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federal register

Wednesday
August 10, 1983

Selected Subjects

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Presidential Documents

Title 3—

The President

Proclamation 5081 of August 8, 1983

Child Health Day, 1983

By the President of the United States of America

A Proclamation

More than anything else, we seek the blessing of good health for our children. We hope for the sound minds in sound bodies that lead to lives of strength and achievement.

Through the resources of a health care system second to none, this Nation strives to protect all of our children from preventable diseases, to encourage behavior that fosters good health, and to treat their episodic illnesses.

Unfortunately, some children are burdened with disabilities and chronic illnesses and need long-term healing and care. Their ability to thrive and to contribute to society depends on their receiving the kinds of treatment and health care that are available in this country as in few other places on earth.

Our task on this Child Health Day, 1983, is to fuse our efforts as parents, volunteers, health professionals, and educators to help all children—particularly those with special health needs—take advantage of opportunities that enable them to heal, to grow, and to achieve everything of which they are capable.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, pursuant to a joint resolution of May 18, 1928, as amended (36 U.S.C. 143), do hereby proclaim Monday, October 3, 1983, as Child Health Day, 1983.

I urge all Americans to join me in encouraging good health habits and attitudes in our children and invite all citizens and all agencies and organizations interested in child welfare to unite on Child Health Day with appropriate observances and activities directed toward establishing such practices in the youth of our country.

IN WITNESS WHEREOF, I have hereunto set my hand this 8th day of Aug., in the year of our Lord nineteen hundred and eighty-three, and of the Independence of the United States of America the two hundred and eighth.

Ronald Reagan

[FR Doc. 83-22027
Filed 8-9-83; 10:43 am]
Billing code 3195-01-M

Rules and Regulations

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SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 270

[Release No. IC-13407; File No. S7-943]

Exchange Offers by Certain Registered Separate Accounts or Others

AGENCY: Securities and Exchange Commission.

ACTION: Final rule and rule amendments.

SUMMARY: The Commission is adopting a rule under the Investment Company Act of 1940 permitting certain registered insurance company separate accounts, or principal underwriters therefor, subject to certain conditions, to make an exchange offer to securityholders without the terms of that offer first having been submitted to and approved by the Commission. The rule codifies the standards the Commission has developed with respect to applications seeking such approval and will eliminate the need for such applications. The Commission also is adopting related technical amendments to one of the general rules under the Act.

EFFECTIVE DATE: August 10, 1983.

FOR FURTHER INFORMATION CONTACT: Thomas P. Lemke, Special Counsel (202) 272-2061, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street NW., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission ("Commission") today announced the adoption of rule 11a-2 [17 CFR 270.11a-2] under the Investment Company Act of 1940 [15 U.S.C. 80a-1 et seq.] ("Act") relating to offers of exchange made pursuant to section 11 of the Act [15 U.S.C. 80a-11] by registered insurance company separate accounts or principal underwriters therefor (collectively sometimes referred to as "separate accounts"). The rule permits a separate account designated as an "offering account," subject to certain conditions, to make an offer of exchange to securityholders of the offering account, or of other separate accounts having the same or an affiliated insurance company depositor or sponsor, without the terms of that offer first having been submitted to and approved by the Commission. Additionally, the Commission is adopting related technical amendments to rule 0-1(e) [17 CFR 270.0-1(e)] of the General Rules and Regulations under the Act. The background and reasons for the proposals are set forth in Investment Company Act Release No. 12675 (Sept. 20, 1982) [47 FR 42374, Sept. 27, 1982].

Discussion

In response to its request for comments, the Commission received three comment letters. While all approved of the proposal and urged its adoption, the commentators also suggested a number of changes to the proposed rule. Based on a review of those suggestions, the Commission has determined to adopt a modified version of the rule, as discussed *infra*. The main points raised by the commentators and the changes made are discussed below.

1. Reinterpretation of the Requirements of Section 11

One commentator urged the Commission to reexamine its interpretation of the scope of exchange offers generally subject to section 11. Specifically, the commentator urged the Commission to reconsider its view that a separate account registered under the Act as a unit investment trust (a "trust account") must obtain an order of the Commission pursuant to section 11 before offering securityholders the opportunity to reallocate their investments among the open-end management investment companies typically constituting the investment media underlying the trust account.[1] The commentator argued that the language of section 11 does not require this interpretation because such reallocations do not involve an offer to exchange securities of the trust account and that a different interpretation, *i.e.*, that Commission approval of the terms of such reallocations was not required, would facilitate the operations of all separate accounts. The Commission believes that the long-standing interpretation of section 11 in question is consistent with the provision's legislative intent and the protection of investors and that reconsideration is not necessary, particularly since adoption of rule 11a-2 will provide the same benefits generally as would be provided by the commentator's suggested reinterpretation.

2. Exchange Offers By Variable Life Insurance Separate Accounts

One commentator suggested that the proposed rule be specifically extended to permit exchange offers to be made by separate accounts offering variable life insurance policies without prior Commission approval. The commentator pointed out that the benefits of the proposed rule, as written, would not clearly extend to such exchange offers because the provisions of the proposed rule relating to sales loads are not consistent with several provisions of rule 6e-2 under the Act [17 CFR 270.6e-2], the general exemptive rule for variable life insurance separate accounts.

After reviewing this comment, the Commission has determined that it would be appropriate and feasible to extend the rule to permit, where no sales load is imposed, variable life trust accounts to offer policyholders the opportunity to reallocate their investments among the open-end management investment companies constituting the funding media underlying any such trust account without prior Commission approval. A provision for such exchange offers, containing requirements comparable to those prescribed by the rule for similar exchange offers involving variable annuity contracts, has been included in paragraph (b)(2) of the rule. By so extending the rule, the Commission believes rule 11a-2 will eliminate the

[1] In this regard, the commentator also asserted that, notwithstanding the definition of the term "exchange" contained in rule 11a-1 under the Act [17 CFR 270.11a-1], there is considerable difference of opinion as to what constitutes an exchange offer. Rule 11a-1, however, is not intended to provide a generally applicable definition of that term. Rather, as reflected in the adopting release (Investment Company Act Rel. No. 5024 (July 12, 1967)) and the terms of the rule itself, the rule relates only to "exchanges" in the context of a specific kind of security known as a "terminable redeemable security."

need for individual applications in a substantial majority of the routine cases. However, the Commission has determined not to extend the rule to include variable life exchange offers involving the imposition of a sales load, at least until it has had more experience with this type of exchange offer through the application process.

3. Exchange Offers Involving Separate Accounts Sponsored by Affiliated Insurance Companies

In the proposing release, the Commission requested comments on whether the proposed rule should be expanded to include exchange offers made between separate accounts having different insurance company sponsors or depositors, provided that the insurance companies have a common parent. All three commentators recommended that the Commission so expand the rule, arguing generally that the decision to operate several insurance companies through a holding company structure is based upon factors that should not affect the permissibility of registered separate accounts making an exchange offer. [3] The Commission agrees and has expanded the scope of the relief provided by the rule as requested.

4. Exchange Offer Involving Securities Subject to Both a Front-end and a Deferred Sales Load

In the proposing release, the Commission requested comments on whether the proposed rule should be expanded to include exchange offers involving securities subject to both a front-end and a deferred sales load [3] and, if so, on the appropriate limitations on the amount and method of calculating sales loads to be applied to such exchange offers. One commentator supported such an expansion of the proposed rule, subject to the condition that the deferred sales load on the exchanged security be waived. The Commission believes that there may be a number of appropriate methods to address this issue and that, given the infrequent incidence of this type of sales loading structure, it would be preferable at this time not to codify the suggested method but rather to devise appropriate standards through the application process.

5. Relief for Transfer Fees

The proposed rule provided that in connection with an exchange offer made in reliance on the rule, the offering account could impose a reasonable fee for administrative expenses incurred in connection therewith (a "transfer fee") without the exchange being deemed to be made on a basis other than net asset value. One commentator requested that the Commission include in the rule the exemptive relief from the provisions of sections 26 and 27 of the Act [15 U.S.C. 80a–26 and 80a–27) necessary to permit deduction of this fee.[4] The Commission has determined not to modify the rule in this regard because, as recently noted in the release proposing rule 6c–8 under the Act (Investment Company Act Release No. 13048 (February 28, 1983) [48 FR 9532, March 7, 1983]), it intends to consider shortly another "start-up" rule,[5] one which would codify the relief from sections 26 and 27 of the Act necessary to permit separate accounts to deduct various kinds of administrative fees, including transfer fees. Moreover, prior to adoption of that rule, the vast majority of separate accounts making exchange offers and imposing transfer fees in connection therewith will be able to make exchanges solely in reliance on rule 11a–2 since typically they will have obtained the necessary relief from sections 26 and 27 of the Act as part of their start-up relief.[6]

Alternatively, the commentator requested that the Commission make clear that a transfer fee that meets the standards for exemptive relief from sections 26 and 27 also would be permitted by paragraph (b)(1)(i) of the proposed rule. For purposes of sections 26 and 27, the Commission's general policy has been to grant applications for exemptive orders to the extent necessary to permit separate accounts to impose various types of administrative fees, including transfer fees, provided that such fees are in an amount not greater than the estimated cost of the services provided. In order to clarify that this standard also is applicable to transfer fees, the language in the proposed rule to the effect that the fee must be reasonable in relation to the services rendered and expenses incurred, which might be construed as prescribing a different standard, has been deleted.

6. Other Comments

In response to other comments, the Commission has made two changes in the language of the rule. First, the rule has been amended to refer to "securities (or portions thereof)" instead of referring only to "securities" because, as pointed out by one commentator, some registrants deem it appropriate to register the entire insurance or annuity contract under the Securities Act of 1933 while others deem it appropriate to register only the units of interest in the separate account that fund the contract. Second, paragraph (c) of the proposed rule, which prescribes the requirements for deducting a front-end sales load at the time of the exchange, has been clarified to state that there may be deducted the "*excess of* the rate of the front-end sales load otherwise applicable to that security *over* the rate of any front-end sales load previously paid" rather than the "difference between" the two rates. This change, a commentator noted, makes clear that the securityholder is credited for any front-end sales load paid on the security to be exchanged.

7. Amendments to rule 0–1(e)

As proposed, the Commission is amending rule 0–1(e) of the General Rules and Regulations under the Act, which defines various terms used in those rules and regulations, including

[3] One commentator also appeared to suggest that the Commission should permit, by rule or order, offering accounts to make offers of exchange to securityholders of a separate account with an unaffiliated sponsoring insurance company. The Commission has not received any applications requesting approval of the terms of this type of exchange offer and believes it is appropriate to consider the terms of such offers pursuant to an application. The possible complexity and variety of the terms of such exchange offers make relief by rule inappropriate at this time.

[3] In order to conform the language of rule 11a–2 with that of the recently adopted deferred sales load rule (*see* Investment Company Act Rel. No. 13406 (July 28, 1983) [rule 6c–8) [17 CFR 270.6c–8]), the term "contingent deferred sales load" used in proposed rule 11a–2 has been changed to "deferred sales load."

[4] Section 26(a)(2)(C) of the Act [15 U.S.C. 80a–26(a)(2)(C)], as relevant here, provides generally that no payment to the depositor of or principal underwriter for a trust account shall be allowed the trustee as an expense. This requirement is made applicable to separate accounts registered under the Act as management investment companies issuing periodic payment plan certificates by section 27(c)(2) of the Act [15 U.S.C. 80a–27(c)(2)]. A variable annuity contract which is permitted to be paid for with more than one purchase payment, including a reinvestment of dividends or an accumulation of capital gains attributable to such contracts, is a periodic payment plan certificate.

[5] For a variety of reasons, separate accounts must obtain so-called "start-up" exemptive relief from various provisions of the Act prior to offering their variable annuity contracts to the public.

[6] For example, presently a trust account, in order to permit transfers among the investment media initially underlying the account and deduct transfer fees in connection therewith, must obtain, as part of its start-up application, an order pursuant to section 11 and relief from sections 26 and 27 of the Act. Thereafter, if an additional investment medium is added, section 11 requires the account to obtain Commission approval of the terms of any transfers involving that medium but the account's sections 26 and 27 start-up relief is sufficient to permit the deduction of transfer fees in connection with those transfers. Since rule 11a–2 generally will eliminate the need for the section 11 order, only an existing trust account proposing to impose a transfer fee for the first time or proposing to raise the level of an existing transfer fee will be precluded from relying solely on the rule.

the term "separate account," and sets forth conditions for availability of exemptive relief for separate accounts pursuant to various of those rules, to include rule 11a–2 as one of the rules listed therein.

List of Subjects in Part 270

Investment companies, Reporting Requirements, Securities.

Text of Rule 11a–2 and Amendments to Rule 0–1(e)

PART 270—[AMENDED]

Part 270 of Chapter II of Title 17 of the Code of Federal Regulations is amended as follows:

1. By revising the introductory paragraph of (e) and paragraph (e)(2) of § 270.0–1 to read as follows:

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

§ 270.0–1 Definition of terms used in this part.

* * * * *

(e) Definition of separate account and conditions for availability of exemptions under §§ 270.6c–6, 270.6c–8, 270.11a–2, 270.14a–2, 270.15a–3, 270.16a1, 270.22d–3, 270.22e–1, 270.27a–1, 270.27a–2, 270.27a–3, 270.27c–1, and 270.32a–2 of this chapter.

* * * * *

(2) As conditions to the availability of exemptive Rules 6c–6, 6c–8, 11a–2, 14a–2, 15a–3, 16a–1, 22d–3, 22e–1, 27a–1, 27a–2, 27a–3, 27c–1, and 32a–2, the separate account shall be legally segregated, the assets of the separate account shall, at the time during the year that adjustments in the reserves are made, have a value at least equal to the reserves and other contract liabilities with respect to such account, and at all other times, shall have a value approximately equal to or in excess of such reserves and liabilities; and that portion of such assets having a value equal to, or approximately equal to, such reserves and contract liabilities shall not be chargeable with liabilities arising out of any other business which the insurance company may conduct.

2. By adding § 270.11a-2 to read as follows:

§ 270.11a–2 Offers of exchange by certain registered separate accounts or others the terms of which do not require prior Commission approval.

(a) As used in this section:

(1) "Deferred sales load" shall mean any sales load, including a contingent deferred sales load, that is deducted upon redemption or annuitization of amounts representing all or a portion of a securityholder's interest in a separate account;

(2) "Exchanged security" shall include not only the security or securities (or portion[s] thereof) of a securityholder actually exchanged pursuant to an exchange offer but also any security or securities (or portion[s] thereof) of the securityholder previously exchanged for the exchanged security or its predecessors;

(3) "Front-end sales load" shall mean any sales load that is deducted from one or more purchase payments made by a securityholder before they are invested in a separate account; and

(4) "Purchase payments made for the acquired security," as used in paragraphs (c)(2) and (d)(2) of this section, shall not include any purchase payments made for the exchanged security or any appreciation attributable to those purchase payments that are transferred to the offering account in connection with an exchange.

(b) Notwithstanding section 11 of the Act [15 U.S.C. 80a–11], any registered separate account or any principal underwriter for such an account (collectively, the "offering account") may make or cause to be made an offer to the holder of a security of the offering account, or of any other registered separate account having the same insurance company depositor or sponsor as the offering account or having an insurance company depositor or sponsor that is an affiliate of the offering account's depositor or sponsor, to exchange his security (or portion thereof) (the "exchanged security") for a security (or portion thereof) of the offering account (the "acquired security") without the terms of such exchange offer first having been submitted to and approved by the Commission, as provided below:

(1) If the securities (or portions thereof) involved are variable annuity contracts, then

(i) The exchange must be made on the basis of the relative net asset values of the securities to be exchanged, except that the offering account may deduct at the time of the exchange

(A) An administrative fee which is disclosed in the part of the offering account's registration statement under the Securities Act of 1933 relating to the prospectus, and

(B) Any front-end sales load permitted by paragraph (c) of this section, and

(ii) Any deferred sales load imposed on the acquired security by the offering account shall be calculated in the manner prescribed by paragraph (d) or (e) of this section; or

(2) If the securities (or portions thereof) involved are variable life insurance contracts offered by a separate account registered under the Act as a unit investment trust, then the exchange must be made on the basis of the relative net asset values of the securities to be exchanged, except that the offering account may deduct at the time of the exchange an administrative fee which is disclosed in the part of the offering account's registration statement under the Securities Act of 1933 relating to the prospectus.

(c) If the offering account imposes a front-end sales load on the acquired security, then such sales load

(1) Shall be a percentage that is no greater than the excess of the rate of the front-end sales load otherwise applicable to that security over the rate of any front-end sales load previously paid on the exchanged security, and

(2) Shall not exceed 9 percent of the sum of the purchase payments made for the acquired security and the exchanged security.

(d) If the offering account imposes a deferred sales load on the acquired security and the exchanged security was also subject to a deferred sales load, then any deferred sales load imposed on the acquired security

(1) Shall be calulated as if

(i) The holder of the acquired security had been the holder of that security from the date on which he became the holder of the exchanged security and

(ii) Purchase payments made for the exchanged security had been made for the acquired security on the date on which they were made for the exchanged security; and

(2) Shall not exceed 9 percent of the sume of the purchase payments made for the acquired security and the exchanged security.

(e) If the offering account imposes a deferred sales load on the acquired security and a front-end sales load was paid on the exchanged security, then any deferred sales load imposed on the acquired security may not be imposed on purchase payments made for the exchanged security or any appreciation attributable to purchase payments made for the exchanged security that are transferred in connection with the exchange.

(f) Notwithstanding the foregoing, no offer of exchange shall be made in reliance on this section if both a front-end sales load and a deferred sales load are to be imposed on the acquired security or if both such sales loads are imposed on the exchanged security.

Paperwork Reduction Act

The information collection required by this rule has been cleared by the Office

of Management and Budget and given clearance number 3235-0272.

Regulatory Flexibility Act Certification

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 606(b), the Chairman of the Commission has certified that rule 11a-2 will not have a significant economic impact on a substantial number of small entities. The Commission did not receive any comments on that certification.

Statutory Authority

The Commission hereby adopts rule 11a-2 pursuant to the provisions of section 11(a) [15 U.S.C. 80a-11(a)] and section 38(a) [15 U.S.C. 80a-37(a)] of the Act. Further, the Commission hereby amends rule 0-1(e) pursuant to the provisions of section 38(a) [15 U.S.C. 80a-37(a)] of the Act. By the Commission.

Dated: July 28, 1983.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-21696 Filed 8-9-83; 8:45 am]

BILLING CODE 8010-01-M

ENVIRONMENTAL PROTECTION AGENCY

21 CFR Part 193

[PAP 9H5210/R138; PH-FRL 2410-3]

Tolerances for Pesticides in Food Administered by Environmental Protection Agency; Resmethrin

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a food additive regulation to permit residues of the insecticide resmethrin in or on food commodities. This regulation to establish the maximum permissible level for residues of the insecticide in or on food commodities was requested, pursuant to a petition, by the Penick Corporation.

EFFECTIVE DATE: August 10, 1983.

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

FOR FURTHER INFORMATION CONTACT: Timothy A. Gardner, Product Manager (PM) 17, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency Rm. 207, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202; (703-557-2690).

SUPPLEMENTARY INFORMATION: EPA issued a notice published in the **Federal Register** of March 2, 1983 (48 FR 8856) that announced that the Penick Corporation, 1050 Wall St. West, Lyndhurst, NJ 07071, had submitted food additive petition FAP 9H5210 proposing to amend 21 CFR Part 193 by establishing a regulation permitting residues of the insecticide resmethrin [5-(phenylmethyl)-3-furanyl] methyl 2,2-dimethyl-3-(2-methyl-1-propenyl) cyclopropanecarboxylate in or on foods at 3.0 parts per million (ppm) resulting from the use of resmethrin in food processing and food storage areas, provided that the food is removed or covered prior to such use. No comments were received by the Agency in response to the notice of filing.

The data submitted in the petition and other relevant material have been evaluated. The toxicological data considered in support of the tolerance included a 2-year rat chronic feeding/oncogenicity study with a no-observed-effect level (NOEL) of 500 parts per million (ppm) for toxic effects, which was the lowest effect level (LEL) for increases in hypertrophy of hepatocytes which are not considered a definite toxic response. The LEL for definite toxic effects was 2,500 ppm; at this level there were increases in liver weight and various liver lesions were noted. In this rat study resmethrin was determined not to be oncogenic up to, and including, 5,000 ppm, which was the highest dose tested (HDT); an 85-week mouse oncogenesis study which showed that resemethrin was not oncogenic up to and including 1,000 ppm (HDT); a 3-generation rat reproduction study with a NOEL of <500 ppm, in which there were slight increases in pups cast dead and decreases in pup weight noted at the lowest dose tested (LDT); rat and rabbit teratology studies which showed that resmethrin was not teratogenic in rats up to, and including, 80 milligrams (mg)/kilogram (kg) (HDT) and not teratogenic in rabbits up to, and including, 100 mg/kg (HDT); a 180-day subchronic feeding study in dogs with a NOEL of 10 mg/kg of body weight (bw)/day, with an LEL of 30 mg/kg of bw/day, at which level increased liver weights were noted. The acute oral LD_{50} in rats ranged from 1.5 to 10.2 grams (gm)/kg in five tests. Special neurotoxicity studies in rats showed that resmethrin was not neurotoxic at 1,250 ppm for 32 weeks, 5,000 ppm for 30 days or 12,640 ppm for 7 days.

Data considered desirable but currently lacking are:

1. Additional mutagenicity studies which may be required when EPA policy is finalized.

2. An acute inhalation LC_{50} study and the 90- and 21-day subchronic inhalation studies with the technical resmethrin and/or formulated product.

Actions being taken to obtain the lacking information are:

1. The petitioner has been advised of the mutagenesis requirement, and has agreed in writing to submit additional mutagenicity studies if required.

2. The petitioner has agreed in writing to submit the acute inhalation and subchronic inhalation studies with the technical material and/or formulated product by March 31, 1984.

The acceptable daily intake (ADI) is calculated to be 0.1250 mg/kg/day based on the rat chronic feeding study and the 3-generation rat reproduction study with the lowest dose tested for these studies (500 ppm) and using a 200-fold safety factor. The maximum permissible intake (MPI) is calculated to be 7.5000 mg/day for a 60-kg person. Approval of the tolerance for foods in food processing and food storage areas would result in the theoretical maximum residue contribution (TMRC) of 4.5000 mg/day/1.5 kg and utilize 60.00 percent of the ADI.

The nature of the residue is adequately understood for this use, and an adequate analytical method (gas chromatography) is available for enforcement purposes.

There are currently no regulatory actions pending against the continued registration of this pesticide and no other considerations are involved in establishing this tolerance.

The pesticide is considered useful for the purpose for which the regulation is sought. It is concluded that the pesticide may be safely used in the prescribed manner when such use is in accordance with the label and labeling registered pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, (86 Stat. 973, 89 Stat. 751, U.S.C. 135(a) *et seq.*) and is established as set forth below.

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

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-534, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new food or feed additive levels, or conditions for safe use of additives, or raising such food or feed additive levels 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 24945).

[Sec. 409(c)(1), 72 Stat. 1786 (21 U.S.C. 346(c)(1))].

List of Subjects in 21 CFR Part 193

Food additives, Animal feeds, Pesticides and pests.

Dated: July 21, 1983.

Edwin L. Johnson,

Director, Office of Pesticide Programs.

PART 193—[AMENDED]

Therefore, 21 CFR Part 193 is amended by adding a new § 193.464 to read as follows:

§ 193.464 Resmethrin.

Tolerances are established for residues of the insecticide resmethrin [5-[phenylmethyl]-3-furanyl] methyl 2,2-dimethyl-3-(2-methyl-1-propenyl) cyclopropanecarboxylate in or on food items at 3.0 ppm resulting from use of the insecticide in food handling and storage areas as a space concentration for spot/or crack and crevice treatment and shall be limited to a maximum of 3.00 percent of the active ingredient by weight, and as a space treatment shall be limited to a maximum of 0.5 fluid ounce of 3.0 percent active ingredient by weight per 1000 cubic feet of space provided that the food is removed or covered prior to such use. To assure safe use of the additive, its label and labeling shall conform to that registered with the U.S. Environmental Protection Agency, and shall be used in accordance with such label and labeling.

[FR Doc. 83-21291 Filed 8-9-83; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 202a, 203, 209, 211, 213, 220, 221, 222, 226, 228, 234, 235 and 237

[Docket No. R-83-1071]

One-Time Mortgage Insurance Premium

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

ACTION: Notice of announcement of effective date for final rule.

SUMMARY: This notice announces the effective date for the final rule published in the **Federal Register** on June 23, 1983 [48 FR 28794] that established a new system for collecting mortgage insurance premiums for certain single family mortgages HUD insures under section 203 of the National Housing Act. The effective date provision of the rule stated that the rule would become effective upon expiration of the first period of 30 calendar days of continuous session of Congress after publication, subject to waiver, and announced that future notice of the effectiveness of the rule would be published in the **Federal Register**.

Thirty calendar days of continuous session of Congress have expired since the rule was published.

DATE: The effective date for the final rule published June 23, 1983 (48 FR 28794), is September 1, 1983.

FOR FURTHER INFORMATION CONTACT: James B. Mitchell, Acting Director, Office of Financial Management, Room 6186, 451 Seventh Street, S.W., Washington, D.C. 20410, telephone (202) 426-4325. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: In addition to this notice announcing the effectiveness of this rule as September 1, 1983, the effective date is also being inserted wherever it appears in § 203.259a.

PART 203—[AMENDED]

Accordingly, 24 CFR Part 203 is amended as follows:

§ 203.259a [Amended]

1. In § 203.259a, remove the parenthetical phrase "(insert effective date)" from page 28805, first column, line 9 and line 17, and add in its place September 1, 1983.

Dated: July 29, 1983.

Grady J. Norris,

Assistant General Counsel for Regulations.

[FR Doc. 83-21743 Filed 8-9-83; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 373

[DoD Directive 5106.1]

Inspector General of the Department of Defense

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: Under Pub. L. 95-452, the Secretary of Defense has assigned responsibilities and functions to the Inspector General of the Department of Defense, and has delegated specific authorities. This rule [DoD Directive 5106.1] serves as the DoD implementing document that provides the responsibilities, functions, authorities, and relationships for the Inspector General of the Department of Defense to carry out his charter.

EFFECTIVE DATE: This rule was approved and signed by the Deputy Secretary of Defense on March 14, 1983, and is effective as of that date.

FOR FURTHER INFORMATION CONTACT: Mr. Arthur H. Ehlers, Director for Organizational and Management Planning, Office of the Deputy Secretary of Defense (Administration), Office of the Assistant Secretary of Defense (Comptroller), The Pentagon, Washington, D.C. 20301, telephone 202-695-4278.

SUPPLEMENTARY INFORMATION: In FR Doc. 82-14216, appearing in the **Federal Register** (47 FR 22530) on May 25, 1982, the Office of the Secretary of Defense published this Part. Pub. L. 95-452 promulgated the Inspector General Act of 1978. As a result, the position of the Assistant to the Secretary of Defense (Review and Oversight) was abolished and a new position of Inspector General, DoD, established.

This information is submitted in compliance with the requirements of section 552(a)(1) of Title 5, United States Code, and 1 CFR 305.76.

List of Subjects in 32 CFR Part 373

Organization and functions (government agencies), Investigations and inspections.

Accordingly, 32 CFR, Chapter I, is amended by revising Part 373, reading as follows:

PART 373—INSPECTOR GENERAL OF THE DEPARTMENT OF DEFENSE

Sec.

Authority: Pub. L. 95-452 and 10 U.S.C., Chapter 4.

§ 373.1 Purpose.

This Part implements the provisions of Pub. L. 95-452, which establishes the position of Inspector General (IG) and the Office of the Inspector General (OIG) in the Department of Defense, and sets forth responsibilities, functions, authorities, and relationships as outlined below.

§ 373.2 Applicability and scope.

(a) This Part applies to the Office of the Secretary of Defense (OSD), the Military Departments, the Organizations of the Joint Chiefs of Staff (OJCS), the Unified and Specified Commands, and the Defense Agencies (hereinafter referred to as "DoD Components").

(b) Its provisions cover all programs and operations administered or financed by the Department of Defense.

§ 373.3 Mission.

As an independent and objective office in the Department of Defense, the OIG shall:

(a) Conduct, supervise, monitor, and initiate audits and investigations relating to programs and operations of the Department of Defense.

(b) Provide leadership and coordination and recommend policies for activities designed to promote economy, efficiency, and effectiveness in the administration of, and to prevent and detect fraud and abuse in, such programs and operations.

(c) Provide a means for keeping the Secretary of Defense and the Congress fully and currently informed about problems and deficiencies relating to the administration of such programs and operations and the necessity for and progress of corrective action.

§ 373.4 Organization and management.

(a) The IG, a civilian appointed by the President, with the advice and consent of the Senate, shall serve as head of the OIG.

(b) The IG, in accordance with applicable laws and regulations governing the civil service, shall:

(1) Appoint a Deputy Inspector General, who shall serve as IG in his or her absence.

(2) Appoint an Assistant Inspector General for Auditing who shall supervise the performance of auditing activities relating to programs and operations of the Department of Defense.

(3) Appoint an Assistant Inspector General for Investigations who shall supervise the performance of investigative activities relating to programs and operations of the Department of Defense.

(4) Select, appoint, and employ such other officers and employees as may be necessary to carry out the mission, functions, responsibilities, and authorities assigned herein.

(c) The OIG shall consist of organizational elements established by the IG within the resources assigned by the Secretary of Defense or by statute.

(d) The Secretaries of the Military Departments or their designees shall assign military personnel to the OIG in accordance with approved authorizations and established procedures for assignments to joint duty.

(e) The Secretary of Defense shall provide the OIG with appropriate and adequate office space at central and field office locations together with such equipment, office supplies, and communications facilities and services as may be necessary for the operation of the OIG, and shall provide necessary maintenance services for offices and equipment and facilities located therein.

§ 373.5 Responsibilities and functions.

(a) The *Inspector General, Department of Defense*, shall:

(1) Be the principal adviser to the Secretary of Defense on all audit and criminal investigative matters covered under Pub. L. 95–452 and for matters relating to the prevention and detection of fraud, waste, and abuse in the programs and operations of the Department of Defense.

(2) Initiate, conduct, and supervise such audits and investigations in the Department of Defense, including the Military Departments, as the IG considers appropriate.

(3) Provide policy direction for audits and investigations relating to fraud, waste, and abuse and program effectiveness.

(4) Evaluate and review the work of all DoD activities relating to contract audit, internal audit, internal review, military exchange audit, and independent public accountant audit service programs.

(5) Investigate fraud, waste, and abuse uncovered as a result of contract and internal audits, as the IG considers appropriate.

(6) Develop policy, monitor and evaluate program performance, and provide guidance with respect to all DoD activities relating to criminal investigation programs.

(7) Monitor and evaluate the adherence of DoD auditors to internal audit, contract audit, and internal review principles, policies, and procedures.

(8) Develop policy, evaluate program performance, and monitor actions taken by all DoD Components in response to contract audits, internal audits, internal review reports, and audits conducted by the Comptroller General of the United States.

(9) Monitor and give particular regard to the activities of the internal audit, inspection, and investigative units of DoD Components (including those of the Military Departments) with a view toward avoiding duplication and insuring effective coverage, coordination, and cooperation.

(10) Provide policy direction for and conduct, supervise, and coordinate audits and investigations relating to DoD programs and operations.

(11) Review existing and proposed legislation and regulations relating to DoD programs and operations and make recommendations thereon in accordance with Section 4(a)(2) of Pub. L. 95–452 concerning their impact on economy and efficiency or on the prevention and detection of fraud and abuse in DoD programs and operations.

(12) Recommend policies for and conduct, supervise, or coordinate other activities carried out or financed by the Department of Defense for the purpose of promoting economy and efficiency in the administration of, or preventing and detecting fraud and abuse in, its programs and operations.

(13) Recommend policies for and conduct, supervise, or coordinate relationships between the Department of Defense and other Federal agencies, State and local governmental agencies, and nongovernmental entities with respect to (i) all matters relating to the promotion of economy and efficiency in the administration of, or the prevention and detection of fraud and abuse in, programs and operations administered or financed by the Department of Defense; or (ii) the identification and prosecution of participants in such fraud or abuse.

(14) Keep the Secretary of Defense and Congress fully and currently informed concerning fraud and other serious problems, abuses, and deficiencies relating to the administration of programs and operations administered or financed by the Department of Defense, recommend corrective action concerning such problems, abuses, and deficiencies, and report on the progress made in implementing such corrective action.

(15) Receive and investigate, consistent with Section 7 of Pub. L. 95–452 and DoD Directive 7050.1 complaints or information concerning the possible existence of an activity constituting a violation of law, rules, or regulations, or mismanagement, gross waste of funds, or abuse of authority, or a substantial and specific danger to the public health and safety involving the Department of Defense.

(16) Organize, direct, and manage the OIG and all resources assigned thereto.

(17) Perform other duties as assigned by the Secretary of Defense.

(b) The *Secretaries of the Military Departments* shall maintain authority, direction, and operational control over

their audit, inspection, and investigative organizations, including responsibility for their effectiveness and the scope of their activities.

(c) The *Assistant Secretary of Defense (Comptroller)* shall maintain authority, direction, and operational control over the Defense Contract Audit Agency including responsibility for the effectiveness and scope of the Agency's activities.

§ 373.6 Relationships.

(a) The IG shall carry out the above responsibilities and functions under the general supervision of the Secretary of Defense and shall not be prevented or prohibited from initiating, carrying out, or completing any audit or investigation, or from issuing any subpoena during the course of any audit or investigation; except that the IG shall be subject to the authority, direction, and control of the Secretary with respect to audits, investigations, or the issuances of subpoenas that require access to information concerning:

(1) Sensitive operational plans.

(2) Intelligence matters.

(3) Counterintelligence matters.

(4) Ongoing criminal investigations by other administrative units of the Department of Defense related to national security.

(5) Other matters the disclosure of which would constitute a serious threat to national security.

(b) If the Secretary of Defense exercises the authority to restrict IG access under § 373.6(a) above, the IG shall submit a statement concerning such exercise within 30 days to the Committees on Armed Services and Governmental Affairs of the Senate and the Committees on Armed Services and Government Operations of the House of Representatives and to other appropriate committees or subcommittees.

(c) In the performance of assigned responsibilities and functions, the IG shall:

(1) Coordinate actions, as he or she deems appropriate, with other DoD Components and, unless precluded by the nature of the matter, notify the Secretaries of the Military Departments concerned before conducting audits or investigations of matters normally under the jurisdiction of the Military Departments.

(2) Give particular regard to the activities of the Comptroller General of the United States with a view toward avoiding duplication and insuring effective coordination and cooperation.

(3) Coordinate, as appropriate, with the Under Secretary of Defense for Policy and the Assistant to the Secretary of Defense (Intelligence Oversight) on matters relating to their respective areas of responsibility.

(4) Report expeditiously to the Attorney General whenever the IG has reasonable grounds to believe there has been a violation of Federal criminal law.

(5) Report expeditiously to the Military Department Secretary concerned any suspected or alleged violations of the Uniform Code of Military Justice.

§ 373.7 Authority.

In addition to the authorities delegated in Pub. L. 95–452, the IG is hereby delegated authority to:

(a) Issue DoD instructions, DoD publications, and one-time, directive-type memoranda, consistent with DoD 5025.1–M that implement policies approved by the Secretary of Defense in assigned areas of responsibility. Instructions shall be issued directly to elements of the OSD and the Defense Agencies. Instructions to the Military Departments shall be issued through the Secretaries of those Departments or their designees. Instructions to the Unified and Specified Commands shall be issued through the JCS.

(b) Have access to all records, reports, investigations, audits, reviews, documents, papers, recommendations, or other material available to any DoD Component. These normally shall be obtained consistent with DoD Directive 5000.19.

(1) Except as specifically denied in writing by the Secretary of Defense pursuant to the authority contained in Section 8 of Pub. L. 95–452 and § 373.6(a), above, no officer, employee, or service member of any DoD Component may deny the IG, or officials assigned by the IG, access to information, or prevent them from conducting an audit or investigation.

(2) IG officials shall possess proper access security clearance when sensitive classified data are requested.

(c) Communicate directly with personnel of other DoD Components on matters related to Pub. L. 95–452 and this Part. To the extent practicable and consistent with the responsibilities and functions of the Military Departments as described in § 373.5(b), above, the head of the DoD Component concerned shall be kept informed of such direct communications.

(d) Request assistance as needed from other audit, inspection, and investigative units of DoD Components. In such cases, assistance shall be requested through the head of the DoD Component concerned.

(e) Request information or assistance from any Federal, State, or local governmental agency, or unit thereof.

(f) Exercise the administrative authorities contained in § 373.8.

§ 373.8 Delegations of Authority.

Pursuant to the authority vested in the Secretary of Defense, and in accordance with DoD policies, Directives, and Instructions, the Inspector General (IG) of the Department of Defense or, in the absence of the IG, the person acting for him or her, is hereby delegated authority, as required in the administration and operation of the Office of the Inspector General (OIG) to:

(a) Fix rates of pay for wage board employees exempted from Title 5, United States Code, Section 5102(c)(7), on the basis of rates established under the Coordinated Federal Wage System. In fixing those rates, the wage schedules established by DoD wage-fixing authority shall be followed.

(b) Establish advisory committees and employ part-time advisors for the performance of OIG functions pursuant to Title 10, United States Code, Section 173(a).

(c) Administer oaths of office incident to entrance into the Executive Branch of the Federal Government or any other oath required by law in connection with employment therein, in accordance with Title 5, United States Code, Section 2903(b), and designate in writing other officers and employees of the OIG to perform this function. Administer oaths as provided by Title 5, United States Code, Section 303.

(d) Establish an OIG Incentive Awards Board and pay cash awards to and incur necessary expenses for the honorary recognition of OIG civilian employees whose suggestions, inventions, or superior acts or service benefit or affect the OIG or its subordinate activities in accordance with Title 5, United States Code, Section 4503, and Office of Personnel Management (OPM) regulations.

(e) Perform the following functions in accordance with the provisions of Title 5, United States Code, Section 7532; Executive Order 10450, "Security Requirements for Government Employment," April 27, 1953; and DoD 5200.2–R, "DoD Personnel Security Program," December 20, 1979:

(1) Designate any position in the OIG as a "sensitive" position.

(2) Authorize, in case of an emergency, the appointment of a person to a sensitive position in the OIG for a limited period of time for whom a full field investigation or other appropriate

investigation, including the National Agency Check, has not been completed.

(3) Authorize the suspension, but not the termination, of the services of an OIG employee in the interest of national security.

(f) Clear OIG personnel and other individuals, as appropriate, for access to classified DoD material and information in accordance with the provisions of DoD 5200.2–R and Executive Orders 10450 and 12356, "National Security Information," April 2, 1982.

(g) Act as agent for the collection and payment of employment taxes imposed by Chapter 24, Section 3401, of the Internal Revenue Code of 1954 and, as such agent, make all determinations and certifications required or provided under Title 26, United States Code, Section 3122, and Title 42, United States Code, Section 405(p) (1) and (2), with respect to OIG employees.

(h) Authorize and approve overtime work for OIG civilian personnel in accordance with Title 5, United States Code, Subchapter V, Chapter 55, and Section 550.11 of the OPM regulations.

(i) Authorize and approve:

(1) Travel for OIG civilian personnel in accordance with Volume 2, Department of Defense Civilian Personnel, Joint Travel Regulations.

(2) Temporary duty travel only for military personnel assigned to or detailed to the OIG in accordance with Volume 1, Joint Travel Regulations.

(3) Invitational travel to persons serving without compensation whose consultative, advisory, or highly specialized technical services are required in a capacity that is directly related to or in connection with OIG activities, pursuant to Title 5, United States Code, Section 5703, and Part A, Chapter 6, Volume 2, Joint Travel Regulations.

(j) Approve the expenditure of funds available for travel by military personnel assigned or detailed to the OIG for expenses incident to attendance at meetings of technical, scientific, professional, or other similar organizations in such instances where the approval of the Secretary of Defense, or designee, is required by law (Title 37, United States Code, Section 412). This authority cannot be redelegated.

(k) Develop, establish, and maintain an active and continuing Records Management Program under DoD Directive 5015.2, "Records Management Program," September 17, 1980; and Parts 286 and 286a of this title.

(l) Establish and use imprest funds for making small purchases of material and services, other than personal, for the OIG when it is determined more advantageous and consistent with the best interests of the government, in accordance with DoD Instruction 5100.71, "Delegation of Authority and Regulations Relating to Cash Held at Personal Risk Including Imprest Funds," March 5, 1973, and the Joint Regulation of the General Services Administration/Treasury Department/General Accounting Office, "For Small Purchases Utilizing Imprest Funds."

(m) Authorize the publication of advertisements, notices, or proposals in newspapers, magazines, or other public periodicals as required for the effective administration and operation of the OIG (Title 44, United States Code, Section 3702).

(n) Establish and maintain appropriate property accounts for the OIG and appoint boards of survey, approve reports of survey, relieve personal liability, and drop accountability for OIG property contained in the authorized property accounts that has been lost, damaged, stolen, destroyed, or otherwise rendered unserviceable, in accordance with applicable laws and regulations.

(o) Issue the necessary security regulations for the protection of property and places under the jurisdiction of the IG, under DoD Directive 5200.8, "Security of Military Installations and Resources," July 29, 1980.

(p) Establish and maintain, for the functions assigned, an appropriate publications system for the promulgation of common supply and service regulations, instructions, and reference documents, and changes thereto, consistent with DoD 5025–1M, "Department of Defense Directives System Procedures," April 1981.

(q) Enter into support and service agreements with the Military Departments, other DoD Components, or other governement agencies as required for the effective performance of responsibilities and functions assigned to the OIG.

(r) Authorize OIG personnel to carry firearms in accordance with DoD Directive 5210.66, "Carrying of Firearms by Department of Defense Personnel," May 31, 1979.

(s) Exercise original Top Secret classification authority.

(t) Issue credentials and other identification to employees of the OIG.

(u) The Inspector General may redelegate these authorities, in writing, except as otherwise specifically indicated above or as otherwise provided by law or regulation.

Dated: August 5, 1983.

M. S. Healy,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 83-21726 Filed 8-9-83; 8:45 am]

BILLING CODE 3810-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AH-FRL 2412-6]

Approval and Promulgation of State Implementation Plans; Notice of Settlement of Litigation

AGENCY: Environmental Protection Agency.

ACTION: Rule-related notice of settlement of litigation.

SUMMARY: This notice describes a recent settlement of litigation concerning state implementation plans for lead under the Clear Air Act between the Environmental Protection Agency (EPA) and the Natural Resources Defense Council, Inc. (NRDC) and other plaintiffs. This notice provides general information to the public, States and Territories about how this Settlement Agreement may affect them.

FOR FURTHER INFORMATION CONTACT: John J. Silvasi, Office of Air Quality Planning and Standards, Control Programs Development Divison (MD–15), U.S. EPA, Research Triangle Park, N.C. 27711, (919/541–5665).

SUPPLEMENTARY INFORMATION: On July 30, 1982, NRDC and several other plaintiffs filed a citizens suit under Section 304(a) of the Clean Air Act, 42 U.S.C. 7604(a), in the United States District Court for the District of Columbia against EPA for failure to perform nondiscretionary duties concerning the adoption and implementation of state plans for control of airborne lead emissions. *NRDC* v. *Gorsuch*, No. 82–2137 (D.D.C.). NRDC argued that under Section 110 of the Act, 42 U.S.C. 7410, final lead implementation plans for all of the states were to have been promulgated no later than January, 1980 and that at the time of their suit over half the states were without final lead implementation plans. Subsequently, the parties signed a Settlement Agreement, which was approved by Judge Joyce Hens Green of the District Court in an Order signed on July 26, 1983.

The Settlement Agreement establishes specific deadlines for the completion of state implementation plans (SIPs) for

lead for the states currently lacking such plans. If the states do not submit their own lead SIPs to EPA for review and approval, EPA will have to develop and promulgate the necessary plans pursuant to Section 110(c) of the Act, 42 U.S.C. 7410(c).

The Agreement divides the states into three groups. The first group, Appendix I states, consists of states that before March 1, 1983 submitted lead SIPs to EPA upon which EPA has not yet taken final action. This group includes:

Alabama; District of Columbia; Hawaii; Louisiana (Baton Rouge area); Oregon; Nebraska (except Omaha); New Mexico (Anapra area); Pennsylvania (except Philadelphia, Allegheny County, and the area around three secondary lead smelters in Berks and Carbon Counties); and Texas (except Dallas and El Paso).

EPA agreed to publish final approvals or proposed disapprovals of the SIPs for Appendix I states no later than November 1, 1983.[1] In the event EPA proposes disapproval of any of these SIPs, it must publish its final action on the SIP no later than May 1, 1984 and publish a proposed federal implementation plan (FIP) for such state no later than October 1, 1984.

The second group, Appendix II states, consists of states that have not yet submitted lead SIPs to EPA and that have major stationary sources of lead or recent violations of the national ambient air quality standard (NAAQS) for lead. This group includes:

Alaska; California (Fresno and Los Angeles areas); Florida; Idaho; Illinois (Granite City area); Indiana; Minnesota; Mississippi; Montana; Nebraska (Omaha area); New Jersey;
New York; Pennsylvania (Philadelphia and the areas around three secondary lead smelters in Berks and Carbon Counties); Tennessee (outside Davidson and Hamilton counties); Texas (Dallas and El Paso); and Washington.

These states were to have submitted their SIPs to EPA by August 1, 1983. EPA agreed to propose approval or disapproval of the SIPs for Appendix II states no later than January 3, 1984, and to publish final action on these plans no later than August 1, 1984. In the event EPA disapproves a state's plan, it must publish a proposed FIP for that state by October 1, 1984 (unless the state submits a revised SIP for final action before the deadline). If an Appendix II state fails to submit a lead SIP for EPA action by January 3, 1984, EPA is required to publish a proposed FIP for that state by April 1, 1984 and to take final action on its proposal by October 1, 1984. If there are any Appendix I or Appendix II states for which EPA has proposed a FIP by October 1, 1984 in accordance with the Settlement Agreement, the parties will return to the District Court to seek an order setting an appropriate date for making the proposed FIP final.

The third group, Appendix III states, consists of states that have not yet submitted lead SIPs to EPA and that do not have major stationary sources of lead or recent violations of the lead NAAQS. This group includes:

Arizona (New source review); California (New source review outside of Fresno and Los Angeles); Connecticut; Massachusetts; Nevada (Washoe County); Pennsylvania (Allegheny County); Rhode Island; South Dakota; Wisconsin; Wyoming. The Commonwealth of Puerto Rico and the U.S. Trust Territories; American Samoa; Guam; Northern Mariana Islands; and The Virgin Islands.

These states must submit their SIPs to EPA by December 31, 1983. EPA agreed to propose approval or disapproval of SIPs for Appendix III states no later than July 1, 1984, and to publish final action on these plans no later than February 1, 1985.[2] In the event EPA disapproves a state's plan, it must publish a proposed FIP for that state by April 1, 1985 (unless the state submits a revised SIP for final action before the deadline). If there are any Appendix III states for which EPA has proposed a FIP by April 1, 1985 in accordance with the Settlement Agreement, the parties will return to the District Court to seek an order setting an appropriate date for making the proposed FIP final.

If an Appendix III state fails to submit a lead SIP for EPA action by July 1, 1984, EPA is required to publish a proposed FIP for that state by October 1, 1984 and to take final action on its proposal by April 1, 1985. If the Commonwealth of Puerto Rico or any of the U.S. Territories listed in Appendix III fails to submit a lead SIP to EPA for proposed action by July 1, 1984, EPA must propose a FIP for the area by October 1, 1985 and take final action by April 1, 1986.

If at anytime an Appendix II or III state that did not submit a plan in accordance with the timetable set forth in the Agreement submits an approvable lead SIP, EPA may propose approval of that state plan in lieu of a federal plan. EPA, however, must have taken final action on such a plan before the deadlines specified in the Agreement in order not to have to propose or promulgate a FIP for that state.

Similarly, if at anytime an Appendix I state whose SIP, was disapproved by EPA submits an approvable revised SIP, EPA may proceed with the newly revised SIP in lieu of a federal plan (also in accordance with the deadlines in the Agreement for EPA promulgation of a FIP). Finally, if in the future a state covered by this Agreement submits an approvable plan after EPA has promulgated a FIP for that state, EPA may at that time withdraw its FIP and simultaneously substitute the approved SIP.

The District Court will retain jurisdiction of the case until thirty days after final approved by the Administrator or federal promulgation of lead implementation plans for all states whose plans have not been approved by the Administrator as of the date of the Agreement.

The Settlement Agreement described above was completed by NRDC, the Department of Justice and EPA and approved by Judge Joyce Hens Green of the U.S. District Court for the District of Columbia in an Order signed on July 26, 1983.

Dated: July 29, 1983.

Charles L. Elkins,

Acting Assistant Administrator for Air, Noise and Radiation.

[FR Doc. 83-21745 Filed 8-9-83; 8:45 am]

BILLING CODE 6560-50-M

[1] The plan for the Anapra area of New Mexico will be processed under the schedule for Appendix II states in conjunction with the plan for El Paso, Texas.

[2] Pursuant to agreement between the parties, Connecticut will be subject to the schedule applicable to Appendix II states.

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40 CFR Part 180

[PP 2F2761/R533; PH-FRL 2412-4]

Tolerances and Exemptions From Tolerances for Pesticide Chemicals in or on Raw Agricultural Commodities; Poly (Oxy-1, 2-Ethanediyl), Alpha-Isooctadecyl-Omega-Hydroxy

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes an exemption from the requirement of a tolerance for residues of the insecticide poly (oxy-1, 2-ethanediyl), alpha-isooctadecyl-omega-hydroxy in or on certain agricultural commodities resulting from use of the insecticide as a mosquito control agent in aquatic sites. This regulation was requested, pursuant to a petition, by the Sherex Chemical Company, Inc.

EFFECTIVE DATE: Effective on August 10, 1983.

ADDRESS: Written objections may be submitted to the: Hearing Clerk (A-110), Environmental Protection Agency, Rm.

3708, 401 M St., SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: William Miller, Product Manager (PM) 16, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 211, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703–557–2600).

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of March-16, 1983 (48 FR 11161), that announced that the Sherex Chemical Company, PO Box 646, Dublin, OH 43017, had submitted pesticide petition 2F2761 to the Agency proposing to amend 40 CFR Part 180 by establishing an exemption from the requirement of a tolerance for residues of the insecticide poly (oxy-1, 2-ethanediyl), alpha-isooctadecyl-omega-hydroxy in or on the raw agricultural commodities fish, shellfish, irrigated crops, meat, milk, poultry, and eggs resulting from use of the insecticide in accordance with good agricultural practice as a mosquito control agent in aquatic sites.

There were no comments received in response to the notice of filing.

The data submitted with the petition and other relevant material have been evaluated. The chemical, an ethoxylated isostearyl alcohol is presently exempt from the requirement of a tolerance as an inert ingredient under 40 CFR 180.1001 (c) and (e) as alpha-alkyl (C_9-C_{14}) omega-hydroxypoly (oxyethylene); the poly (oxyethylene) content averages 2–20 moles. Under this exemption, the chemical is deemed to be safe or to present no hazard to human health when present as residues if any, in raw agricultural commodities resulting from use in accordance with good agricultural practice as an inert ingredient in pesticide formulation applied to growing crops, to raw agricultural commodities after harvest, or to animals.

The data in support of the exemption from the requirement of a tolerance for this chemical as an inert ingredient, consists of studies on closely related fatty acid and fatty alcohol ethoxylates having various degrees of ethoxylation, including a 2-year dog study with a no-observed-effect level (NOEL) of 50,000 parts per million (ppm) (1,250 mg/kg); a 2-year rat study with a NOEL of 20,000 ppm (1,000 mg/kg); a 2-year rat study with a NOEL of 20,000 ppm (1,000 mg/kg); and a 10-month monkey study with a NOEL of 1,000 mg/day.

Additional toxicological data considered in support of this exemption from the requirement of a tolerance for residues resulting from the use of this chemical as a mosquito control agent in aquatic sites include two oral LD_{50} rat studies; an acute dermal rabbit study; primary skin and eye irritation rabbit studies; and a *Salmonella* microsomal Ames mutagenicity assay which was negative.

No actions are pending against the continued registration of the insecticide, and no other consideration are involved in establishing the exemption.

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

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

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

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–534, 94 Stat. 1164, 5 U.S.C 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

(Sec. 408(e), 68 Stat. 514 (21 U.S.C. 346(a)(e))).

List of Subjects in 40 CFR Part 180

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

Dated: July 29, 1983.

Edwin L. Johnson,

Director, Office of Pesticide Programs.

PART 180—[AMENDED]

Therefore, 40 CFR Part 180 is amended by adding a new § 180.1078 to read as follows:

§ 180.1078 Poly(oxy-1,2-ethanediyl), alpha-isooctadyl-omega-hydroxy; exemption from the requirement of a tolerance.

The insecticide poly(oxy-1,2,-ethanediyl), alpha-isooctadecyl-omega-hydroxy (as Registry Number 52292–17–8) is exempted from the requirement of a tolerance for residues in or on fish, shellfish, irrigated crops, meat, milk, poultry, and eggs when used in accordance with good agricultural practice as a mosquito control agent in aquatic sites.

[FR Doc. 83–21708 Filed 8–9–83; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 271

[SW–7–FRL 2409–6]

Hazardous Waste Management Program; Missouri; Request for Extension of Application Deadline for Interim Authorization

AGENCY: Environmental Protection Agency.

ACTION: Notice of extension of application submission and interim authorization period.

SUMMARY: On July 15, 1983 the State of Missouri Department of Natural Resources requested an extension beyond the July 26, 1983 deadline for application for final authorization under the Resource Conservation and Recovery Act of 1976, as amended.

This request stated that the State of Missouri does not expect to apply for Phase II, Component C, but wishes to proceed directly to final authorization. Missouri expects to apply for final authorization in an application to be submitted to EPA on or before July 26, 1984. At the present time, Missouri's application for Phase I and II, Components A and B interim authorization is in a 30-day public comment period. A decision with regard to this application will be forthcoming in October, 1983. EPA is granting this extension. The immediate effect of this action will be to allow Missouri to receive interim authorization for Phase I and II Components A and B, and operate approved parts of the federal program after July 26, 1983. It will also allow them to proceed directly to application for final authorization of the remainder of the program. Once interim authorization is approved, retention of authorization is contingent upon the achievement of scheduled actions toward final authorization and obtaining legislative amendments necessary for final authorization.

EFFECTIVE DATE: July 25, 1983.

FOR FURTHER INFORMATION CONTACT:
Robert L. Morby, Chief, Waste Management Branch, EPA Region 7, 324 E. 11th St., Kansas City, Missouri 64106. Telephone 816/374–6536.

SUPPLEMENTARY INFORMATION:

Background

40 CFR 271.122(c) (1) and (4) (formerly §123.122(c) (1) and (4) 47 FR 32377 July 26, 1982) requires that a State may apply for interim authorization at any time prior to expiration of the 6th month of the 24 month period, beginning with the effective date of the last component of Phase II (January 26, 1983), and that a State which received any but not all Phases/Components of Interim Authorization must amend their original submissions by July 26, 1983 to include all Components of Phase II. Part 40 CFR 271.137(a) (formerly § 123.137(a); 47 FR 32378, July 26, 1982) further provides that on July 26, 1983, interim authorizations terminate except where the State has submitted by that date an application for all Phases/Components of interim authorization.

Where the authorization (approval) of the State program terminates, EPA is to administer and enforce the Federal program in those States. However, the Regional Administrator may, for good cause, extend the July 26, 1983, deadline for submission of the interim or final authorization application and the deadline for termination of the approved State program.

Note.—40 CFR Part 123, including the July 26, 1982 amendments (47 FR 32373) was recodified on April 1, 1983 as 40 CFR Part 271 (48 FR 14248).

The State of Missouri applied for Interim Authorization for Phase I and II, Components A and B, on March 17, 1983; but before action on the authorization request could be completed, an indefinite suspension was granted to allow completion of legislative changes.

On July 13, 1983 the State submitted an amended application which was accepted by EPA Region VII as administratively complete. A published Federal Register Notice (48 FR 34296, July 28, 1983) has announced the resumption of the public comment period; and a public hearing is scheduled for August 29, 1983. Missouri's legal and technical resources have been severely impacted by the dioxin problems and their demands. Proceeding directly to final authorization for the parts of the program not approved will allow sufficient time to resolve differences between State and Federal land disposal regulations, and to bring all applicable state statutes and regulations into equivalency with Federal regulations. Accordingly, the Missouri Department of Natural Resources has committed to the following schedule to complete the requirements for interim and final authorization application:

- By not later than the end of the 1984 Missouri Legislative Session, complete all legislative changes required for final authorization application as identified in the EPA pre-application legal review of April 1983.
- By not later than July 12, 1984, complete all regulatory changes required for final authorization that are needed to achieve full equivalency.
- By not later than July 26, 1984, submit a formal application for final authorization.

Decision

Effective July 26, 1983, in consideration of the State's efforts to obtain the necessary legislative and regulatory revisions and of Missouri's past performance in implementing a hazardous waste program under cooperative arrangement, while dealing with immense external resource pressures evolving from Missouri's dioxin problems; I find that there is good cause to grant the State's request for an extension in completing its interim authorization application.

Accordingly, Missouri submitted a complete final application for interim authorization Phases I and II, A and B, on July 13, 1983 and will submit a complete application for final authorization on or before July 26, 1984. Failure to obtain the necessary legislative amendments to provide for an equivalent state program will be grounds for termination of interim status.

List of Subjects in 40 CFR Part 271

Hazardous material, Indian lands, Reporting and recordkeeping requirements, Waste treatment and disposal, Water supply, Intergovernmental relations, Penalties, Confidential business information.

Authority: This notice is issued under the authority of Sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6912(a), 6926 and 6974(B).

Dated: July 25, 1983.

Morris Kay,

Regional Administrator.

[FR Doc. 83-21707 Filed 8-9-83; 8:45 am]
BILLING CODE 6560-50-M

FEDERAL MARITIME COMMISSION

46 CFR Part 503

Public Information

AGENCY: Federal Maritime Commission.

ACTION: Final rule.

SUMMARY: The Commission's public information rules are amended to centrally display control numbers assigned to information collection requirements of the Commission by the Office of Management and Budget (OMB). This subpart complies with requirements of section 3507(f) of the Paperwork Reduction Act of 1980, and 5 CFR 1320.7(f)(2) of OMB's regulation.

EFFECTIVE DATE: August 10, 1983.

FOR FURTHER INFORMATION CONTACT:
Francis C. Hurney, Secretary, Federal Maritime Commission, 1100 L Street NW., Washington, D.C. 20573, Telephone: (202) 523–5725.

SUPPLEMENTARY INFORMATION: The Office of the Federal Register has furnished recommended formats to guide agencies that must comply with the Office of Management and Budget regulations on the display and publication of control numbers assigned to information collection requirements. The Commission is amending its public information regulations to comply with the format requirements and to implement the display requirements of 5 CFR 1320.7(f)(2). This amendment supersedes all other references to specific OMB control numbers contained in 46 CFR.

List of Subjects in 46 CFR Part 503

Administrative practice and procedure.

Accordingly, 46 CFR Part 503 is amended by the addition of a new Subpart I as follows:

Subpart I—Commission Information Collection Requirements Under the Paperwork Reduction Act: OMB Control Numbers

§ 503.91 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

(a) *Purpose.* This subpart centrally displays the control numbers assigned to information collection requirements of the Commission by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1980, Pub. L. 96–511. The Commission intends that this subpart comply with the requirements of section 3507(f) of the Paperwork Reduction Act, which requires that agencies display a current control number assigned by the Director of the Office of Management and Budget

("OMB") for each agency information collection requirement.

(b) Display.

46 CFR section where identified and described	Current OMB control No.
Sec:	
502.27 (Form FMC-12)	3072-0001
510.13 (Form FMC-18)	3072-0004
510.15	3072-0018
510.16	3072-0018
510.20 (Form FMC-18)	3072-0004
510.21 (Form FMC-18)	3072-0004
510.31 through 510.36	3072-0018
512.2 (Form FMC-377)	3072-0029
512.2 (Form FMC-378)	3072-0030
512.2 through 512.4	3072-0008
512.6 (Form FMC-377)	3072-0029
512.6 (Form FMC-378)	3072-0030
514.2 (Form FMC-379)	3072-0032
514.2	3072-0031
514.3	3072-0031
514.4	3072-0031
514.6 (Form FMC-379)	3072-0032
522.3 through 522.5	3072-0040
522.7	3072-0040
522.8	3072-0040
523.2	3072-0038
523.10	3072-0038
523.11	3072-0038
523.20	3072-0038
524.3	3072-0039
524.4	3072-0039
524.5	3072-0039
527.3 through 527.6	3072-0007
528.1 through 528.3	3072-0003
528.5	3072-0003
531.3 through 531.6	3072-0005
531.8 through 531.19	3072-0005
533.3 through 533.5	3072-0002
536.3 through 536.3	3072-0009
536.7	3072-0042
536.8	3072-0009
536.9 through 536.11	3072-0009
536.12	3072-0036
536.13 through 536.15	3072-0009
537.2 through 537.4	3072-0013
540.4 (Form FMC-131)	3072-0012
540.5	3072-0011
540.6	3072-0011
540.8	3072-0011
540.9	3072-0011
540.23 (Form FMC-131)	3072-0012
540.24	3072-0011
540.26	3072-0011
540.27	3072-0011
547.4 through 547.7	3072-0035
547.9	3072-0035
551.1 through 551.3	3072-0010
551.8	3072-0010
552.2 through 552.5	3072-0028

Note.—Information pertaining to 46 CFR Parts 542, 543, and 544 has been transferred to the Department of Transportation, U.S. Coast Guard, pursuant to Executive Order 12418, dated May 5, 1983. These regulations are in the process of being renumbered and republished as Coast Guard regulations at 33 CFR Parts 130, 131, and 132, respectively.

Effective Date: Notice, public procedure and delayed effective date are not necessary for the promulgation of this amendment because of its nonsubstantive nature. Accordingly, this amendment shall be effective upon publication in the **Federal Register.**

By the Commission.

Francis C. Hurney,

Secretary.

[FR Doc. 83-21702 Filed 8-9-83; 8:45 am]

BILLING CODE 6730-01-M

46 CFR Part 536

[General Order 13, Amdt. 11; Docket No. 83-18]

Filing of Tariffs by Common Carriers in the Foreign Commerce of the United States

Correction

In FR Doc. 83-20623, beginning on page 35099, in the issue of Wednesday, August 3, 1983, the Docket No. should read as it appears above.

BILLING CODE 1505-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[FCC 83-339]

Elimination of Unnecessary Broadcast Regulation

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein eliminates the Commission's policies concerning the misuse of audience ratings data and the use of inaccurate or exaggerated coverage maps or coverage claims by broadcast licensees because our review indicates the regulations are no longer warranted or required by the public interest.

DATE: Effective September 2, 1983.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Roger D. Holberg, Mass Media Bureau, (202) 632-7792.

List of Subjects in 47 CFR Part 73

Broadcast policies.

Policy Statement and Order

In the matter of elimination of unnecessary broadcast regulation; FCC 83-339.

Adopted: July 14, 1983.
Released: August 2, 1983.
By the Commission.

1. This is the first in a series of Policy Statements that we expect to issue over the course of the coming months eliminating or proposing to eliminate various broadcast policies which our review indicates are no longer warranted or required by the public interest. These policies concern activities in which the Commission does not believe it should continue to expend resources, especially, but not solely, where there exist sufficient private remedies or market forces to deter the activity addressed by the particular policy. Additionally, we will be issuing one or more *Notices of Proposed Rule Making* in cases such as where the conduct is the subject of a Commission rule but contains issues closely related to those involved in policies being dealt with in this umbrella proceeding.[1] We turn now to a discussion of the specific policies addressed by this Policy Statement.

Distortion of Ratings

2. In 1963, as a result of information developed both in hearings before the Special Subcommittee on Investigations of the House Committee on Interstate and Foreign Commerce and through complaints filed with the Commission, the Commission issued a Public Notice (FCC 63-544) cautioning licensees about the improper use of ratings information. That Public Notice informed licensees that they were obliged to act responsibly in the use of such information and to ensure that survey material utilized in advertising campaigns was valid.[2] However, the Commission indicated that ordinarily it would refer complaints concerning questionable uses of ratings material to the Federal Trade Commission (FTC) for that agency's consideration and would take into account findings or orders to cease and desist entered by the FTC against licensees. Subsequently, the FTC issued guidelines regarding the use of broadcast ratings survey data. Generally, the FTC statement detailed practices that broadcasters should endeavor to avoid. For example, broadcasters were advised that it is improper to quote from an audience survey (or to quote survey data) in such a way as to create a misleading impression of the survey's results.

[1] As is apparent, our action here is not being taken pursuant to notice and comment procedures. Section 553(b)(3)(A) of the Administrative Procedure Act [5 U.S.C. 553(b)(3)(A)] does not require the issuance of a notice and an opportunity for comment where, *inter alia* "general statements of policy" are involved. Further, the listing of many of the Commission's policies in section 73.4000 *et seq.* of the Commission's Rules does not affect the need, or lack thereof, for a notice and comment proceeding. Section 73.4000 clearly states that the policies are listed, and that relevant citations are provided in the Rules, "solely for the purpose of reference and convenience * * *"

[2] The policy being considered here involves the *use* of data by licensees (either, for example, the misleading *use* of accurate data or the *use* of data known to be invalid or inaccurate). It is not to be confused with the Commission's policy against licensee participation in deliberate attempts to alter the outcome of a rating survey by engaging in activities that undermine the validity of the sampling process. *Public Notice*, 65 F.C.C. 2d 413 (1977). In the latter policy, which is not at issue here, the conduct addressed is not the *use* of the data, but an effort to artificially affect the data themselves.

Additionally, broadcasters were advised to refrain from making audience claims based upon data compiled in a survey which the broadcaster knows or has reason to know was not designed, conducted or analyzed in accordance with accepted statistical principles and procedures or where they know the data to be obsolete. In a 1965 Public Notice[3], the FCC brought these guidelines to the attention of its broadcast licensees and stated that, in determining whether a licensee is operating in the public interest, it would take into consideration a licensee's operation within the FTC guidelines. The Commission also restated its existing policy of generally referring complaints involving the use of broadcast ratings to the FTC and reaffirmed its intention to consider any findings or orders to cease and desist issued against a licensee by that agency. Subsequently, the Commission commenced a rule making proceeding looking toward the adoption of rules prohibiting ratings misuse practices.[4] Although the Commission determined that the need for such a rule was outweighed by the First Amendment and Section 326 considerations which the rule would raise, it again reiterated its concern with ratings distortion practices.[5]

3. Although the Commission's general policy has been to refer complaints to the FTC, and to take findings and orders to cease and desist issued by that agency into account in assessing a licensee's qualifications to retain its license, it also has independently evaluated complaints regarding the misuse of ratings information by licensees. The Commission has, for example, granted short-term license renewals based upon such conduct even absent any findings by the FTC.[6] As a result the Commission continues to receive, and consider, numerous complaints of misuse of ratings information in the first instance. Such complaints typically are filed by competitors alleging that the subject station is promoting itself either to the public or to advertisers and advertising agencies by making misleading claims as to the station's popularity.[7]

4. We no longer are persuaded that the Commission's limited resources are well spent by continuing to investigate and adjudicate complaints of this nature in the first instance. These types of claims are made by businesses every day as to their popularity. However, a principal difference between such claims made by broadcasters and those made by non-broadcasters is that in the broadcasting context these claims are made more to obtain advertising than to influence purchasing decisions made by members of the public at large.[8] Yet, given the availability of detailed audience rating data for both radio and television, advertisers and advertising agencies are in a particularly good position to verify the accuracy of ratings claims and to decide for themselves the significance that they will attach to claims made by the stations. Moreover, competing stations learning of a station's misuse of ratings data should be able and would likely be inclined to counteract any impact of such claims by notifying the advertisers and agencies that they dispute the claims being made. Furthermore, in all business relationships such as those involved in the purchasing of broadcast advertisements, the commercial entities have a strong incentive to deal candidly with each other. In instances where this incentive proves inadequate to deter fraudulent behavior, legal recourse against the offending station by the defrauded party is available.

5. Given these non-regulatory methods of dealing with ratings abuse problems, and the commercial nature of the conduct involved, we believe that continued Commission oversight in this area in the first instance is not warranted. Accordingly, all future complaints in this area should be directed to the FTC. In addition, all pending requests for Commission action involving licensees, alleged misuse of ratings information will be forwarded to the FTC. [9] However, as in other areas where adverse determinations concerning licensee conduct are made, we will continue to consider FTC findings and orders to cease and desist relating to licensee abuse of ratings information in determining whether a licensee is acting in the public interest.[10]

Coverage Maps and Statements Regarding Stations' Coverage

6. The Commission's policy concerning misleading coverage claims or the use of inaccurate or exaggerated coverage maps by broadcast licensees was set forth in a letter to Radio Station WARO.[11] In that letter the Commission stated that it expected licensees to deal candidly with the public and with advertisers. It condemned the use of inaccurate and exaggerated coverage maps or any practice intended to deceive or mislead advertisers or the public. Licensees were warned that care should be exercised to assure that advertisers were not misled and that full disclosure of station coverage was essential in exercising this responsibility.

7. We do not condone the use of inaccurate or exaggerated coverage maps or other misleading material regarding a station's coverage in connection with the sale of broadcast air time. The same considerations, however, which led us to conclude that continuing Commission involvement in the area of ratings abuse is no longer warranted, suggest the same conclusion with respect to the use of misleading coverage maps or coverage information by broadcast licensees. Here, as there, a business relationship between a broadcaster and its advertisers is primarily at issue; [12] the same capacity for independent verification by advertisers of a broadcaster's claims exists; and, the same forceful incentive for candid dealing obtains, as does the availability of private legal remedies should this incentive fail to prevent abusive conduct. We note, moreover, that should a licensee file a misleading coverage map with the Commission, the licensee could be found to have misrepresented facts to the Commission, thus placing its license at risk, and possibly to have violated 18 U.S.C. 1001, thus subjecting itself to criminal penalties. In view of the foregoing, we are changing our policy and, therefore,

[3] *"Commission Calls Attention of Licensees to FTC Statement on Broadcast Ratings,"* 1 F.C.C. 2d 1078 (1965).

[4] *Amendment of Part 73 of the Commission's Rules and Regulations to Prohibit Distortion of Audience Ratings (Docket No. 20501)*, 40 FR 26698 (June 25, 1975).

[5] *Report and Order* (Docket No. 20501), 58 F.C.C. 2d 513 (1976). For the application of this policy to a licensee's conduct see, *Coastal Telecommunications Corp.*, 66 F.C.C. 2d 941 (1977).

[6] *KPIK*, 14 F.C.C. 2d 267 (1968); *March Media, Ltd.*, 38 F.C.C. 2d 457 (1972).

[7] Such complaints often allege that a station is informing the public or advertisers that, for example, "W is Central City's number one country music station," whereas the complainant disputes that assertion.

[8] We feel it is unlikely that viewers or listeners would be appreciably influenced in their choice of stations merely because a broadcast station claimed to have superior ratings. Rather, it is more likely that such decisions are based upon programming fare offered by each station.

[9] Complainants in individual cases will be formally notified of this change in policy prior to our forwarding the complaints.

[10] *See Violation of Laws of USA by Station Applicants*, 42 F.C.C. 2d 399 (1951).

[11] *Universal Communications of Pittsburgh, Inc.*, 74 F.C.C. 2d 617 (1969).

[12] Indeed, coverage maps and information are utilized almost exclusively as an aid in selling commercial time to advertisers. There is little, if any, likelihood that information derived from exaggerated coverage maps or misleading coverage claims would be addressed directly to the listening or viewing public, or in any significant way would be relied upon by them. *See* n. 8, *supra*.

we no longer plan to investigate or adjudicate complaints involving misleading coverage claims or the use of inaccurate or exaggerated coverage maps by broadcast licensees. [13]

8. In conclusion, therefore, this *Order* implements the following determination by the Commission: (1) that allegations of ratings distortions and misleading coverage claims are more appropriately explored and decided in other forums and will be so directed in the future; and (2) that, notwithstanding this determination, we will continue to consider the effect of adverse findings on the licensee's character qualifications. We have not determined in this *Order* what weight should attach to other outcomes; *e.g.*, a proceeding terminated for failure to prosecute, or by plea of *nolo contendere* or by a consent order. The relevance of these situations to licensee character evaluation, and indeed the more general question of whether the Commission should continue to consider even adverse findings where, as here, the activities are primarily business-related rather than broadcast-related, will be resolved in the pending proceedings in Gen. Docket No. 81–500, Policy Regarding Character Qualifications in Broadcast Licensing, 87 FCC 2d 836, 848 (1981).

9. Accordingly, it is ordered, That §§ 73.4035 and 73.4090 of the Commission's Rules are deleted as set forth in the attached Appendix, effective September 2, 1983.

10. Authority for this action is contained in Sections 4(i) and 303(r) of the Communications Act of 1934, as amended.

(Secs. 4, 303, 48 stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

William J. Tricarico,
Secretary.

Appendix

PART 73—[AMENDED]

§ 73. 4035 [Removed]

1. 47 CFR 73.4035, Audience ratings: Hypoing and survey misuse, is removed in its entirety.

§ 73. 4090 [Removed]

2. 47 CFR 73.4090, Coverage maps, Use by licensees, is removed in its entirety.

[FR Doc. 83-21720 Filed 8-9-83; 8:45 am]
BILLING CODE 6712-01-M

[13] To the extent, of course, that a licensee's use of exaggerated or inaccurate coverage maps or other materials concerning coverage results in judicial or agency findings of a violation of law, we will continue to consider such findings. *See* n.10, *supra*.

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Regulations Governing the Gray Wolf in Minnesota

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Fish and Wildlife Service amends its regulations governing the gray wolf in Minnesota. In certain areas of the State the amendment will allow a carefully controlled taking of wolves by the public and by designated State and Federal employees. The taking will be allowed primarily in areas of recurring wolf depredation on livestock, and will not be permitted in areas where it might affect wolf recolonization of Wisconsin. The wolf population in the affected zones of Minnesota will be maintained at or above the level recommended in the Eastern Timber Wolf Recovery Plan, drafted by the Eastern Timber Wolf Recovery Team. Sale in interstate and foreign commerce of wolf parts taken by the public will be authorized, but will be controlled by a tagging system; sale of lawfully tagged pelts in foreign commerce also will be permitted, provided that the requirements of the Convention on International Trade in Endangered Species of Wild Fauna and Flora are met. In addition, the amendment will modify the Service's present wolf depredation control program by authorizing the placement of traps within one-half mile of farms where depredation has occurred, and by authorizing the killing of any wolf, including pups of the year, caught in such traps.

On July 14, 1982, the Service proposed the amendment in the **Federal Register** (47 FR 30528). In that publication, the Service notified the public that comments would be accepted and considered if they were received by the Service on or before September 13, 1982. Public hearings were held on the proposal in Minneapolis, Minnesota on August 4, 1982, and in International Falls, Minnesota on August 11, 1982. The information and opinions that were received as a result of the comment period and the public hearings now have been reviewed and analyzed, and the Service has decided to modify the proposed regulation to make it clear that until northern Wisconsin has been recolonized by wolves, the State will not allow taking of wolves, other than in direct response to depredation, in the areas of Minnesota from which such recolonization is taking place, unless depredation problems in those areas become chronic. The regulations also have been modified to make it clear that they do not authorize trade in living wolves.

DATES: This rule will become effective October 11, 1983. Prior to that date the Service will seek a modification of the order entered by the United States District Court for the District of Minnesota in *Fund for Animals v. Andrus*, Civil No. 5–78–66 (decided July 25, 1978; supplementary decision filed August 31, 1978).

FOR FURTHER INFORMATION CONTACT: John Spinks, Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. 20240, (703) 235–2771.

SUPPLEMENTARY INFORMATION:

Background

For many years, the gray wolf (*Canis lupus*) population of Minnesota has been the subject of debate among members of the public, private wildlife conservation organizations, and government agencies. The population also has been the subject of a vast range of regulations, from absolute protection to no protection whatever; and every system has had its advocates and detractors. By the present rule, the Fish and Wildlife Service further refines the system under which the Minnesota population of the Gray Wolf is regulated, to make that system conform more closely to the recommendations of the various experts on the Eastern Timber Wolf Recovery Team. The Service believes that the change constitutes a more appropriate system for conserving the species than that which has previously been in place.

At one time, the gray wolf was present in virtually all of the conterminous 48 states, as well as in Canada and Mexico; but by the early years of the twentieth century the extensive habitat destruction and human persecution that accompanied the settlement of the North American continent radically reduced the range and the numbers of the species, and today the gray wolf population in northern Minnesota is the last large surviving segment of the species south of Canada.

In Minnesota, the gray wolf at one time inhabited nearly all of the State. By 1918, however, the species had been eliminated from the southern two-thirds of the State. Since that time, however, the number of wolves in Minnesota has been relatively stable, and probably has increased somewhat in recent years. The most notable recent change that the Minnesota wolf population has

undergone has been connected with the areas where the population is concentrated. A decade ago, the number of wolves in the far northeastern part of the State was greater than it is at present. For reasons that are reviewed in more detail below—having to do with the designation of large areas of the northeastern part of the State as wilderness—wolf numbers have declined in that area, and have increased somewhat in areas to the south and west of Superior National Forest. In recent years the wolf also has appeared again in northern Wisconsin, where it previously was believed to have been eliminated.

It is this factual background with which the Eastern Timber Wolf Recovery Team was confronted. Under the authority of the Endangered Species Act of 1973, 16 U.S.C. 1531–1543, the United States Fish and Wildlife Service has appointed "Recovery Teams" for various species of wildlife which have been listed as "Endangered" or "Threatened" by the Service. Each Recovery Team is composed of experts on the biology of the wildlife species to which it is assigned, and each is given the task of recommending, on an ongoing basis, the best conservation measures that can be designed to bring the species to the point where it no longer requires any of the protections of the Endangered Species Act. For the gray wolf in Minnesota, the responsible Team is the Eastern Timber Wolf Recovery Team. The Team was so named because, before 1978, the Service used the designation Eastern Timber Wolf (*Canis lupus lycaon*) when dealing with certain populations of the species, including the Minnesota population. In 1978, the Service elected simply to use the species name—gray wolf—to describe those populations, but the Recovery Team name was never changed.

In 1977, the Eastern Timber Wolf Recovery Team described six steps which it believed were necessary to restore the gray wolf to the point where it no longer would be either Endangered or Threatened. In making its recommendations, it recognized that even within the State of Minnesota, where the wolf population was stable and healthy, the species encountered different problems in different areas. The Team therefore suggested that the State be divided into five zones and that the species be afforded a different degree of protection in some zones than in others. Specifically, the Team recommended:

> . . . (1) protection where needed to help restore the Eastern Timber Wolf to areas of its original range and to preserve a naturally functioning population that can serve as a living museum, as a scientific subject, and as a reservoir to repopulate adjacent areas; (2) depredation control where wolves are killing domestic animals; (3) maintenance of wolf population densities at prescribed levels in semiwilderness areas through a combination of protection and regulated taking, so as to minimize depredation on livestock, illegal killing of wolves, and vilification of the species; (4) restocking of wolves into suitable areas of their former range, when feasible; (5) continued research and monitoring of wolf populations; and (6) provision of adequate prey populations through adequate habitat improvement.

The Service reviewed these recommendations and accepted them in principle, but did not deem it advisable to adopt any regulated taking program for the species, other than a trapping program that operated in direct response to depredation complaints. The Service's decision in this regard was reflected by a rule in 1978, 43 FR 9607 (March 9, 1978), which employed the Endangered Species Act's two-tiered system to declare the Minnesota wolf population "Threatened" while retaining the "Endangered" classification for the other remnant wolf populations in the lower forty-eight states. In that rule, the Service forbade all taking of wolves in the more settled areas of Minnesota, except in direct response to confirmed wolf depredation on livestock, or to protect human life, or for research or humane purposes.

By the present rule, the Service somewhat modifies these taking prohibitions, more closely conforming them to the recommendations of the Recovery Team by permitting the State of Minnesota to authorize a closely controlled taking of wolves by members of the public and/or by designated State or Federal officers, primarily in areas where wolf depredations on livestock have been recurrent and have not been adequately dealt with by the Service's present depredation control program. One limit on this authorization is that it shall not cause the wolf density in any Minnesota Zone to fall below the level which the Recovery Team recommended as "optimum."

Several factors have conjoined to convince the Service that its regulations should be changed in this way:

1. *The State of Minnesota Department of Natural Resources recently has changed its proposed Wolf Management Plan, both by adopting the Wolf Recovery Team's recommendations on the wolf density levels that should be maintained in the State's five zones, and by agreeing to adopt a wolf depredation control program that contains the controls and safeguards of the Service's program.*

For several years, the State of Minnesota Department of Natural Resources and the Fish and Wildlife Service have been engaged in a dialogue over the best way to regulate the State's wolf population. The State has not, as is often asseted, favored wholesale killing of wolves; but it has expressed the view that the species would be better served if it were not as strictly protected as the Service has felt it should be. The State in 1980 drafted and submitted a "Management Plan" for the species, which in many ways resembled the approach recommended by the Service's Wolf Recovery Team.

One difference between the two approaches had to do with wolf density figures in the five zones which the Service has outlined for wolf conservation purposes within Minnesota. (See 50 CFR 17.40(d).) The Recovery Team established precise wolf density target figures for all five zones in the State. In contrast, the State established a range of population densities, rather than a single figure, for each of the zones. In 1982, however, the State of Minnesota agreed to adopt the Recovery Team's wolf density figures as its minimum acceptable level. In the Service's view, this change was significant and was an essential predicate to these regulations.

Equally significant and essential was the State's agreement to work under the limits and safeguards of the Service's depredation control program. This program was given its initial shape by the Service's rule of March 9, 1978 (43 FR 9607), which appears at 50 CFR 17.40(d). The terms of the rule were interpreted by the August 31, 1978 Order of the United States District Court for the District of Minnesota in *Fund For Animals v. Andrus*, Civil No. 5–78–66; and within the framework provided by the rulemaking and the Order, the program was given its final shape by administrative decisions of the Service. As the program now is constituted, when the Service receives a complaint that a wolf has been responsible for depredation of livestock, a trapper immediately is sent to the scene. The trapper is directed first to confirm whether a depredation has indeed occurred, as evidenced by observing a wounded animal or finding the remains of a carcass, and whether the culprit is, in fact, a wolf (as opposed to a coyote, or dog, or a bear); traps are set only upon that confirmation. In cases where the trapper confirms that a wolf is responsible for the depredation, traps are set on the affected farm and up to

one-quarter mile away from the farm's boundary (that being the distance limitation imposed upon the Service by the aforementioned Order in *Fund For Animals v. Andrus*). Once the traps are set, they are checked by the trapper at least daily. If the trapper succeeds in catching the animal or animals probably responsible for the depredation, or if no wolves are caught within ten days, the traps are removed if no additional losses occur during that period. If additional losses are confirmed at a given farm during the same year, trapping is conducted for a period of up to twenty-one days. If an immature wolf is caught, it is released—even if the trapper believes that the animal is from the pack responsible for the depredation—because the Service's present regulations forbid the "taking" of a wolf unless it is that very wolf which has committed the depredation, and immature wolves cannot kill large livestock animals.

The 1980 Management Plan submitted by the State of Minnesota did not incorporate a program of this sort, and the Service itself is now of the view that in two minor respects the restrictions in its present program hinder rather than help wolf conservation. Specifically, when the Service is restricted to a one-quarter mile distance from the boundaries of an affected farm, topography occasionally eliminates the possibility of effective trapping. Therefore, the Service in the present rule expands that distance limitation to one-half mile. The Service also now is of the view that there is no value in releasing immature pack members when they are part of a pack that has committed depredation. Although immature animals may themselves be unable to kill livestock, their existence and their need for food probably are major reasons for the occurrence of depredation, and they probably are learning to commit depredations. Also, farmers who have lost livestock to wolves and are unable legally to respond by setting traps understandably are outraged when a government trapper succeeds in catching a wolf only to release it again; and such outrage cannot serve the cause of wolf conservation. Therefore, the Service's amended regulations will authorize designated State and Federal employees to kill any wolf caught within the aforementioned one-half mile distance from a farm on which confirmed wolf depredations have taken place.

But the other features of the Service's present depredation control program will be retained, and will be used by the State. Thus, with respect both to wolf depredation control and to wolf population management the State has expressed a willingness to implement the management program developed by the Service. These changes have been a key predicate to the Service's decision to adopt the present rule.

2. *The number of wolves in Minnesota has been remarkably stable for many years, despite quite radical changes in the way the law has treated the species. It therefore is impossible from a biological perspective to argue that complete protection of the species is necessary for the species' conservation, except in those areas of Minnesota where the wolf's population pressures are causing the species to recolonize areas of Wisconsin.*

In the preamble to the Service's July 14, 1982 proposed rule on the wolf, the history of the species in Minnesota was reviewed in some detail. The dominant fact emerging from that review was the stability of the wolf's numbers in the State, despite the variations in the treatment which the law has afforded the species over time. Twenty-five years ago the species was the subject of a bounty, could be killed by any person at any time, and could lawfully be hunted from airplanes. Then airborne hunting was forbidden and in the mid-1960's the wolf was removed from the bounty list, but the species still was subject to an aggressive predator control program. In 1967, because the species *Canis lupus* long has been nearly extirpated in all areas of the lower 48 States except Minnesota, it was included on a list of wildlife covered by the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere ("the Pan American Convention"), 56 Stat. 1354; and in 1969, for the same reason, the species was included on the list of endangered species compiled under the Endangered Species Act of 1969, Pub. L. No. 91–135, 83 Stat. 275 ("The 1969 Act"). The 1969 Act, however, dealt only with commerce and did not in any way change the system under which the wolf was trapped in Minnesota.

Then, in 1973, by virtue of the "grandfather" provisions of the Endangered Species Act of 1973 ("the 1973 Act"), 16 U.S.C. 1533(c)(3) (1976), the entire species *Canis lupus* including, again, the Minnesota population, was carried onto the 1973 Act's list and a complete ban on taking was imposed by the statute. It was not until 1978, after it had received the Recovery Team's Report, that the Service adopted a rule reclassifying the Minnesota population of wolf as "Threatened." Meanwhile the wolf enjoyed complete protection against taking; and, as has been noted above, even after the 1978 rulemaking the State's wolf population has been afforded almost the same protection.

During all of these changes in Federal and State law, the species' numbers in the State have remained relatively constant. At present, biologists estimate that there are 1200 or more wolves in the State. These numbers are not substantially different from those of four years ago, when the Minnesota population was reclassified as Threatened, or nine years ago when the population suddenly received total protection by virtue of being grandfathered onto the new Endangered Species Act's list, or 20 years ago during the period when members of the public received a bounty for wolf pelts. In fact, the population has remained relatively stable since 1918.

This stability is due in part to the fact that the species' population size is to some extent self-regulating. In years when large numbers of wolves are removed from the population, research indicates that both litter sizes and the proportion of females in litters tend to increase. Similarly, when there are many wolves and consequently few ecological niches for pups to fill, litter sizes and the proportion of females in litters tend to decrease. Another major contributing factor to the species' stability—perhaps the principal factor—is the continued relatively undeveloped nature of the wolf's primary habitat in northern Minnesota.

Yet some changes have occurred. As was noted above, one important change has involved the areas in the State where wolves are found. During the years when lumber companies were permitted to harvest timber in Minnesota's Arrowhead region, the resulting cut-over areas provided excellent browse for deer, and the consequently large deer population supported a large number of wolves. In the 1970's, however, large areas of the Arrowhead region were designated as "wilderness" under the Wilderness Act, 16 U.S.C. 1131–1136 (1976), and timbering therefore ceased. Consequently, the region's forests have been maturing, browse has been decreasing, deer populations in the region have been declining, and some of the wolves that were in the area and that depended on the deer population have tended to disperse to the south and east.

One effect of that dispersal may have been to create a sufficiently large wolf population in Minnesota's eastern counties adjoining Wisconsin to cause further dispersal and recolonization into

northwestern Wisconsin. This possibility of recolonization is extremely important, because if a viable wolf population were established in an area outside of Minnesota, there no longer would be a possibility that the lower 48 States' entire wolf population could be eliminated by an environmental catastrophe occurring in one State.

To summarize the foregoing: the overall status of the wolf in Minnesota is good. It is necessary for the present to afford virtually complete protection to those populations that are recolonizing Wisconsin, and no purpose would be served by reducing the protections afforded the species in zone 1. But it is clear that conservation of the species in the relatively settled areas of the State does not require that it be afforded complete protection against taking. The questions then can be phrased in the converse: would any conservation purpose be served by authorizing a limited take of wolves outside of zone 1 and outside of the colonizing populations? For the reasons stated below, the Service is of the view that that question can be answered in the affirmative.

3. *While the Service's research indicates that wolf depredation on livestock in Minnesota is a smaller and more fluctuating problem than many assert it to be, nevertheless in localized areas of the State, particularly along the southern border of Zone 3, the depredation problem has proven to be chronic and not amenable to the solutions which the Service has employed in the past.*

As with many things about the wolf, the problem of wolf depredation on livestock is highly complex and only partly understood by professionals, but nonetheless is the subject of great emotion and a huge spectrum of opinion in the public at large. Plainly, wolf depredation on livestock—sheep, poultry, and cattle—does occur, but it is uncommon enough behavior in the species as a whole to be called aberrant. In recent years, the Service has conducted research on the patterns of depredation of livestock by wolves, and its findings are the subject of a paper by Dr. Steven H. Fritts.

Certain conclusions can be drawn from this research. First, while the cause of depredation is not clear, apparently more is required than simply the presence of livestock in the immediate vicinity of wolves, since cases are documented where packs' territories have for years immediately adjoined pastures and where no harm has befallen livestock. Second, when depredation does occur, the trapping and killing of the responsible wolf usually solves the problem: if the territory thus made vacant is then immediately occupied by another animal or pack, the new occupants often will not harm the livestock, unless there exist other causative factors for the depredation, such as poor animal husbandry. But it is also clear that there are areas in Minnesota where the depredation problem has proved to be intractable—where year after year serious depredation continues, despite the best efforts of the Service's trappers. Statistical illustration of this phenomenon is provided by the facts that two farmers have received nearly 50 percent of the total payments which the State of Minnesota has made under its program for compensating farmers for livestock losses caused by wolves, and that a relatively small number of other farmers received most of the rest of the payments. Within the context of the zones into which the Wolf Recovery Team and the Service have divided the State of Minnesota for purposes of wolf conservation (See 50 CFR 17.42 (1981)), the areas principally affected by such chronic depredation lie within zone 4. Zone 4 is for the most part sparsely settled, with some farms and substantial areas of semi-wilderness, and within the zone localized areas have been heavily victimized. The most notable of these areas is near Northome, Minnesota, where zone 4 meets the southern border of the much less heavily settled zone 3.

Some areas of zone 5 also may be affected by such depredation. Zone 5 contains most of the State's human population, and is heavily farmed. In the view of the Service and the Recovery Team, the zone no longer contains any habitat that is suitable for wolves; and until recently only a few wolves were present in the zone. In 1981, however, areas of the zone experienced heavy livestock losses due to wolves; but that phenomenon was not repeated in 1982, perhaps because of the Service's responsive trapping efforts in 1981, perhaps because of illegal killing of wolves, and perhaps because of other incompletely understood factors.

In areas where recurrent depredation appears, the Service is of the view that it would be consistent with sound conservation of the wolf to authorize a limited public trapping season for wolves, provided that the wolf population density in the affected zones does not fall below the level recommended by the Wolf Recovery Team. The Service's experts on the wolf have opined that, as a supplement to the Service's present depredation control programs, such a trapping season may well have a salutary effect on the depredation problem. They also have advised, however, that in a particular year neither the Service's present program nor a public trapping season may result in the removal of an area's more mature and wary wolves—the wolves most likely to be directly responsible for depredation. To address this contingency, the Service has decided to permit designated State and Federal employees to attempt such removal in such years, again provided that the Wolf Recovery Team's optimum population density figures are used as a "floor." It is not possible to foretell the exact extent to which such a program will succeed in eliminating recurrent depredation; but it is clear that when the Wolf Recovery Team's population density levels are used as a safeguard, the program will not be inconsistent with the conservation of the State's wolf population.

It is also necessary, however, to give special protection to the population of wolves that is recolonizing Wisconsin. The State of Minnesota indicated, before the Service promulgated its proposed rulemaking, that it had no intention of authorizing a trapping season in the areas of Minnesota (within portions of St. Louis, Pine and Carlton Counties) where those populations are; but the Service's proposed regulations did not explicitly deal with those recolonizing populations. The public comment received on the Service's proposal has convinced the Service that matters would be made clearer if it made explicit what previsously was implicit: the present regulations have been changed to make it clear that no public trapping season will be permitted in areas where the wolf population is recolonizing Wisconsin, until that recolonization is complete or unless that area experiences chronic and recurrent depredation problems of the sort which have been experienced along the boundary between zones 3 and 4.

4. *There is some indication that during the nine years that the wolf has been afforded virtually complete protection from public taking in Minnesota, wolves have lost some of their fear of man, to the overall detriment of the species.*

The phenomenon whereby wolves tend to lose their fear of man when they are protected from taking is one which is documented in a variety of contexts, and there is evidence that the phenomenon is occurring in at least some areas of Minnesota. Particulary in zone 4, in the years since the passage of the 1973 Act there has been a number of confirmed incidents in which wolves have entered areas of human habitation and shown little or no fear of man. In

one respect, these incidents bear a relation to wolf depredation on livestock: neither phenomenon should be exaggerated, but also neither should be dismissed.

An argument exists to the effect that since the likelihood of an actual wolf attack on a human being is extremely unlikely, there is no reason to consider the animals' boldness as a problem. But that argument ignores the evidence that where wolves become increasingly unafraid of humans, human fear of wolves and consequent illegal killing of wolves tend to increase. Neither the species nor the public can be well served by a conservation program that inevitably promotes the illegal killing of wolves.

Instead, the wolf would be better conserved and the public would be better served if the Service's regulations provided a mechanism which served to limit the likelihood of wolves' encroachment into areas of human habitation—if again, the mechanism ensured both that the wolf population in the affected zone did not fall below the optimum density recommended by the Wolf Recovery Team, and that the wolf recolonization of Wisconsin was unaffected. For this reason, although the regulated trapping season authorized by the regulations will take place primarily in the areas where wolf depredation has been recurrent, it is not exclusively restricted to those areas but allows some leeway to deal with the sorts of problems that might otherwise be occasioned by complete protection of the species.

Public Comment

In the Service's proposed rule, the public and all interested parties were asked to submit views, comments, data, etc., either in support of, or in opposition to, the proposal. In response, the Service received and considered 1,437 letters, as of October 4, 1982. Of that number, 1,398 opposed the rule. Of these, 451 letters resulted from a news alert from the Defenders of Wildlife and 314 were copies of a form letter from an unidentified organization. The Service also received two petitions, one containing 3,873 signatures, collected by Friends of Animals and Their Environment, opposed to the proposal, and one containing 231 signatures, collected by the Isabella Sportman's Club, in favor of it. Approximately 70 persons attended the public hearing at Minneapolis, with 14 providing testimony; of the 14, most opposed the proposal. Approximately 225 persons attended the hearing held at International Falls, Minnesota, with 35 presenting testimony; of the 35, the large majority favored the proposal.

The most extensive and detailed comments were received from a Minneapolis lawyer and a law clerk on behalf on ten organizations opposed to the rule. Hereafter, these comments will be referred to as "the ten organizations' comments". The following constitutes a summary of the comments received and the Service's responses thereto.

Comment. The Fish and Wildlife Service is legally not authorized to permit the public take of wolves which the regulations contemplate. This comment was made in detailed form by the ten organizations and in less detail by several hundred individuals, as well. In its detailed form, it was composed of three separate arguments. Each of these will be addressed separately.

First, the ten organizations argued that it is the duty of the Secretary of the Interior to conserve threatened species under the 1973 Act, and that since "conserve" is a term which the Act defines to include regulated taking only "in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved" (16 U.S.C. 1532(3)(1976)), the Secretary of the Interior must be able to find that such extraordinary population pressures exist before he authorizes a regulated public taking of the sort contemplated for the wolf.

Response. This argument ignores completely the language which the 1973 Act employs with respect to "Threatened" species. It also ignores the plain intent of both Houses of Congress.

Under the 1973 Act, no prohibitions automatically apply to a species listed as "Threatened" (16 U.S.C. 1533(d)(1976)). This is in marked contrast to the Act's treatment of species listed as "Endangered", which automatically receive a panoply of protections merely by virtue of their status (compare 16 U.S.C. 1533(d) with 16 U.S.C. 1538(a)(1976)).

For threatened species, the Act simply provides:

> Whenever any species is listed as a threatened species pursuant [to the 1973 Act], *the Secretary shall issue such regulations as he deems necessary and advisable to provide for the conservation of such species.* The Secretary *may* by regulation prohibit with respect to any threatened species any act prohibited under [citation] * * * with respect to endangered species. * * *
>
> 16 U.S.C. 1533(d) (1976) (emphasis supplied).

The Fish and Wildlife Service has consistently been of the view that this provision means what it says: for Threatened species the Service *may* impose any restriction, including the taking restriction, that the Act automatically applies to Endangered species, but the Service is not *mandated* to apply restrictions. In the Service's view, the language with respect to "taking" in the Act's definition of conservation is modified, with respect to Threatened species, by virtue of the fact that the section authorizes the Service to issue such regulations as are deemed "necessary and advisable to provide for the conservation" of threatened species.

It is clear that both Houses of Congress strongly believed that by creating two categories of protection—Threatened and Endangered—under the 1973 Act, they were giving the Service flexibility to approach the protection of species differently, based on the degree of jeopardy the species face. If the available regulatory tools were identical for both Endangered and Threatened species, then that flexibility would be lost, and the distinction that the Service could draw between programs governing threatened species and programs covering endangered species would be very small. As described above, Congress did provide the needed flexibility in 16 U.S.C. 1533(d).

Another objection from the ten organizations' concerned the definition of "conservation." The organizations asserted that the Service has an affirmative duty not only to avoid placing a Threatened species in further jeopardy, but to bring the species to a point where the protections of the Act are no longer required. In this connection, they assert that the rule will disrupt the social structure of wolf packs, will jeopardize recolonization of the wolves in Wisconsin, and will bring the Minnesota Department of Natural Resources into the wolf conservation program—all to the detriment of the wolf.

The Service recognizes that its duty under the 1973 Act is to regulate Threatened species in a manner that will facilitate the recovery of those species. However, the Service rejects the assertion that its new regulations will not accomplish that. Specifically, the Service rejects the suggestions that its program will damage recolonization in Wisconsin, that the State's wolf population will be jeopardized by changes in pack's social structure, and that the participation of the Minnesota Department of Natural Resources in the Service's wolf conservation program will damage the wolf's chances of recovery. As is noted above, the Service has amended it proposal to reflect the fact that no trapping will be permitted in certain areas of the St. Louis, Pine and Carlton Counties in Minnesota which

are the crucial areas for wolf dispersal into Wisconsin, until or unless recolonization is complete or chronic wolf depredation occurs in those areas. As to the social disruption comment, the wolf population in Minnesota has been subject to such disruption for virtually the entire history of its contact with humans, without notable consequence to the population's stability.

And the Service categorically rejects the argument that participation by the Minnesota Department of Natural Resources in the wolf conservation program will jeopardize the wolf. Congress repeatedly stressed the importance of a Federal-State partnership in the conservation of Endangered and Threatened species under the 1973 Act, recognizing that States have resources which the Federal Government simply cannot match. Before and during the rulemaking process, the Minnesota Department of Natural Resources has repeatedly committed itself to implementing a strong enforcement program to protect and enhance the wolf's status in the State, and the Service is of the view that, given the changes in the State's proposed program noted above, participation by the Department of Natural Resources clearly will result in the conservation of the wolf population.

Comment: The ten organizations and several hundred private citizens opposed the rulemaking because the proposed regulations would authorize interstate and international commerce in legally taken wolf pelts. Specifically, these comments expressed the view that legalizing the sale of Minnesota wolf pelts will create a market and an incentive for illegal taking of Minnesota wolves.

Response: The Service is very conscious of the need to prevent the trade in illegally taken wolf pelts. But this problem is not different than that posed by the potential for illegal trade in other protected species, and it can be dealt with in the same way. Wolves presently can be taken in Alaska and Canada; and if wolf pelts from those jurisdictions are properly tagged and are accompanied by proper documents they legally can be imported into and sold in the lower 48 states. The present rule requires that any wolf pelt traded in interstate or international commerce be tagged with a locking seal in accordance with the regulations of the Minnesota Department of Natural Resources. Such locking seals are serially numbered, and are issued only in a number equal to the number of animals that may in a given year lawfully be taken. Any tampering with the locked seal will, by the nature of the mechanism, be evidence; and any pelt bearing a tampered seal cannot be traded under the Service's regulations. This is the system employed by virtually every fish and game agency in the world to protect species whose numbers permit a harvest, but not an unlimited harvest; in the Service's view, it is clear that the system will protect the Minnesota population of the wolf, as well.

Comment: The comments submitted on behalf of the ten organizations, and a number of individual comments, suggested that the problem of wolf depredation on livestock in Minnesota does not merit a change in the Service's regulations which would permit the limited trapping of wolves by the public and by State and Federal officers. The comments asserted that the present depredation control program of the Service was adequate and was appropriately "fine-tuned." They also asserted that the compensation program administered by the State of Minnesota, under which farmers who suffer livestock losses to wolves are compensated by the State, provides adequate recompense to those relatively few farmers who experience large numbers of losses. These comments did not directly oppose either the Service's decision to expand the one-quarter mile limit imposed by the *Fund for Animals v. Andrus* order or its decision to authorize the killing of immature wolves that are trapped in response to a specific depredation.

Response: As is noted in the "background" discussion above, the Service agrees that wolf depredation is not a massive problem, and that it can be dealt with by a carefully managed predator control program. But the fact remains that there are some areas of the State where depredation problems have not been solved by the Service's prior control program; and the Service does not believe it is responsible simply to say that since the State of Minnesota presently pays for livestock losses, the agencies regulating the taking of timber wolves need themselves do nothing. Such action tends to breed both contempt for government and the sort of illegal taking of which the ten organizations decry. The Service believes, in order words, that the public and/or government taking authorized by these regulations is a useful additional mechanism to supplement the depredation control program that is presently in place.

Comment: The ten organizations and several individuals objected to what they perceived to be a reinstitution of the State of Minnesota's "Directed Predator Control," program under which in the late 1950's and 1960's trappers certified by the State would be employed to trap wolves under the supervision of State conservation officers.

Response: As should be clear both from the regulations and the discussion in the "Background" section, above, the State of Minnesota will not institute a "Directed Predator Control" program. Individual response to specific depredations will continue to be by a program structured along the lines of the Service's present program—changed only with respect to the one-quarter mile limit and the killing of immature wolves.

Comment: The ten organizations and a number of individuals asserted that the present regulations violate the Order of the Court in *Fund for Animals* v. *Andrus*, insofar as the regulations will authorize the taking of wolves that have not been directly tied to a specific depredation on livestock.

Response: The Court in *Fund for Animals v. Andrus* was dealing only with the requirements which the Service had imposed upon itself by its 1978 rulemaking. The Court clearly did not express the view that the Service's regulations could not be changed to authorize different forms of taking; to the contrary, in the opinion of the United States Magistrate whose recommendation was adopted by the Court, the Service's 1978 regulations were far too restrictive. The Magistrate observed that "the present regulation maximizes the chances of wolf/human conflict." (Opinion of United States Magistrate Patrick J. McNulty, filed July 14, 1978, in *Fund for Animals v. Andrus*, Civil No. 5–78–66 (D.Minn.) at 21.) He observed that—

> [T]he concensus of the experts, including those on the Recovery Plan Team, is that ideal conservation of the wolf must include a managed harvesting or thinning of both the natural prey and the wolves in Zone IV to maintain the optimum wolf population. *Id.* at 23.

In addition he asserted that "[a]n amendment to this regulation, and *one is clearly required* must be adopted in conformance with the mandated procedure." The Service now has followed the "mandated procedure" of the Administrative Procedure Act and the Endangered Species Act of 1973, and it is of the view that its regulation entirely conforms with the law. But to be assured that no conflict with the Court exists, the Service will approach the Court and move to dissolve the injunction entered in the *Fund for Animals* litigation; and the Service has delayed the effective date of this

rulemaking 60 days to allow the Court an opportunity to rule on the Service's motion.

Comment: The ten organizations asserted that under the 1973 Act State participation in endangered species programs can take place only under Section 6 of the 1973 Act. That Section requires, as a prerequisite to the completion of a cooperative agreement between a State and the Fish and Wildlife Service, that the State has developed an adequate and active conservation program for those Endangered and Threatened species that are resident in the State and subject to the agreement. From this provision, the ten organizations argued that absent such an "adequate and active" conservation program in the State of Minnesota the Service could not promulgate its regulations, and that the regulations constitute an unlawful delegation of the Service's authority. The organizations and a number of individuals also asserted that the State of Minnesota Department of Natural Resources has repeatedly demonstrated an unwillingness to enforce any prohibitions against the taking of wolves and a reluctance to in any way participate in a program for the conservation of the species, and therefore that the Service could not under any circumstances find the State's program adequate and active.

Response: The Service rejects the assertion that it cannot, in its regulations concerning Threatened species, adopt provisions of State law or develop a conservation program which relies upon or incorporates a State regulatory mechanism. As has been noted above, the Act provides that with respect to Threatened species the obligation of the Service is to adopt such regulations as it deems necessary and advisable for the conservation of the species. The Service takes the position that if a given State regulatory mechanism can facilitate the conservation of a Threatened species, then the Service need not itself duplicate such a mechanism, but can incorporate the State's mechanism into its own regulations.

The Service also rejects the assertion that its regulations concerning the Minnesota population of the wolf will constitute an unlawful delegation of authority to the State of Minnesota, and the claim that the wolf conservation efforts of the State's Department of Natural Resources in some way will be inadequate. On the first point, the Minnesota Department of Natural Resources will not have unfettered discretion in implementing its management program. The Service's regulations have been carefully drawn in accordance with the recommendations of the Wolf Recovery Team; strict limitations are imposed both on the areas where the State can permit wolves to be taken and on the wolf population densities which must be present before taking can be permitted; and once the regulations are in effect, the Service will continue its wolf conservation activities in partnership with the State. For its part, since December, 1979, the Minnesota Department of Natural Resources has had a cooperative agreement with the Service, for the conservation of endangered and threatened vertebrate species in the State, including the wolf. Under that agreement, the State has been pursuing a wolf research program which is complementary to the Service's own effort; and as was noted above, under the present regulations the State has committed itself to a broadened effort in the area of wolf conservation. But the existence or non-existence of the agreement is in the Service's view simply immaterial to the validity of the Service's decision with respect to these regulations. That decision must be judged under section 4(d) of the 1973 Act; and under that section the Service believes its regulations are sound from both a biological and a legal perspective.

Comment: The ten organizations asserted that there was no rational basis for the provision in the amended regulations which would authorize designated employees or agents of the Service, other Federal land management agencies, and/or the Minnesota Department of Natural Resources, to take wolves if, during a particular year, public taking has not resulted in the removal of the number of wolves which the State has permitted to be taken, and if that additional take would not reduce the density in the zone below the levels specified by the Recovery Team.

Response: The reason the Service included this provision in its regulations has to do with the possibility that, in a particular year, the Service's depredation control program coupled with public taking may not be successful in removing, from an area of chronic wolf depredation, sufficient numbers of wolves to make it unlikely that such depredation will recur. In such a circumstance, it is the Service's view that the pertinent State and Federal agencies should have the authority to themselves to accomplish such removal. This is not to say that the agencies probably will find it necessary to take such action; rather, the Service simply believes that it is prudent to have a mechanism available on the chance that it might be needed.

Comment: The ten organizations asserted that the Service's regulations require the preparation of an environmental impact statement. They argued that the regulation would have significant impacts on the social structure, actual numbers, and recolonization potential of Minnesota wolves; that there were many unknown risks inherent in the regulations; that the regulations were controversial; that "even a small adverse impact on the timber wolf will create major existence value concerns throughout the land"; and that the decision to permit a sport season on threatened species involves "a major reinterpretation" of the word "conservation" as it is used in the 1973 Act.

Response: The Service is of the view that its regulations do not require an environmental impact statement. The regulations do not reflect a reinterpretation of the Service's authority. Under the authority provided by section 4(d) of the 1973 Act, the Service has on several occasions adopted regulations which authorized the regulated taking of Threatened species where no finding was made that the taking was mandated by population pressures. The Service's 1978 rule concerning the wolf is a case in point. As to the consequences of the present regulations for the wolf, the environmental assessment which the Service has prepared to accompany the regulations indicates that the regulations clearly will not adversely affect the species. The impacts on the social structure of wolf packs will be no different than the impact which the species has experienced for decades. Wolf populations will be reduced only in localized areas, and in no zone will they be permitted to fall below the level recommended as optimum by the Wolf Recovery Team. The recolonization potential of the wolf will be protected by the State's commitment that during the period that recolonization of Wisconsin is taking place, public trapping will not take place within any area essential to that recolonization unless wolf depredation in such an area becomes chronic. That protection is now incorporated into the Service's regulations, as well. The "existence value concerns" of Americans with respect to the wolf do not constitute environmental effects cognizable by NEPA, and the Service's regulations should not in any event prompt such concerns since the regulations are consistent with the conservation of the

species. Nor does the controversy over the regulations mandate the preparation of an environmental impact statement. The regulations of the Council on Environmental Quality provide: "Proposed major actions, the environmental impact of which is likely to be highly controversial, should be covered [by an environmental impact statement] in all cases". 40 CFR 1500.6(a). But this provision contemplates a situation where the impacts of the major action are the subject of a factually supportable dispute. The Service's regulations do not present such a situation, although there clearly are members of the public who fear that the regulations will damage the wolf in Minnesota or Wisconsin, the biologists who are expert on the subject are of the view that such apprehension is unwarranted.

Comment: The ten organizations and several individuals allege that the Service proposed the regulations in response to political pressure.

Response: As was noted above, the Service and the State of Minnesota have long engaged in a dialogue with respect to the proper manner in which the wolf should be conserved. The present regulations are a highly structured, finely tuned response to what the Service perceives as imperfections in its present system of regulation. Before and during this rulemaking, elected representatives of the State of Minnesota did express interest in changing the regulations which the Service adopted in 1978. However, that interest was not uniformly in favor of the regulations which the Service ultimately proposed, nor was their response to the Service's proposal uniformly favorable. Certain elected representatives strongly asserted that the regulations did not go far enough in giving the State of Minnesota authority over the wolf; others expressed the view that they went too far and expressed concern for the regulations as they were proposed. The Service has considered all of their comments along with all others. However, the decision of the Service set forth in these regulations is premised upon the conservation needs of the species.

Comment: The ten organizations alleged that the Service's public hearings on these regulations were scheduled "in bad faith", because one public hearing, held in Minneapolis (called " 'pro-wolf' territory" by the ten organizations) was scheduled during a work day, while the other public hearing, held in International Falls, Minnesota (" 'anti-wolf' territory", according to the ten organizations), was held during an evening.

Response: The scheduling of both public meetings was based on the times during which appropriate meeting facilities were available. The Service sought to provide appropriate hearing facilities at the least possible expense to the government. In Minneapolis, this dictated the use of government facilities which were available only during the work day. At International Falls, however, there was no suitable government facility and the Service was obliged to utilize an auditorium at Rainy River Community College, which was available during evening hours.

Comment: A large number of individuals opposed the proposed regulations because they authorized the use of steel traps—a method of taking which the commenters considered to be inhumane.

Response: The Service recognizes that a segment of the public opposes the use of steel leg hold traps for all purposes. However, the steel trap when properly used is an effective and humane method of taking wolves; and in the Service's view the taking of wolves on certain occasions is necessary. In those instances, the use of leg hold traps is more humane than other available methods of taking.

Comment: Several persons objected to the Service's proposal because in their view the regulations would lead to more persons keeping wolves as pets, to the detriment of the species and perhaps of pet owners as well.

Response: The Service agrees that trade in Minnesota wolves as pets is inappropriate, and it is not the Service's intention by these regulations to permit such trade. Therefore, the proposed regulations have been modified to permit the sale in interstate and foreign commerce only of lawfully taken wolf pelts.

Comment: Several individuals suggested that a problem might develop under the new regulations by virtue of the fact that persons might mistake coyotes for wolves or wolves for coyotes.

Response: Persons do mistake coyotes for wolves, and wolves for coyotes, and it is likely that wolves occasionally are blamed for coyotes' actions. But the Service is unable to perceive how the present regulations will cause this phenomenon to operate in some more detrimental fashion than it does at present.

Comment: Several members of the public urged the Service to deal with wolf depredation problems and any other problems that wolves might pose, using non-lethal methods. A number of these persons specifically urged the Service to experiment with the use of guard dogs or fences to protect livestock.

Response: For several years, the Service has been experimenting with nonlethal methods of deterring depredation. Specifically, during the four years that the Service has operated under the regulations which were adopted in 1978, its wolf depredation controllers have employed two forms of taste aversion. In one form, wolf pups trapped near the sites of confirmed depredation have been force-fed meat of the type involved in the depredation, which has been injected with a harmless but highly nauseating chemical. In the other form, baits consisting of the flesh and hide of cattle, and containing the same nauseating chemical, were placed on two farms that had experienced chronic losses of cattle to wolves. The Service's controllers also have placed flashing lights, of the type used to mark road construction, on or near farms that have experienced depredation. More recently, they have started a pilot project on the use of guarding dogs. The data from these experiments is yet incomplete, but it suggests that such tools can be effective under certain circumstances. Nonetheless, the Service has been unable to prevent the sort of chronic depredation discussed in the "Background" section, above. The suggestion that the Service—or farmers affected by depredation—should experiment with fences simply misunderstands the problem associated with depredation. Wolves are not deterred by barbed wire fences or electric fences, and the species probably would have no difficulty dealing with solid fences of some height—although the price associated with the construction of such fences would be prohibitive in any case. Indeed, that is the difficulty with any elaborate fencing scheme: the price associated with it, when the size of even a single livestock pasture is taken into consideration, is prohibitive, and the likelihood of success is highly problematical.

Comment. A large number of individuals, and the ten organizations in their comments, expressed the view that the persons presently employed by the Service to control depredation do satisfactory work, and that therefore it is foolish to change a workable system.

Response: The Service agrees that in large measure its depredation control program has been a success; but it does not agree that the system needs no supplementation or refinement. As is noted above, there are areas where the

depredation control program has not succeeded in solving chronic depredation problems; and the limited nature of the present program will not affect the sorts of problems that are occasioned by wolves that have not developed a strong fear of humankind. Therefore, the Service is supplementing—not replacing—the depredation control program with the mechanisms in the present regulations.

Comment. Many members of the public asserted that wolves are too beautiful and intelligent to kill, that animals have the right to live unmolested, and that the wolf belongs to all Americans, not merely to citizens of northern Minnesota.

Response. These comments, while well-meant, do not reflect several realities: wolf depredation is a problem which in some measure the Service has not yet been able to solve; wolves are a stable healthy population in Minnesota; and the Endangered Species Act is not designed to protect all members of a threatened species, regardless of the consequences of such protection. Complete protection of species such as the wolf may be as harmful, or more harmful, to the species' long term chances for survival as the complete absence of protection. It is far better in the Service's view to seek a middle ground, protecting the species where necessary to encourage its recolonization in appropriate habitat, and maintaining an optimum population in other areas.

Comment. A number of individuals suggested that the Service's new regulations may cause the wolf to become extinct.

Response. As is discussed in some detail above, it is clear that the Service's changed regulations will in no way damage the viability of the Minnesota population of the wolf, nor will they damage the species' recolonization of Wisconsin.

Comment: A number of individuals question the ability of the State of Minnesota to properly perform its role in the conservation of the wolf. They alleged that the State lacks funds to carry out a program that is consistent with the wolves' needs, that State politics might force the Minnesota Department of Natural Resources to take actions detrimental to the wolves' welfare, and that the State might allow excessive killing of the wolves.

Response: The Service disagrees strongly that the Minnesota Department of Natural Resources will abandon its responsibility under these regulations; and the regulations themselves provide ample safeguards for the species. The wolf population levels determined by the Wolf Recovery Team to be "optimum" will constitute the "floor" below which wolf populations in the various Minnesota zones will not be allowed to fall. No public taking will be permitted in zones 1 and 2; and in zone 3, such taking will be permitted only in a relatively small area along the southern boundary of the zone, in response to chronic depredation problems experienced in the adjoining areas of zone 4. Although the State of Minnesota, like many other governmental entities, presently is experiencing financial difficulties, the Minnesota Department of Natural Resources has repeatedly stated that it will have the ability to fund its wolf conservation program in an adequate fashion.

Comment: A number of individuals asserted that the Fish and Wildlife Service has no management philosophy for the wolf; that the wolf could be relocated to other areas, rather than simply killed; and that the regulations do not enhance the species' chance for recovery.

Response: The Service does have a very clear management philosophy for the wolf: it is the philosophy established by the Wolf Recovery Team. The Service has repeatedly attempted to interest the governments of other States in reintroducing wolf populations into appropriate areas of the species' former range. These attempts have to date proved unsuccessful, but the Service does not intend to forego them. It is clear, however, that if natural recolonization can occur, such recolonization is far easier for State governments to support than is human-sponsored introduction. The Service does not believe that relocation of depredating wolves, or shuffling of wolves from one area to another to achieve variations in would population densities within Minnesota, present viable conservation options. Wolf relocation was practiced by the Service between 1974 and 1978. Wolves that were trapped in response to depredation complaints were moved into wilderness areas in zone 1. The results were quite unsatisfactory: the wolves uniformly moved away from the areas to which they were translocated, and often moved out of the wilderness altogether. This effect is quite natural, since the wolf population density in the areas to which the wolves were moved was already at or near its wolf carrying capacity. In short, translocation of this sort did no benefit either to the translocated wolf or the species as a whole.

Comment: Several members of the public suggested that, rather than authorize the taking of wolves, the Service and/or the State of Minnesota should limit the taking of deer, in order that wolves need not resort to livestock for a food source.

Response: As is noted above, it is not clear that the absence of other available food is the only, or even the principal reason that wolves commit depredation on livestock. But the Minnesota Department of Natural Resources is of the view that Minnesota's deer herd should be the subject of intensive conservation efforts, and the Department is pursuing those efforts. Its annual deer season is adjusted to reflect the status, in any particular year, of the herd; and the Department is actively engaged in habitat management and research in order that future years will yield more and healthier deer.

Comment: A number of persons argued that wolf depredation often results from a failure, on the part of livestock owners, to comply with State livestock sanitation laws. These persons were of the view that such laws should be more rigorously enforced before any changes are made in the program by which the Service deals with depredation.

Response: The Service agrees that enforcement of the State's livestock sanitation laws is essential; and the Service may refuse to provide depredation control to livestock owners who have failed to take appropriate measures under those laws. However, in the Service's view, most livestock owners in Minnesota attempt to comply with those laws; and the amount of wolf depredation that results from a failure to comply with those laws is relatively small. In short, more rigorous enforcement of those laws would not, in the Service's view, work any very substantial change on the patterns of wolf depredation in the State.

Comment: Several persons suggested that wolves should be confined within a sanctuary area—thirty five thousand acres was one size mentioned—and that any wolves outside that area should be the subject of legal taking by any member of the public.

Response: The Service sees no justification for such a proposal. Although wolves do pose some problems in their interaction with human beings in some areas of Minnesota, the discussion in the "Background" section makes it clear that those conflicts, though real, are localized and capable of control by limited taking. A sanctuary of 35,000 acres, or even of a larger size, would be able to support fewer wolves than can now be supported in a manner consistent with both a stable wolf

population and an undisturbed human population.

Comment: A number of persons argued that there are too many wolves in Minnesota, that they should be "thinned out", and that the species is neither Endangered nor Threatened.

Response: The Service is of the view that the wolf population in Minnesota is healthy, but that a general across-the-board "thinning" of the entire population is not called for. Rather, in the Service's view, there may be reason to reduce wolf numbers in certain local areas, in response to certain specific phenomena. The Wolf Recovery Team has stated that until a viable wolf population is established elsewhere in the United States, the species in Minnesota should not be considered for removal from the list of Endangered and Threatened wildlife. The Service shares that view.

Comment: Several persons suggested that the increased taking authorized by these regulations, when combined with the taking occasioned by depredation control and by poachers might rise to the level where the Minnesota wolf population would be unable to sustain its numbers.

Response: The service has carefully considered these arguments, and it is of the view that they are not warranted. The Service's regulations provide that no public taking shall be authorized in any zone unless the wolf population in the zone after the take would be at or above the density levels suggested by the Wolf Recovery Team. As a further safeguard, the regulations provide that in zone 4 no more than 50 wolves will be taken by the public in the first year under the regulations, in order that the effect of the regulations can be monitored and observed. In short, the Service is of the view that its regulations constitute a careful and conservative approach to the authorization of public taking.

National Environmental Policy Act

An environmental assessment has been prepared in conjunction with this rule. Based on the record compiled in the decision making, and on the environmental assessment, the Fish and Wildlife Service has determined that this is not a major Federal action which would significantly affect the quality of the human environment within the meaning of Section 102(2)(C) of the National Environmental Policy Act, 42 U.S.C. 4332(2)(C) (1976) and the implementing regulations at 40 CFR Parts 1500–1508.

Determinations Under Executive Order 12291 and the Regulatory Flexibility Act

The Department of the Interior has determined that this is not a major rule and does not require preparation of a regulatory analysis under Executive Order 12291. The Department has also determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This is because any possible effect that could occur would be beneficial in that Federal regulations and recordkeeping requirements would be reduced. These determinations are discussed in more detail in The Determination of Effects which has been prepared by the U.S. Fish and Wildlife Service.

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

Accordingly, 50 CFR 17.40(d)(2) is revised to read as follows:

§ 17.40 [Amended.]

* * * * *

(d) * * *

(2) *Prohibitions.* The following prohibitions apply to the gray wolf in Minnesota.

(i) *Taking.* Except as provided in this paragraph (d)(2)(i) of this section, no person may take a gray wolf in Minnesota.

(A) Any person may take a gray wolf in Minnesota in defense of his own life or the lives of others.

(B) Any employee or agent of the Service, any other Federal land management agency, or the Minnesota Department of Natural Resources, who is designated by his/her agency for such purposes, may, when acting in the course of his/her official duties, take a gray wolf in Minnesota without a permit if such action is necessary to:

(*1*) Aid a sick, injured, or orphaned specimen; or

(*2*) Dispose of a dead specimen; or

(*3*) Salvage a dead specimen which may be useful for scientific study.

(*4*) Designated employees or agents of the Service or the Minnesota Department of Natural Resources may take a gray wolf without a permit in Minnesota, in zones 2, 3, 4, and 5, as delineated in paragraph (d)(1) of this section, in response to depredations by a gray wolf on lawfully present domestic animals: *Provided,* that such taking must occur within one-half mile of the place where such depredation occurred.

(C) The Minnesota Department of Natural Resources may permit persons to take a gray wolf in zones 3, 4, and 5, as delineated in paragraph (d)(1) of this section: *Provided* that

(*1*) Such taking shall be permitted not more than 5 miles inside the boundary of zone 3, in areas of recurring wolf depredation on lawfully present domestic animals; and the extent of such taking shall be adjusted periodically to maintain an average population density of not less than 1 wolf per 10 square miles (the Minnesota Department of Natural Resources shall determine population density on the basis of generally accepted wildlife census techniques);

(*2*) In zone 4, such taking shall be permitted primarily in areas of recurring depredation, and the extent of such taking shall be adjusted periodically to maintain an average population density in the zone of not less than 1 wolf per 50 square miles (the Minnesota Department of Natural Resources shall determine population density on the basis of generally accepted census techniques); and

(*3*) During the first year after the effective date of these regulations, not more than 50 gray wolves may be taken by the public in zone 4.

(D) Any employee or agent of the Service, any other Federal land management agency, or the Minnesota Department of Natural Resources who is designated by his/her agency for such purposes, may, when acting in the course of his/her official duties, take a gray wolf in Minnesota without a permit in any area of recurring depredation within which the Minnesota Department of Natural Resources has authorized taking under § 17.40(d)(2)(i)(C) of this section, if during the season immediately preceding the taking the persons participating in the season have not taken the number of wolves which the State has permitted to be taken, and such taking by an employee or agent of the Service, any other Federal land management agency or the Minnesota Department of Natural Resources would not reduce the density in the zone in which taking occurs below that specified in paragraph (d)(2)(i)(C) of this section.

(E) The taking authorized by §§ 17.40(d)(2)(i) (C) and (D) of this chapter shall not be permitted in those areas of Pine and Carlton Counties lying east of a line beginning where the east line of County Highway 23 meets the southern boundary of Pine County, then running north along the east line of

County Highway 23 to the point in Carlton County where it intersects the east line of County Highway 1, then running north along the east line of County Highway 1 until it crosses the St. Louis River, until the Service has determined that such dispersal has resulted in a stable wolf population in Wisconsin, or unless recurring depredation by wolves on lawfully present domestic animals in those areas is determined by the Service to be a chronic problem.

(F) Any employee or agent of the Service or the Minnesota Department of Natural Resources, when operating under a Cooperative Agreement with the Service signed in accordance with section 6(c) of the Endangered Species Act of 1973, who is designated by the Service or the Minnesota Department of Natural Resources for such purposes, may, when acting in the course of his or her official duties, take a gray wolf in Minnesota to carry out scientific research or conservation programs.

(ii) *Export and Commercial Transactions.* (A) Except as provided in paragraph (d)(2)(ii)(B) of this section, or as provided in § 17.32 of this title, no person may sell or offer for sale in interstate commerce, or export, or in the course of a commercial activity transport, ship, carry, deliver, or receive any Minnesota gray wolf.

(B) A pelt from a gray wolf taken in accordance with the provisions of paragraph (d)(2)(i)(C) of this section, and tagged with a locking seal in accordance with the regulations of the Minnesota Department of Natural Resources, may be exported if the requirements of the Convention of International Trade in Endangered Species of Wild Fauna and Flora (see 50 CFR Part 23) are met; and a pelt from a gray wolf taken and tagged in such manner may be transported, shipped, carried, delivered, or received in interstate commerce in the course of a commercial or noncommercial activity, and may be sold or offered for sale in interstate commerce.

(iii) *Unlawfully taken wolves.* No person may possess, sell, deliver, carry, transport, or ship, by any means whatsoever, a gray wolf taken unlawfully in Minnesota, except that an employee or agent of the Service, or any other Federal land management agency, or the Minnesota Department of Natural Resources, who is designated by his/her agency for such purposes, may, when acting in the course of his official duties, possess, deliver, carry, transport or ship a gray wolf taken unlawfully in Minnesota.

* * * * *

Dated: June 22, 1983.

G. Ray Arnett,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 83-21712 Filed 8-9-83; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 649

[Docket No. 30719-137]

American Lobster Fishery

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

ACTION: Final rule.

SUMMARY: This final rule implements the American Lobster Fishery Management Plan (FMP). The Regional Director of the Northeast Region of the National Marine Fisheries Service has approved the FMP, with the exception of a provision prohibiting the possession of V-notched lobsters in the Fishery Conservation Zone (FCZ) in portions of the Gulf of Maine, which was conditionally approved only. These regulations implement the FMP, as approved, by specifying management measures intended to allow the American lobster fishery to attain optimum yield.

EFFECTIVE DATE: Section 649.20(f) is effective from September 7, 1983, through January 4, 1984. All other regulations are effective September 7, 1983.

ADDRESS: Copies of the FMP, the final environmental impact statement, regulatory impact review and regulatory flexibility analysis are available from Mr. Douglas G. Marshall, Executive Director, New England Fishery Management Council, Suntaug Office Park, 5 Broadway, Saugus, Massachusetts 01906.

FOR FURTHER INFORMATION CONTACT: Bruce Nicholls (Lobster Management Coordinator), 617-281-3600.

SUPPLEMENTARY INFORMATION:

Background

The American Lobster Fishery Management Plan was prepared by the New England Fishery Management Council in consultation with the Mid-Atlantic Fishery Management Council. The FMP was approved by the Regional Director of the Northeast Region of the National Marine Fisheries Service on July 8, 1983. The Regional Director has conditionally approved, for a time period not to exceed 120 days (ending January 4, 1984) from the September 7, 1983, effective date of these regulations, the provision in the FMP which would prohibit the possession of V-notched lobsters in the FCZ in portions of the Gulf of Maine. The conditional approval was based on a finding that the measure was not consistent with National Standard 3 for fishery management, which requires that, where possible, a stock be managed as a unit throughout its range, and that the meausure as proposed would not have been enforceable. The Regional Director has advised the Council of his conditional approval to give it an opportunity to reconsider the measure and suggested alternative means to construct the measure to allow for final approval. Council action on the Regional Director's proposed alternative may result in a supplement or amendment to these regulations.

The FMP as approved establishes a management program for American lobsters which—

(1) On the date of implementation, prohibits the landing or possession of lobster meat and imposes a 1 1/16 inch minimum length for the sixth tail segment; prohibits the landing of female lobsters bearing extruded eggs, the removal of such eggs, or the possession of lobsters from which eggs have been removed; requires vessel owners intending to fish in the FCZ to obtain permits issued by NMFS or through cooperative agreements with the coastal States; and provides for the collection of fishery information using the NMFS Three Tier Fishery Information Collection System.

(2) On January 1, 1985, establishes a minimum carapace length of 3 3/16 inches and requires that all traps be vented to allow release of sublegal lobsters and be marked with the owner's identification.

(3) On January 1, 1986, requires that lobsters be landed whole.

These conservation and management measures are designed to allow the American lobster fishery to achieve optimum yield. Similar measures are imposed by most of the coastal States in the range of the lobster fishery. The primary objective of the FMP is to provide for complementary regulation of the lobster fishery within the fishery conservation zone, and to serve as a vehicle for coordinated management of the American lobster fishery resource throughout its range.

Proposed regulations to implement the FMP were published on May 20, 1983 (48 FR 22760). The proposed regulations provided a 45 day public comment period on the FMP and proposed

regulations. The comment period ended on July 5, 1983. Three written comments were received during the comment period. The comments, and NOAA's responses, are discussed below.

Responce to Public Comments

Written comments were submitted by the New England Fishery Management Council, the Department of Environmental Protection of the State of New Jersey and by Edward V. Cattell, Jr., an attorney representing New Jersey lobster fishermen.

1. *Comment:* A definition of possession should be added to the regulations to allow food service establishments and dealers to market lobster meat and parts.

Response: The section of the regulations dealing with mutilation of lobsters and the landing of meat or parts applies through the point of landing, and should not prevent legitimate marketing of lobster meat or parts taken in compliance with the regulations. A definition of possession is thus unnecessary.

2. *Comment:* The ban on landing lobsters parts should be eliminated.

Response: The prohibition was included by the Council after considerable discussion. It is necessary to ensure the effectiveness of the conservation program. Implementation of the ban will be delayed for two years as a result of action on the part of the Council to reduce the possible impact on affected fishermen.

3. *Comment:* The carapace size measures should be delayed in implementation through 1987 to allow New Jersery to adopt complementary regulations.

Response: The implementation schedule of the FMP was developed by the Council and reflects special and specific consideration and action to delay measures to allow New Jersey to achieve consistency. Further delay is not consistent with the agreement reached within Council forum and would only postpone the conservation benefit of the FMP.

4. *Comment:* A Federal lobster permit should not be necessary.

Response: The Federal government, in assuming lobster management responsiblity in the FCZ, must have a vehicle to identify persons who will fish for American lobster in the FCZ and a means to sanction such persons in the event of violation of the regulations. A permit serves those ends. The permit requirement allows for the use of State permits endorsed for FCZ fishing and thus should not impose any significant additional burden.

5. *Comment:* The vessel marking requirements should not specify the height and color of numerals required as this duplicates existing State requirements.

Response: The vessel marking requirements contained in these regulations are identical to those imposed in other fishery management plans, and are important because they allow the Coast Guard and NMFS to identify vessels using aerial and vessel surveillance. The requirements do not apply to vessels under 25 feet in length. A standard marking program for licensed fishing vessels provides an important and effective means of identifying vessels.

These regulations were under continuing review by NOAA during the public comment period, and incorporate a number of changes required for clarity and to reflect the approval of the FMP. The only substantive change made by NOAA is to establish elective categories for lobster permits. Under this program, persons fishing for American lobster must elect to fish (1) only within State boundaries (i.e., internal waters and the adjacent territorial sea of the United States), or (2) within the FCZ, in addition to or instead of within State boundaries. The Regional Director will issue FCZ permits, and may also authorize States, under a cooperative agreement, to endorse State-issued lobster permits to authorize fishing in the FCZ.

Any person electing to fish for American lobster only within State boundaries would not be subject to the measures contained in these rules and would not apply for an FCZ permit. His lobster fishing within State boundaries would continue to be governed by State rules. Any fishing by him in the FCZ would be illegal.

Any person electing to fish for American lobster in the FCZ, whether or not he also intends to fish for American lobster within State boundaries, must apply for an FCZ permit under these regulations and for any State permit required under applicable State rules. He must agree, as a condition of obtaining the FCZ permit (or a State permit endorsed for FCZ fishing), that all his catch, gear, and fishing will be subject to the more restrictive of these regulations or applicable State conservation measures, without regard to where the fishing, catch or gear is conducted, taken or possessed.

This election condition for FCZ permits is necessary to ensure the effective enforcement of measures imposed by the FMP. It minimizes conflict with State control over fishing and landings by their residents within State boundaries. It provides for effective Federal enforcement while still allowing for State adoption of stricter measures when the State considers it appropriate. This system is intended to provide for the orderly and cooperative development of Federal and State management measures. The system was established through modification and clarification to §§ 649.1, 649.4, 649.7, 649.20, and 649.21.

Classification

A regulatory impact review prepared by the Council supported a determination by NOAA's Administrator that these regulations do not constitute a major rule under Executive Order 12291. Summary published at 48 FR 22761.

The Administrator has determined, based on the regulatory flexibility analysis, that these regulations will have a significant economic impact on a substantial number of small entities.

A draft Environmental Impact Statement was prepared in accordance with the National Environmental Policy Act and was filed with the Environmental Protection Agency (EPA) and made available to the public from September 24, 1982, through November 8, 1982. Fourteen public hearings were conducted from Maine to Maryland. A final environmental impact statement (FEIS) was filed with EPA on July 8, 1983. Copies of the FEIS can be obtained from the New England Fishery Management Council at the address above.

This rule contains a collection of information requirement subject to the Paperwork Reduction Act. The collection of this information has been approved by the Office of Management and Budget, OMB Control Numbers 0648–0097 and 0648–0013.

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 Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Maryland and Delaware. This determination was submitted for review by the responsible State agencies under section 307 of the Coastal Zone Management Act. None of the States have contested the Council's determination.

Section 649.5, Recordkeeping requirements, has been reserved pending the full implementation of the provisions of the NMFS Three Tier Fishery Information Collection System to be used under this FMP.

List of Subjects in 50 CFR Part 649

Administrative practice and procedure, Fish, Fisheries, Reporting and recordkeeping requirements.

Dated: August 5, 1983.

Joe Clem,

Chief, Fees, Permits and Regulations Division, National Marine Fisheries Service.

For the reasons set out in the preamble, NOAA amends 50 CFR by adding a new Part 649 to read as follows:

PART 649—AMERICAN LOBSTER FISHERY

Subpart A—General Provisions

Sec.

Subpart B—Management Measures

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

Subpart A—General Provisions

§ 649.1 Purpose and scope.

This part implements the American Lobster Fishery Management Plan prepared and adopted by the New England Fishery Management Council in consultation with the Mid-Atlantic Fishery Management Council, and approved by the Director of the Northeast Region of the National Marine Fisheries Service, NOAA. These regulations govern fishing for American lobster within that portion of the Atlantic Ocean over which the United States exercises fishery management authority, and possession of American lobster and lobster traps.

§ 649.2 Definitions.

In addition to the definitions in the Magnuson Act, and unless the context requires otherwise, the terms used in this part have the following meanings:

American lobster or *lobster* means the species *Homarus americanus.*

Area of custody means any vessel, building, vehicle, pier, live car, pound, or dock facility where American lobster may be found.

Authorized officer means—

(a) Any commissioned, warrant, or petty officer of the U.S. Coast Guard;

(b) Any certified enforcement officer or special agent of the National Marine Fisheries Service;

(c) Any officer designated by the head of any Federal or State Agency which has entered into an agreement with the Secretary and the Commandant of the U.S. Coast Guard to enforce the provisions of the Magnuson Act; or

(d) Any U.S. Coast Guard personnel accompanying and acting under the direction of any person described in paragraph (a) of this definition.

Berried female means a female lobster bearing eggs attached to the abdominal appendages.

Carapace length is the straight line measurement from the rear of the eye socket parallel to the center line of the carapace to the posterior edge of the carapace. The carapace is the unsegmented body shell of the lobster.

Catch, take, or harvest includes, but is not limited to, any activity which results in killing any fish, or bringing any live fish or shellfish on board a vessel.

Council includes the New England and Mid-Atlantic Fishery Management Councils.

Fish includes the American lobster, *Homarus americanus.*

Fishery conservation zone (FCZ) means that area adjacent to the United States which, except where modified to accommodate international boundaries, encompasses all waters from the seaward boundary of each of the coastal States to a line each point of which is 200 nautical miles from the baseline from which the territorial sea is measured.

Fishery management plan (FMP) means the American Lobster Fishery Management Plan and any amendments thereto.

Fishing, or *to fish*, means any activity, other than scientific research conducted by a scientific research vessel, which involves—

(a) The catching, taking, or harvesting of fish;

(b) The attempted catching, taking, or harvesting of fish;

(c) Any other activity which can reasonably be expected to result in the catching, taking, or harvesting of fish; or

(d) Any operations at sea in support of, or in preparation for, any activity described in paragraphs (a), (b), or (c) of this definition.

Fishing vessel means any vessel, boat, ship, or other craft which is used for, equipped to be used for, or of a type which is normally used for (a) fishing; or (b) aiding or assisting one or more vessels at sea in the performance of any activity relating to fishing, including, but not limited to preparation, supply, storage, refrigeration, transportation, or processing.

Land means to begin offloading fish, to offload fish, or to arrive in port.

Magnuson Act means the Magnuson Fishery Conservation and Management Act of 1976, as amended, 16 U.S.C. 1801 *et seq.*

NOAA means the National Oceanic and Atmospheric Administration.

Official number means the documentation number issued by the U.S. Coast Guard or the certificate number issued by a State or the Coast Guard for undocumented vessels in accordance with the Federal Boating Safety Act of 1971 (46 U.S.C. 1451 *et seq.*) or the Vessel Documentation Act (46 U.S.C. 65).

Operator, with respect to any vessel, means the master or other individual on board and in charge of that vessel.

Owner, with respect to any vessel, means—

(a) Any person who owns that vessel in whole or in part;

(b) Any charterer of the vessel, whether bareboat, time, or voyage;

(c) Any person who acts in the capacity of a charterer, including, but not limited to, parties to a management agreement, operating agreement, or other similar agreement that bestows control over the destination, function, or operation of the vessel; or

(d) Any agent designated as such by any person in paragraphs (a), (b), or (c) of this definition.

Person means any individual (whether or not a citizen of the United States), corporation, partnership, association, or other entity (whether or not organized or existing under the laws of any State), and any Federal, State, local, or foreign government or any entity of any such government.

Regional Director means the Director, Northeast Region, National Marine Fisheries Service, NOAA, or a designee.

Scrubbing is the forcible removal of eggs from a berried female lobster.

Secretary means the Secretary of Commerce, or a designee.

Sixth tail segment is that tail segment closest to the fan of the lobster's tail with the segment length measured along the dorsal center line with the tail flexed.

U.S.-harvested fish means fish caught, taken, or harvested by vessels of the United States within any fishery regulated under the Magnuson Act.

Vessel of the United States means—

(a) Any vessel documented under the laws of the United States;

(b) Any vessel numbered in accordance with the Federal Boat Safety

Act of 1971 (46 U.S.C. 1451 *et seq.*) and measuring less than five net tons; or

(c) Any vessel numbered under the Federal Boat Safety Act of 1971 (46 U.S.C. 1451 *et seq.*) and used exclusively for pleasure.

V-notch conservation area means the area of the FCZ north and east of a line which begins at a point 43°06′ N. latitude, 70°34′ W. longitude, runs due southeast to a point 42° N. latitude, 69°35′ W. longitude, and thence runs due east along the 42nd parallel to the seaward limit of the FCZ.

§ 649.3 Relation to other laws.

All fishing activity, regardless of species sought, is prohibited under 15 CFR Part 924, in the U.S.S. Monitor Marine Sanctuary, which is located approximately 15 miles southwest of Cape Hatteras off the coast of North Carolina. Nothing in these regulations will supersede more restrictive State or local lobster management measures.

§ 649.4 Vessel permits.

(a) *General.* (1) Any vessel of the United States fishing for American lobster in the FCZ must have a permit required by this part on board the vessel. The Regional Director may by agreement with State agencies recognize permits or licenses issued by those agencies endorsed for fishing for lobster in the FCZ, providing that such permitting programs accurately identify persons who fish in the FCZ, and that the Regional Director can either individually or in concert with the State agency act to suspend the permit or license for FCZ fishing for any violation under this part.

(2) Alternate State FCZ permitting programs will be established through a letter of agreement between the Regional Director and the director of the State marine fisheries agency concerned. The letter of agreement will specify the information to be collected by the alternate FCZ permitting program and the mode and frequency of provision of that information to the Regional Director. The Regional Director will, in cooperation with the State director, arrange for notification of the existence and terms of any such agreements to the affected persons. Persons intending to fish in the FCZ should determine whether an alternate FCZ permitting program is in force for their State before applying for a Federal permit under § 649.4(b).

(3) Vessel owners or operators who apply for a fishing vessel permit under this section, or for a State permit endorsed for FCZ fishing under § 649.4(a)(2) must agree, as a condition of the permit, that all the vessels' lobster fishing, catch, and gear (without regard to whether such fishing occurs in the FCZ or landward of the FCZ, and without regard to where such lobster, lobster meats, or parts, or gear are possessed, taken or landed) will be subject to all the requirements of this part. All such fishing, catch, and gear will remain subject to any applicable State or local requirements. If a requirement of this part and a conservation measure required by State or local law differ, any vessel owner or operator permitted to fish in the FCZ must comply with the more restrictive requirement.

(b) *Application.* An application for a Federally issued fishing vessel permit under this section must be submitted and signed by the vessel owner or operator on an appropriate form which may be obtained from the Regional Director. The application must be submitted to the Regional Director and must contain the following information:

(1) The name, mailing address, and telephone number of the applicant and the vessel's master;

(2) The name of the vessel;

(3) The vessel's official number;

(4) The home port, length, gross tonnage, and net tonnage of the vessel;

(5) The engine horsepower of the vessel;

(6) The approximate fish-hold capacity of the vessel;

(7) The type, and quantity of fishing gear used by the vessel;

(8) The size of the crew, which may be stated in terms of a range; and

(9) A signed statement that the applicant agrees to the conditions specified in § 649.4(a)(3), i.e. that all the vessel's fishing, catch, and gear, of American lobster will be subject to the requirements of this part, in addition to any more restrictive conservation requirements of applicable State or local rules, without regard to where such fishing, catch, or gear occur, is taken, or is possessed.

(c) *Issuance.* (1) Upon receipt of a completed application, the Regional Director will issue a permit within 30 days.

(2) Upon receipt of an incomplete or improperly executed application, the Regional Director will notify the applicant of the deficiency in the application. If the applicant fails to correct the deficiency within 10 days following the date of notification, the application will be considered abandoned.

(d) *Expiration.* A Federally-issued permit expires when the owner or name of the vessel changes.

(e) *Duration.* A Federally-issued permit is valid until it expires or is revoked, suspended, or modified under 50 CFR Part 621.

(f) *Alteration.* Any permit which has been altered, erased, or mutilated is invalid.

(g) *Replacement.* Replacement permits may be issued. An application for a replacement permit will not be considered a new application.

(h) *Transfer.* Federal permits issued under this part are not transferable or assignable. A Federally issued permit is valid only for the vessel for which it is issued.

(i) *Display.* Any permit issued under this part must be carried on board the fishing vessel at all times. The permit must be displayed for inspection upon request of any authorized officer.

(j) *Sanctions.* Subpart D of 50 CFR Part 621 governs the imposition of sanctions against a permit issued under this part. As specified in that Subpart D, a permit may be revoked, modified, or suspended if the vessel for which the permit is issued is used in the commission of an offense prohibited by the Magnuson Act or by this part; or if a civil fine or criminal penalty imposed under the Magnuson Act has not been paid.

(k) *Fees.* No fee is required for any Federally-issued permit under this part.

(l) *Change in application information.* The permit holder must report any change in the information specified in paragraph (b) of this section, such as the vesssel owner or quantity of gear, to the Regional Director within 15 days of the change.

§ 649.5 Recordkeeping requirements. [Reserved]

§ 649.6 Vessel indentification.

(a) *Official number.* Each fishing vessel subject to this part over 25 feet in length must display its official number on the port and starboard sides of the deckhouse or hull, and on an appropriate weather deck so as to be visible from above.

(b) *Numerals.* The official number must be permanently affixed to each vessel subject to this part in contrasting block Arabic numerals at least 18 inches in height for all other vessels over 65 feet, and at least 10 inches in height for all other vessels over 25 feet in length. The length of a vessel, for purposes of this section, is that length set forth in U.S. Coast Guard or State records.

(c) *Duties of operator.* The operator of each vessel subject to this part must—

(1) Keep the vessel name and official number clearly legible and in good repair; and

(2) Ensure that no part of the vessel, its rigging, its fishing gear, or any other object obstructs the view of the official number from an enforcement vessel or aircraft.

§ 649.7 Prohibitions.

(a) It is unlawful for any person issued a permit under § 649.4—

(1) To land or possess any American lobster which fails to meet the carapace length standards specified in § 649.20(b);

(2) To land or possess any American lobster or parts thereof in violation of the mutilation standards specified in §649.20(c);

(3) To retain on board, possess, or land any berried female American lobster;

(4) To remove eggs from any berried female American lobster, or to possess or land any such lobster from which eggs have been removed;

(5) To retain on board in the V-notch conservation area any lobster marked with a V-notch as specified in § 649.20(f) during the period September 7, 1983 through January 4, 1984;

(6) To possess, deploy, haul, harvest lobster from, or carry on board a vessel any gear not marked and vented in accordance with the requirements specified in § 649.21;

(7) To fail to affix and maintain permanent markings as required by § 649.6;

(b) It is unlawful for any person—

(1) To throw or dump into the water, or otherwise dispose of any lobster, or the contents of any pail, bag, barrel, or any matter whatsoever after being signalled by an authorized officer, before the authorized officer has inspected the same;

(2) To use any vessel for taking, catching, harvesting, or landing of any American lobster in the FCZ unless the vessel or operator has a valid permit issued under this part, and the permit is on board the vessel;

(3) To make any false statement in connection with an application under § 649.4; or to fail to report to the Regional Director, within 15 days, any change in the information contained in a permit application for a vessel;

(4) To make any false statement, oral or written, to an authorized officer, concerning the taking, catching, harvesting, landing, purchase, sale, or transfer of any American lobster;

(5) To possess, have custody or control of, ship, transport, offer for sale, sell, purchase, land, import or export any American lobster taken or retained in violation of the Magnuson Act, this part, or any other regulation under the Magnuson Act;

(6) To refuse to permit an authorized officer to board a fishing vessel, or to enter an area of custody, subject to such person's control, for purposes of conducting any search or inspection in connection with the enforcement of the Magnuson Act, this part, or any other regulation or permit under the Magnuson Act;

(7) To forcibly assault, resist, oppose, impede, intimidate, threaten, or interfere with any authorized officer in the conduct of any search or inspection described in paragraph (b)(6) of this section;

(8) To resist a lawful arrest for any act prohibited by this part;

(9) To interfere with, delay, or prevent, by any means, the apprehension or arrest of another person, with the knowledge that such other person has committed any act prohibited by this part;

(10) To interfere with, obstruct, delay, or prevent by any means the lawful investigation or search in the process of enforcing this part;

(11) To fail to comply immediately with enforcement and boarding procedures specified in § 649.8;

(12) To transfer directly or indirectly, or attempt to so transfer, any U.S.-harvested American lobster to any foreign fishing vessel within the FCZ; or

(13) To violate any other provision of this part, the Magnuson Act, or any other regulation promulgated under the Magnuson Act.

§ 649.8 Enforcement.

(a) *General.* The owner or operator of any fishing vessel subject to this part shall immediately comply with instructions issued by an authorized officer to facilitate safe boarding and inspection of the vessel, its gear, equipment, and catch for purposes of enforcing the Magnuson Act and this part.

(b) *Signals.* Upon being approached by a U.S. Coast Guard cutter or aircraft, or other vessel or aircraft authorized to enforce the Magnuson Act, the operator of a fishing vessel shall be alert for signals conveying enforcement instructions. The VHF-FM radiotelephone is the normal means of communicating between vessels. However, visual methods or loudhailer may be used. The following signals extracted from the International Code of Signals are among those which may be used:

(1) "L" means "You should stop your vessel instantly."

(2) "SQ3" means "You should stop or heave to; I am going to board you," and

(3) "AA AA AA etc.," is the call to an unknown station, to which the signaled vessel must respond by illuminating the vessel identification required by § 649.6(a).

(4) "RY CY" means "You should proceed at slow speed, a boat is coming to you."

(c) *Boarding.* The operator of a vessel signaled to stop or heave to for boarding shall—

(1) Stop immediately and lay to or maneuver in such a way so as to allow the authorized officer and the boarding party to come aboard;

(2) When necessary to facilitate the boarding or when requested by an authorized officer, provide a safe ladder for the authorized officer and the boarding party to come aboard, a man rope, safety line, and illumination for the ladder; and

(3) Take such other actions as the authorized officer deems necessary to ensure the safety of the authorized officer and the boarding party and to facilitate the boarding.

(d) *Dumping.* No person, having been signaled by an authorized officer, shall throw or dump into the water, or otherwise dispose of any lobster, or the contents of any pail, bag, barrel or any matter whatsoever, before the authorized officer has inspected the same.

§ 649.9 Penalties.

Any person or fishing vessel found to be in violation of this part will be subject to the civil and criminal penalty provisions and forfeiture provisions of the Magnuson Act, and to 50 CFR Parts 620 (Citations) and 621 (Civil Procedures), and other applicable Federal law.

Subpart B—Management Measures

§ 649.20 Harvesting and landing requirements.

(a) *Condition.* By accepting a Federal permit or a State permit endorsed for FCZ fishing, the permittee agrees that any lobster found on board or landed by a vessel with a permit issued, authorized, or required by this part will be treated as if it had been harvested in the FCZ subject to these regulations.

(b) *Carapace length.* Effective January 1, 1985, all lobsters landed in whole form must have a minimum carapace length of 3 3/16 inches.

(c) *Mutilation.* Except as provided in paragraph (c)(1) of this section, it will be unlawful for any person to remove meat or any body appendages from any lobster before landing.

(1) From the date of implementation of these regulations, through December 31, 1985, persons may land lobster tails in

States which do not have regulations prohibiting such activity, providing the sixth tail segment measures at least 1 1/16 inches in length, and that not more than two claws are landed with each such tail.

(2) Effective January 1, 1986, it will be unlawful to land or have in possession on board any vessel any lobster part other than whole lobsters.

(d) *Berried females.* Any berried female American lobster must be immediately returned to the sea.

(e) *Scrubbing.* No person may remove extruded eggs attached to the abdominal appendages from any female American lobster.

(f) *Other conservation measures.* It will be unlawful for any fisherman to retain on board in the V-notch conservation arera any lobser bearing a V-shaped notch in the right flipper next to the middle flipper or any female lobster which is multilated in a manner which could hide or obliterate such a mark. The right flipper will be examined when the underside of the lobster is down and its tail is toward the person making the determination. This provision will remain in effect for a time period not to exceed 120 days (ending January 4, 1984), from the September 7, 1983 effective date of these regulations.

§ 649.21 Gear marking and escape vent requirements.

(a) *Marking.* Effective January 1, 1985, all lobster gear deployed in the FCZ or possessed by a person whose vessel is permitted for fishing in the FCZ, and not permanently attached to the vessel, must be legibly and indelibly marked with one of the following codes of identification:

(1) The vessel's Federal fishery permit number; and/or

(2) Whatever positive identification marking is required by the vessel's homeport State.

(b) *Escape vents.* All lobster traps deployed in the FCZ or possessed by a person whose vessel is permitted for fishing in the FCZ must be constructed to include one of the following escape vents in the parlor section of the trap. The vent must be located in such a manner that it would not be blocked or obstructed by any portion of the trap, associated gear, or the sea floor in normal use.

(1) A rectangular portal with an unobstructed opening not less than 1 3/4 inches (44.5 mm) by six inches (152.5 mm);

(2) Two circular portals with unobstructed openings not less than 2 1/4 inches (57.2 mm) in diameter; or

(3) Any other vent certified by the Regional Director to release a substantial number of lobsters under 3 5/16 inches carapace length from the trap.

(c) *Enforcement action.* Unmarked, unvented, or improperly vented traps will be seized and disposed of at the discretion of the Regional Director.

[FR Doc. 83-21840 Filed 8-8-83; 11:05 am]
BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 48, No. 155
Wednesday, August 10, 1983

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 983

[Docket No. F&V AO-79-3]

Pecans Grown in 16 States; Recommended Decision and Opportunity To File Written Exceptions

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed termination of proceedings to formulate a marketing agreement and order.

SUMMARY: This notice invites written exceptions to a recommended decision which would terminate the proceedings on a proposed marketing agreement and order program for pecans. The proposed program would authorize a market research and development program, including promotion and paid advertising, for the purpose of improving the marketing, distribution and consumption of pecans. The recommendation to terminate is based on a lack of evidence which would demonstrate a present necessity for such a program.

DATE: Written exceptions to this recommended decision must be filed by September 26, 1983.

ADDRESSES: Interested persons may file written exceptions to this decision with the Hearing Clerk, United States Department of Agriculture, Room 1077, South Building, Washington, D.C. 20250. Two copies of all written exceptions should be submitted, and they will be made available for public inspection during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Frank M. Grasberger, Acting Chief, Specialty Crops Branch, Fruit and Vegetable Division, Agricultural Marketing Service, United States Department of Agriculture, Washington, D.C. 20250; (202) 447-5053.

SUPPLEMENTARY INFORMATION: *Prior documents in this proceeding:* Notice of Hearing—Issued December 16, 1982, and published December 22, 1982 (47 FR 57222); Suppplemental Notice of Hearing—Issued February 7, 1983, and published February 14, 1983 (48 FR 6544).

Preliminary Statement: This administrative action is governed by the provisions of Sections 556 and 557 of Title 5 of the United States Code and, therefore, is not subject to the requirements of Executive Order 12291.

This notice is issued pursuant to the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders (7 CFR Part 900).

A public hearing was held to consider a proposed marketing agreement and order program containing authority to establish marketing research and development projects, including promotion and paid advertising, for pecans. The proposal was submitted by the Federated Pecan Growers' Associations of the United States (FPGA). Sessions of the public hearing were held in Dallas, Texas, February 8–11, 1983; Atlanta, Georgia, February 14–16; Mobile, Alabama, February 17–18; and Washington, D.C., February 28. Notice of the sessions in Dallas, Atlanta, and Mobile was published in the December 22, 1982, issue of the **Federal Register** (47 FR 57222). The notice of the Washington, D.C. session was published February 14, 1983 (48 FR 6544). These notices contained the FPGA's proposed marketing agreement and order.

Material Issues: The material issues made part of the record are as follows:

1. Is the handling of pecans in the proposed production area in the current of interstate commerce, or does it directly burden, obstruct, or affect interstate commerce;

2. Do the marketing conditions show the need for issuance of a marketing agreement and order which will tend to effectuate the declared policy of the act; and

3. The terms and provisions of the proposed marketing agreement and order.

Findings and conclusions: Extensive hearing sessions were held at several locations throughout the United States. Numerous witnesses testified representing growers, accumulators, commercial users, consumers and others. There was a wide divergence of views regarding the various issues presented at the hearing and ranging from strong support to strong opposition to the need for the proposed order program for pecans.

The record of hearing does not disclose evidence sufficient to demonstrate that a marketing agreement and order of the nature proposed is needed at the present time to effectuate the declared policy of the act. Much of the proponents' basis for the need of the marketing program, as presented at the hearing, is speculative, based on future predictions rather than past or current conditions. The hearing record indicates that most pecan producers have experienced little difficulty in marketing their commodity and that the industry has not had to cope with chronic surplus problems. Pecan production has been a profitable venture for most growers. Moreover, the hearing record indicates that the pecan industry has been relatively stable in terms of volume of production, prices to growers, and crop value over the past 20 years. While the record does indicate that growth in volume of production may occur in the years ahead, it has not been established that this production will be greater than market requirements or not marketable at profitable prices.

The record also indicates that the area, as well as the number and diversity of persons proposed to be regulated, could very well create administrative problems of massive proportions.

Therefore, it is concluded that a marketing order program should not be recommended on the basis of this record. Hence, there is no need for further findings or conclusions on issues which relate to Federal jurisdiction or the particular terms and provisions of a proposed regulatory program.

Rulings on proposed findings and conclusions: At the conclusion of the hearing, the Administrative Law Judge fixed April 29, 1983, as the final date for interested parties to file proposed findings and conclusions and written arguments or briefs based upon the evidence received at the hearing. That date was subsequently extended by the Judge to May 9, 1983.

A number of briefs and numerous letters were filed, all of which were considered and made a part of the record.

Each point included in the briefs was carefully considered, along with the evidence in the record, in making the findings and reaching the conclusions herein set forth. To the extent that any suggested findings or conclusions contained in any of the briefs are inconsistent with the findings and conclusions contained herein, the request to make such findings or to reach such conclusions is denied on the basis of the facts found and stated in connection with this recommended decision.

Copies of this recommended decision may be obtained from: Frank M. Grasberger, Room 2525–S, U.S. Department of Agriculture, Washington, D.C. 20250; (202) 447–5053, William C. Knope, P.O. Box 9, Lakeland, Florida 33802; (813) 683–5983, and David B. Fitz, 320 North Main Street, Room A–103, McAllen, Texas 78501; (512) 682–2833.

List of Subjects in 7 CFR Part 983

Marketing agreement and order, Pecans.

Signed at Washington, D.C., on August 8, 1983.

William T. Manley,

Deputy Administrator, Marketing Program Operations.

[FR Doc. 83-21986 Filed 8-9-83; 8:45 am]

BILLING CODE 3410-02-M

CIVIL AERONAUTICS BOARD

14 CFR Part 252

[Economic Regulations Docket 41431; EDR-461A]

Smoking Aboard Aircraft

Dated: August 5, 1983.

AGENCY: Civil Aeronautics Board.

ACTION: Suspension of comment deadline.

SUMMARY: The CAB is temporarily suspending the comment deadline in its rulemaking to amend its smoking rule, because it is considering additional proposals in this proceeding. A new comment deadline will be established when those proposals are issued.

ADDRESSES: Twenty copies of comments should be sent to Docket 41431, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428. Individuals may submit their views as consumers without filing multiple copies. Comments may be examined in Room 711, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. as soon as they are received.

FOR FURTHER INFORMATION CONTACT: David Schaffer, Office of the General Counsel, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428; 202–673–5442.

SUPPLEMENTARY INFORMATION: By EDR–461, 48 FR 24918, June 3, 1983, the Board proposed to ban smoking on small aircraft, ban the smoking of cigars and pipes on all U.S. airlines, ban smoking when aircraft ventilation is not adequate, and provide special protections for those especially sensitive to smoke. Comments were due on September 1, 1983 and reply comments on October 3, 1983.

On July 19, 1983, Action of Smoking and Health (ASH) asked the Board to consider additional issues in this proceeding. It asked the Board to propose alternatives to abolishing the "unreasonably burdened" rule in § 252.2 and to consider rules to deal with the problem of drifting smoke. ASH also asked the Board to ban smoking on short flights.

The Board is now considering these requests. It is unlikely, however, that any proposals could be issued much before the current comment deadline of September 1. In order to give interested persons sufficient time to comment on any new proposals and to prevent them from having to file two sets of comments in this proceeding, the current comment deadline is being suspended. A new comment deadline will be established with the additional proposal. If additional proposals are not approved by the Board, another notice will be issued resetting the comment and reply comment deadlines.

Accordingly, under authority delegated by the Board in 14 CFR 385.20(d), the time for filing comments in this proceeding is temporarily suspended.

(Secs. 204, 404, 407, and 416 of Pub. L. 85–726, as amended, 72 Stat. 743, 760, 766, 771, 49 U.S.C. 1324, 1374, 1377, 1386)

By the Civil Aeronautics Board.

Richard B. Dyson,

Associate General Counsel, Rules and Legislation.

[FR Doc. 83-21847 Filed 8-9-83; 8:45 am]

BILLING CODE 6320-01-M

FEDERAL TRADE COMMISSION

16 CFR Part 451

Advertising for Over-the-Counter Antacids; Publication of Staff Report on Proposed Trade Regulation Rule

AGENCY: Federal Trade Commission.

ACTION: Publication of Staff Report.

SUMMARY: In November 1979, the Presiding Officer published his report on the Proposed Trade Regulation Rule concerning Advertising for Over-the-Counter Antacids.

The Bureau of Consumer Protection's Staff Report, which summarizes and analyzes the evidence in the rulemaking proceeding and makes recommendations as to final action, has now been made public and placed on the rulemaking record (Public Record No. 215–56) along with separate statements of Deputy Director of the Bureau of Consumer Protection Amanda B. Pedersen, Associate Director for Advertising Practices Wallace S. Snyder and Bureau of Economics Director Wendy L. Gramm.

DATES: The publication of the Staff Report commences a comment period on the Staff Report and the accompanying memoranda and on the Presiding Officer's Report. The Presiding Officer has determined that a 90-day comment period is warranted. Comments will be accepted for inclusion in the rulemaking proceeding if received on or before November 8, 1983.

ADDRESSES: Requests for copies of either the Staff Report or the Presiding Officer's Report should be sent to: Public Reference Branch, Room 130, Federal Trade Commission, 6th Street and Pennsylvania Avenue, NW., Washington, D.C. 20580.

Comments should be sent to: Presiding Officer James P. Greenan, Federal Trade Commission, 6th Street and Pennsylvania Avenue, NW., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Wallace S. Snyder, 202–724–1511, Associate Director for Advertising Practices, Federal Trade Commission, Washington, D.C. 20580.

SUPPLEMENTARY INFORMATION: Comments on the Staff Report and accompanying memoranda and on the Presiding Officer's Report will be accepted until November 8, 1983. The comment should be identified as

"Comment on Staff Report and Presiding Officer's Report—Advertising for Over-the-Counter Antacids." When feasible, five copies of comment should be submitted.

In accordance with §1.13(h) of the Rules of Practice, comments should be confined to information already in the rulemaking record. The submission of further evidence or factual material will not be accepted in post record comment and may result in rejection of the comment as a whole.

After the comment period is over, the Commission may, pursuant to §1.13(i) of its Rules of Practice, allow persons who have previously participated in the rulemaking to make oral presentations to it, unless it determines that such presentations would not significantly assist it in its deliberations. Such presentations shall be confined to information already in the rulemaking record. Requests to participate in an oral presentation should be received by the Commission no later than the close of the 90-day comment period set forth in this notice, and should be sent to the Secretary, Federal Trade Commission, 6th Street and Pennsylvania Avenue, NW., Washington, D.C. 20580.

The Commission has not made any findings or conclusions with respect to this matter. The Commission's final determination in this matter will be based on the entire rulemaking record, including these reports and comments. Publication of the Staff Report and the Presiding Officer's Report should not be interpreted as representing the views of the Commission or any individual Commissioner.

James P. Grecnan,

Presiding Officer.

[FR Doc. 83-21719 Filed 8-9-83; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 935

Public Comment Procedures and Opportunity for Public Hearing on Proposed Modifications to the Ohio Permanent Regulatory Program

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

ACTION: Proposed rule.

SUMMARY: OSM is announcing procedures for a public comment period and for requesting a public hearing on the substantive adequacy of program amendments submitted by Ohio to satisfy conditions of the State's permanent regulatory program (hereinafter referred to as the Ohio program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

The amendments submitted are proposed changes to the Ohio statute concerning the definition of public roadway and Reclamation Board of Review appeals. This notice sets forth the times and locations that the Ohio program and proposed amendments will be available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendments, and the procedures that will be followed for the public hearing.

DATE: Written comments from the public must be received by 4:30 p.m., September 9, 1983 to be considered in the decision on whether the proposed amendments should be approved and incorporated into the Ohio regulatory program. A public hearing on the proposed amendments has been scheduled for August 25, 1983. Any person interested in speaking at the hearing should contact Ms. Nina Rose Hatfield at the address or telephone number listed below by August 17, 1983. If no person has contacted Ms. Hatfield by this date to express an interest in the hearing, the hearing will be cancelled. A notice announcing any cancellation will be published in the **Federal Register.** If only one person expresses an interest in speaking at the public hering, a public meeting, rather than a hearing, may be held and the results of the meeting included in the Administrative Record.

ADDRESSES: The public hearing is scheduled for 1:00 p.m. in Room 202, of the Columbus Field Office, Office of Surface Mining, 2242 South Hamilton Road, Columbus, Ohio 43227.

Written comments and requests for an opportunity to speak at the public hearing should be directed to Ms. Nina Rose Hatfield, Field Office Director, at the above address.

Copies of the Ohio regulatory program, the proposed modifications to the program, a listing of any scheduled public meetings, and all written comments received in response to this notice will be available for public review at the OSM Field Office listed above and at the OSM Headquarters Office and the Office of the State regulatory authority listed below, during normal business hours Monday through Friday, excluding holidays.

Office of Surface Mining, Room 5315, 1100 L Street, N.W., Washington, D.C. 20240

Ohio Division of Reclamation, Building B, Fountain Square, Columbus, Ohio 43224

FOR FURTHER INFORMATION CONTACT: Ms. Nina Rose Hatfield, Field Office Director, Columbus Field Office, Office of Surface Mining, Room 202, 2242 South Hamilton Road, Columbus, Ohio 43227; Telephone: (614) 866-0578.

SUPPLEMENTARY INFORMATION

I. Background

The Ohio program was approved effective August 16, 1982, by notice published in the August 10, 1982 **Federal Register** (47 FR 34688). The approval was conditioned on the correction of 28 minor deficiencies contained in 11 conditions—(a), (b), (c), (d), (e), (f)(1)-(f)(10), (g), (h)(1)-(h)(3), (i)(1)-(i)(3), (j) and (k)(1)-(k)(5). In accepting the Secretary's conditional approval, Ohio agreed to correct deficiences (a), (b), (c), (h)(1) and (k)(1) by August 8, 1983; deficiency (e) by September 16, 1982; and the remaining deficiences by February 8, 1983. Information pertinent to the general background, revisions, modifications, and amendments to the Ohio program submission, as well as the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Ohio program can be found in the August 10, 1982 **Federal Register.**

Ohio submitted to OSM on September 16, 1982, a revised program regulation satisfying condition (e). The Secretary approved the revised regulation and removed condition (e) on January 17, 1983 (48 FR 1957).

On January 6, 1983, Ohio submitted materials to OSM intended to, among other things, satisfy conditions (a), (b), (c), (d), (e), (f), (g), (h), (i), (j), (k)(1) and (k)(2). On February 1, 1983, Ohio requested an extension of the deadline for the State to meet conditions (k)(3), (k)(4), and (k)(5). These conditions were due February 8, 1983.

On May 24, 1983, the Secretary approved certain of the amendments and removed conditions (b), (d), (f)(1) through (f)(6), (f)(8) through (f)(10), (g), (h)(2), (h)(3), (i), (j), (k)(1) and (k)(2).

The Secretary established a deadline of August 8, 1983, for the State to meet conditions (a), (c) and (h)(1), and extended to that same date, the deadline for the State to meet conditions (f)(7), (k)(3), (k)(4), and (k)(5). Additionally the Secretary imposed two new conditions (l) and (m) which also carried a deadline of August 8, 1983.

II. Submission of Revisions

On July 18, 1983, Ohio submitted a proposed program amendment

consisting of statutory amendments to satisfy conditions (a) and (l) due August 8, 1983. The statutory amendments are contained in Am. Sub. H.B. No. 291 which was enacted July 1, 1983. The changes amend Chapter 1513 of the Ohio Revised Code (ORC). Condition (a), as set forth in the August 10, 1982 Federal Register, required the State to enact legislation amending ORC Section 1513.01(G)(2) to eliminate the phrase "but not to include public roadways." As discussed in Finding 1.2 of the Secretary's approval (47 FR 34688), the State's definition of "coal mining operations" included this phrase, making it inconsistent with section 701(28)(b) of SMCRA.

The State submitted an amendment on January 6, 1983, which would have excluded public roadways, "unless the roadway has been constructed for access to or haulage of coal from a coal mining and reclamation operation or unless public access to the roadway has been denied or restricted."

On May 24, 1983, the Secretary found that condition (a) had not been satisfied because the proposed Ohio amendment was not as effective as the Federal rule. OSM had clarified the issue of when a road will be excluded from being considered a part of the affected area of a mine, in final rules published August 2, 1982 (47 FR 33439) and April 5, 1983 (48 FR 14814). For a public road to be excluded from the affected area of a mine, it must meet three criteria:

(1) The road has been designated as public road pursuant to the laws of the jurisdiction in which it is located;

(2) The road is maintained with public funds, and constructed, in a manner similar to other public roads of the same classification within the jurisdiction in which it is located; and

(3) There is substantial (more than incidental) public use of the road.

Therefore, the Secretary allowed the State until August 8, 1983 to submit revised provisions. Ohio has now submitted Am. Sub. H.B. No. 291 which amends ORC 1513.01(G)(2) and 1513.01(U) to remove from the definition of "coal mining operation" the language defining public roadways and adds a separate definition of public roadways.

Condition (l) required the State to enact legislation amending ORC sections 1513.13(A)(1) and 1513.13(C) to provide that:

(1) The time for filing a notice of appeal is within 30 days after receipt of a notice, order or decision;

(2) A hearing on a request for temporary relief shall be held in the locality of the permit area; and

(3) Temporary relief decisions by the Chairman of the Reclamation Board of Review are judicially reviewable.

Ohio has submitted Am. Sub. H.B. No. 291 which amends ORC Section 1513.13 in order to satisfy condition (l).

The full text of the proposed program amendments submitted by Ohio is available for public inspection at the addresses listed above. The Director now seeks public coment on whether the proposed amendments are no less effective than the Secretary's regulations and whether the amendments satisfy the conditions of approval. If approved, the amendments will become part of the Ohio program and the conditions to which they pertain will be removed.

Additional Determinations

1. *Compliance with the National Environmental Policy Act:* The Secretary has determined that, pursuant to Section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On August 28, 1981, the Office of Management and Budget (OMB) granted OSM 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 would 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 935

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

(Pub. L. 95-87, 30 U.S.C. 1201 *et seq.*)

Dated: August 4, 1983.

J. R. Harris,

Director, Office of Surface Mining.

[FR Doc. 83-21855 Filed 8-9-83; 8:45 am]

BILLING CODE 4310-05-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[A5-FRL 2413-1]

Designation of Areas for Air Quality Planning Purposes; Attainment Status Designations: Ohio

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: EPA is proposing to approve a request from the State of Ohio to revise the attainment status designations, at 40 CFR 81.336, of 36 counties in Ohio from "does not meet primary standards" (nonattainment) to "cannot be classified or better than national standards" (attainment/unclassifiable) relative to the ozone National Ambient Air Quality Standard. These counties are: Fulton, Henry, Wood, Ottawa, Allen, Hancock, Sandusky, Seneca, Erie, Huron, Darke, Shelby, Logan, Champaign, Union, Madison, Fayette, Highland, Brown, Pickaway, Ross, Fairfield, Hocking, Perry, Lawrence, Medina, Richland, Ashland, Wayne, Morrow, Knox, Holmes, Tuscarawas, Carroll, Harrison, and Belmont.

Additionally, EPA is proposing to disapprove the State's request to redesignate Miami, Greene, Marion, Delaware, Licking, Lorain, Lake, Geauga, Trumbull, and Columbiana Counties from nonattainment to attainment/unclassifiable. The intent of this notice is to discuss the results of EPA's review of the States redesignation request and to solicit public comment on the revisions and EPA's proposed action.

DATE: Comments on these revisions and on EPA's proposed action must be received by September 9, 1983.

ADDRESSES: Copies of the redesignation request, technical support documents and the supporting air quality data are available at the following addresses:

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch, 230 S. Dearborn Street, Chicago, Illinois 60604

Ohio Environmental Protection Agency, Office of Air Pollution Control, 361 East Broad Street, Columbus, Ohio 43216

Comments on this proposed rule should be addressed to: Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch (5AR-26), U.S. EPA, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Sharon Reinders at the EPA, Region V, address above or call (312) 886-6034.

SUPPLEMENTARY INFORMATION: Under Section 107(d) of the Clean Air Act (Act) the Administrator of EPA has promulgated the National Ambient Air Quality Standards (NAAQS) attainment status for all areas within each State. See 43 FR 8962 (March 3, 1978) and 43 FR 45993 (October 5, 1978). These area designations are subject to revision whenever sufficient data become available to warrant a redesignation. In the State of Ohio, 63 counties are currently designated as not attaining the NAAQS for ozone.

On November 29, 1982, the Ohio EPA (OEPA) submitted: 1) A request to EPA to revise the section 107 attainment status designations for the 46 Counties mentioned in the Summary portion of this notice; and, 2) Recent ozone ambient air quality monitoring data collected in the State. In reviewing OEPA's redesignation request EPA analyzed the monitoring data submitted by the State, along with supplemtental monitoring data from areas adjoining the Counties requested for redesignation. EPA also analyzed population data, volatile organic compound (VOC) emissions data, and the locations of the Counties under consideration in relation to the proximity of other nonattainment areas.

Redesignation Criteria for Ozone

When considering a redesignation request for ozone, a number of criteria must be considered. The most important is the ozone NAAQS, which is specified in 40 CFR Part 50. The NAAQS for ozone is defined to be violated when the annual average expected number of daily exceedances of the standard (0.12 parts per million (ppm), 1-hour average) is greater than one (1.0). A daily exceedance occurs when the maximum hourly ozone concentration during a given day exceeds 0.24 ppm ("Guideline for the Interpretation of Ozone Air Quality Standard", EPA-450/4-79-003). The expected number of daily exceedances is calculated from the observed number of exceedances by making the assumption that non-monitored days (invalid or incomplete) have the same fraction of daily exceedances as observed on monitored days (EPA-450/4-79-003).

Specific criteria for ozone redesignation reviews are given in a December 7, 1979, policy memorandum from Richard G. Rhoads, former Director of U.S. EPA's Control Programs Development Division, and an April 21, 1983, policy memorandum from Sheldon Meyers, Director, Office of Air Quality Planning and Standards. These memoranda indicate that the average number of expected exceedances for each monitoring site is to be based on ozone concentrations contained in the most recent 3 years of data, if 3 years of data are available. Supplemental information including emissions data and evidence of an implemented control strategy should be considered to determine if the monitoring data accurately characterize the worst case air quality in an area.

Additional criteria are specified in a January 3, 1978, memorandum from David G. Hawkins, former Assistant Administrator for the Office of Air and Waste Management. This memorandum states that the designated nonattainment area should be of sufficient size to include most of the significant hydrocarbon (VOC) sources. Because it is U.S. EPA's policy (Questions & Answer on Section 107 Designations, January 12, 1978) to redesignate counties as a whole for ozone, the January 3rd memorandum implies that a county, which is associated with a major urban area, should be designated as nonattainment if any portion of the urban area is nonattainment and if the VOC emissions from the county are a significant portion of the total urban area emissions.

For a non-monitored area, EPA considers its proximity to major precursor sources areas (generally major urban areas) and wind directions (generally from the south-west in Ohio during the summer). Data from areawide ozone-precursor studies in the vicinities of major urban areas, such as St. Louis and Philadelphia, as well as data from rural monitoring sites in Region V indicate that ozone transport at significant levels can occur over considerable distances downwind from urban areas. Based on these studies and data, in the absence of any monitoring data, counties immediately downwind from major urban areas are generally assumed to be nonattainment.

Given the regional nature of ozone concentrations, as confirmed in the St. Louis and Philadelphia studies, it is reasonable to assume that non-monitored counties adjoining monitored nonattainment areas are themselves probable nonattainment areas. The probability of nonattainment is particularly high in those counties which are both immediately downwind of major urban areas and adjoining geographically similar monitored rural nonattainment areas.

The results of EPA's review are presented below. The presentation is divided into two sections: proposed disapproval and proposed approval.

Proposed Disapproval

EPA finds that a redesignation of several Counties is not approvable at this time. Included below is a brief summary of the basis of the proposed disapproval. A complete discussion of EPA's rationale is contained in a technical support document available for public review at the Region V office listed above.

Lake and Marion Counties

Ambient air monitoring data collected at sites located in Lake and Marion Counties during the period of January 1980, through September 1982, do not support a redesignation to attainment. In both cases, the average number of expected exceedances of the ozone NAAQS is greater than 1.0.

Lorain County

The monitoring data collected in Lorain County during the period of Janury 1980, through September 1982, shows that the ozone NAAQS have not been violated. However, in accordance with the January 3, 1978, policy memorandum on redesignations, EPA reviewed VOC emissions data for the Cleveland nonattainment area and determined that, while Lorain County itself may not be experiencing violations, mobile, area and industrial VOC emissions in Lorain County represent a significant portion of the total VOC emissions in the Cleveland urban nonattainment area. The expected impact of VOC in Lorain County is on the downwind Cleveland urban area. Thus, EPA believes that this County should remain designated as nonattainment for ozone.

Geauga County

Ambient ozone air monitoring data are not collected in Geauga County. However, prevailing summertime wind direction data indicate that this County may be predominately downwind of Cleveland on days conducive to ozone formation. As discussed above, ozone transport can occur over considerable distances downwind from urban areas. The proximity of Geauga County to the Cleveland area implies that ozone concentrations in Geauga County may

be similar to those values monitored in the Cleveland area. Thus, EPA believes that this County should remain designated as nonattainment until such time as the Cleveland area is designated to attainment.

Miami, Greene, Delaware, Licking, Columbiana, and Trumbull Conuties

Ambient ozone air monitoring data are not collected in these Counties. Therefore, EPA reviewed all available ozone monitoring data collected in neighboring Counties and gave consideration to prevailing wind directions and location relative to major urban areas. From these data, EPA has determined that the current designation of nonattainment should be maintained. The following discussion provides the reader with the location of each of the counties noted above relative to a major urban area and a neighboring County where monitoring data is collected.

- Marion County: downwind of the Dayton urban nonattainment area; adjoins Clark County, a rural monitored nonattainment area.
- Greene County: downwind of both the Dayton and Cincinnati urban nonattainment areas; adjoins Clark and Clinton Counties, which are rural monitored nonattainment areas.
- Delaware County: downwind of the Columbus urban nonattainment area; adjoins Marion County, a rural monitored nonattainment area.
- Licking County: downwind of the Columbus urban nonattainment area.
- Columbiana County: downwind of the Canton urban nonattainment area and the Steubenville urban area which is a significant source of VOC emissions; adjoins Stark, Mahoning, and Jefferson Counties, which are monitored nonattainment areas.
- Trumball County: downwind of the Youngstown urban nonattainment area; adjoins both Ashtabula and Portage Counties, which are rural monitored nonattainment areas, and Mahoning County, an urban monitored nonattainment area.

Proposed Approval

EPA finds that a redesignation of several Counties in Ohio is approvable at this time. Based on EPA's analysis of the proximity of these counties to major urban areas and on review of available ambient ozone monitoring data in nearby counties, EPA believes that 36 counties in Ohio's redesignation request have attained the ozone NAAQS. To summarize EPA's analysis, the approvable redesignations fall into two categories. The counties of Darke, Fulton, Henry, Shelby, Logan, Wood, Champaign, Brown, Union, Madison, Fayette, Highland, Ottowa, Seneca, Pickaway, Ross, Morrow, Erie, Huron, Richland, Knox, Fairfield, Lawrence, Ashland, Perry, Wayne, Holmes, Tuscarawas, Carroll, Harrison, and Belmont are considered rural areas, where ambient air monitoring for ozone is not conducted. These counties are located generally upwind of any urban area or adjoin a county currently designated as attaining the ozone standard. Monitoring data is available in Allen, Hocking, Medina, Hancock, and Sandusky counties. It shows that the ozone standard has not been violated during the period of January 1980 to September 1982. EPA believes that the emission reductions achieved through the Federal Motor Vehicle Control Program, the state-wide application of reasonably available control technology (RACT) on sources of VOC emissions, and implementation of transportation control measures in major upwind urban areas are sufficient to account for attainment of the ozone standard in non-monitored counties and the improvement in air quality shown at the ozone monitors. Therefore, EPA is proposing to approve the State's request to redesignate these counties to attainment.

The reader is referred to the State's submittal of November 29, 1982, and EPA's technical support document for further details on the proposed approval of these Counties.

Interested parties are invited to submit comments on this action. EPA will consider all comments received within 30 days of publication of this notice.

Under 5 U.S.C. Section 605(b), the Administrator has certified that redesignations do not have a significant economic impact on a substantial number of small entities (See 46 FR 8709).

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

Lists of Subjects in 40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

(Sec. 107(d) of the Act, as amended (42 U.S.C. 7407)

Dated: June 15, 1983.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 83-21736 Filed 8-9-83; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 271

[SW-3-FRL 2412-7]

District of Columbia's Application for Interim Authorization, Phase I and II, Components A and B, Hazardous Waste Management Program; Public Hearing and Comment Period

AGENCY: Environmental Protection Agency, Region III.

ACTION: Notice of public hearing and public comment period.

SUMMARY: Today EPA is announcing the availability for public review of the District of Columbia Application for Phase I and II, Components A & B, Interim Authorization, inviting public comment, and giving notice of a public hearing to be held on the application. This is in accordance with agency regulations to protect human health and the environment from improper management of hazardous waste, including the provisions for authorization of State programs to operate in lieu of the Federal program and for a transitional stage in which States can be granted interim program authorization.

DATES: The public hearing on the District of Columbia's application is scheduled for Tuesday, September 13, 1983 at 7:30 p.m. The District of Columbia will participate in the public hearing held by EPA on their application. Written comments on the District of Columbia's Phase I and II, Components A and B, Interim Authorization application must be received by the close of business on September 20, 1983.

ADDRESSES: Public hearing: US EPA Headquarters, Room S-353, 401 M Street SW, Washington, DC 20460. Copies of the District of Columbia Phase I and II, Components A and B, Interim Authorization application are available during normal business hours at the following addresses for inspection and copying:

Division of Pesticide and Hazardous Waste, Department of Environmental Service, 5010 Overlook Ave., S.W., Room 114, Washington, DC 20032 (202) 767-8422 (contact: Mr. Angelo Tompros)

U.S. EPA Headquarters Library (PM211A), 401 M Street, S.W., Washington DC, 20460 (202) 382-5926 (contact: Gloria Butler).

U.S. EPA, Region III, Library, 2nd Floor, 6th and Walnut Streets, Philadelphia, PA 19106 (215) 597-0580 (contact: Diane McCreary)

Written comments should be sent to John A. Armstead, State Programs Section (3AW31), U.S. EPA, Region III, 6th and Walnut Streets, Philadelphia, PA 19106 (215) 597-7259

FOR FURTHER INFORMATION CONTACT: John A. Armstead, State Programs Section (3AW31), U.S. EPA, Region III, 6th and Walnut Streets, Philadelphia, PA 19106 (215) 597-7259.

SUPPLEMENTARY INFORMATION: In the May 19, 1980 **Federal Register** (45 FR 33063) the Environmental Protection Agency promulgated regulations, pursuant to Subtitle C of the Resource Conservation and Recovery Act of 1976, as amended, to protect human health and the environment from the improper management of hazardous waste. These regulations included provisions under which EPA can authorize qualified State hazardous waste management programs to operate in lieu of the Federal program. The regulations provide for a transitional stage in which qualified state programs can be granted interim authorization. The interim authorization program is being implemented in two phases corresponding to the two stages in which the underlying Federal program will take effect. Phase I of the Federal program, published in the May 19, 1980 **Federal Register** (45 FR 33063), includes regulations pertaining to the identification and listing of hazardous wastes; standards applicable to generators and transporters of hazardous waste, including a manifest system; and the "interim status" standards applicable to existing hazardous waste management facilities before they receive permits.

In January 26, 1981 **Federal Register** (46 FR 7965), the Environmental Protection Agency announced the availability of portions or components of Phase II of interim authorization. Phase II of the Federal program includes permitting procedures and standards for hazardous waste management facilities. Component A, published in the **Federal Register** January 12, 1981 (46 FR 2802), contains standards for permitting storage and treatment in containers, tanks, surface impoundments and waste piles. Component B, published in the **Federal Register** January 23, 1981 (46 FR 7666), contains standards for permitting hazardous waste incinerators. Component C, published in the **Federal Register** July 26, 1982 (47 FR 32274), contains standards for permitting surface impoundments, waste piles, land treatment facilities and landfills. These Component C standards for permitting surface impoundments and waste piles superseded the Component A standards for permitting storage and treatment in surface impoundments and waste piles published on January 12, 1981.

The District of Columbia is applying for Phase I and II, Components A and B, Interim Authorization which would enable them to regulate generators, transporters and "interim status" hazardous waste management facilities and permit storage and treatment in containers and tanks and to permit hazardous waste incinerators in lieu of the Federal program

A full description of the requirements and procedures for State interim authorization is included in 40 CFR Part 271, Subpart B, 48 FR 14248.

As noted in the May 19, 1980 **Federal Register** copies of complete state submittals for Phase I and II interim authorization are to be made available for public inspection and comment. In addition, if significant public interest exists, a public hearing is to be held on the submittal.

List of Subjects in 40 CFR Part 271

Hazardous materials, Indian lands, Reporting and recordkeeping requirements, Waste treatment and disposal, Water pollution control, Water supply, Intergovernmental relations, Penalties, Confidential business information.

Dated: August 2, 1983.

Thomas P. Eichler,

Regional Administrator.

[FR Doc. 83-21737 Filed 8-9-83; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 83-807; RM-4327; FCC 83-366]

Protection Standards for AM Stations in Alaska

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action, taken in response to a petition for rulemaking filed by the Alaska Broadcasters Association, proposes changes in the Commission's rules regarding protection standards for stations in Alaska. The proposal suggested would provide greater interference protection to certain AM stations in Alaska.

DATES: Comments are due by September 12, 1983 and replies by September 27, 1983.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Jonathan David, Mass Media Bureau, (202) 632-7792.

List of Subjects in 47 CFR Part 73

Radio broadcast.

Notice of Proposed Rulemaking

In the matter of Protection Standards for AM Stations in Alaska, MM Docket No. 83-807, RM-4327.

Adopted: July 28, 1983.
Released: August 4, 1983.
By the Commission.

Introduction

1. The Commission hereby invites comments on a proposal to amend its rules with respect to AM stations operating on Class I-A and I-B channels in Alaska. The proposal suggested in this *Notice* would provide greater interference protection to certain AM stations in Alaska in response to a petition for rulemaking filed by the Alaska Broadcasters Association.[1]

2. According to the petition, increased skywave protection is necessary in order to ensure effective AM coverage in Alaska. To do this, the petition urges the Commission to accord Class I status to a group of 16 Alaskan stations which operate on United States Class I-A and I-B clear channels.[2] There are two groups of stations involved. Five of them are public radio stations while the other 11 are commercial or religious stations.[3] Four of the commercial or religious stations operate in Anchorage and two others operate from Fairbanks. All of the public stations and the rest of the commercial and religious stations are

[1] The Alaska Public Broadcasting Commission joined in the filing of the petition.

[2] Although the petition is not entirely clear on this point, it appears to be seeking the protection afforded Class I-A or I-B stations. This would mean protecting the 0.5 mV/m 50% skywave contour during nighttime hours. According such protection would not alter the obligation of these stations to continue to provide skywave protection to the existing Class I-A stations operating on these channels in the lower 48 states. However, changes are proposed in the method of calculating interference to these Class I-A stations. Also, Class I status would mean that the daytime 0.1 mV/m groundwave contour of the Alaskan stations would have to be protected. Because of the great distances involved, the Alaskan stations and the dominant Class I-A stations operating in the lower 48 states on these clear channels do not affect one another during daytime hours.

[3] The stations involved are as follows:

Public: KDLG Dillingham, 670 kHz, KBRW Barrow, 680 kHz, KOTZ Kotzebue, 720 kHz, KSDP Sand Point, 840 kHz, KSKO McGrath, 870 kHz.

Commercial/Religious: KYAK Anchorage, 650 kHz, KBYR Anchorage, 700 kHz, KFQD Anchorage, 750 kHz, KTNX Anchorage, 1080 kHz, KFAR Fairbanks, 660 kHz, KCBF Fairbanks, 820 kHz, KJNP North Pole, 1170 kHz, KABN Long Island, 830 kHz, KNOM Nome, 780 kHz, KICY Nome, 850 kHz, KGGN Valdez, 770 kHz.

located in smaller or more remote communities in Alaska. Although there are differences between these stations, petitioners assert that through a change in the status of these stations, they would be better able to serve the special needs of Alaska and its citizens.

3. As the petition points out, Alaska is characterized by vast distances with rugged terrain and often equally rugged weather. There are relatively few major population centers. Instead, much of Alaska consists of scattered settlements far removed from the larger population centers, many of which can be reached only by air. This lack of easy contact with the outside means that the people living in such places become all the more dependent on broadcast communication. Thus, for example, information about weather conditions can assume vital importance, and some stations devote a significant part of each hour's broadcast to such material. However, television coverage is limited, and because the distances involved are so large, FM cannot be expected to provide effective statewide coverage either.[4] As a result, there is often no choice but to rely on the service provided by the AM stations.

4. Although Alaska needs to rely on AM service, this presents special problems. Because of the distances involved, much of Alaska must rely on very week AM signal levels. According to the petition, Alaska listeners may rely on signal values that are below 0.1 mV/m. Ordinarily, a signal level of 0.5 mV/m is accepted as being necessary to provide satisfactory reception in rural areas. However, the petitioners argue that atmospheric and man-made noise are notably lower in Alaska so that signal levels well below 0.5 mV/m can provide adequate reception.[5] In fact, we are told that this difference itself is sufficient to permit a 0.1 mV/m signal to provide the equivalent of a 0.5 mV/m signal. However, as the petition points out, reliance on such signals presumes that they are not subjected to interference from other AM stations. Thus, the goal of the petition is to provide protection to the signals of these Alaskan stations so that the residents of remote communities could continue to receive the service provided by the existing signal levels. This would be accomplished by affording Class I protection to the group of 16 stations identified above.

5. In addition, the station seeks two technical changes. Pending the establishment of new propagation curves better suited to higher (*i.e.* more northerly) latitudes, it requests the Commission to require the use of figure 2 of § 73.190 for all calculations of interference from Alaska clear channel operations.[6] Also, it urges the Commission to allow a minimum field strength for one kilowatt of 175 mV/m rather than the 225 mV/m usually required for Class I stations. According to the petition, the tall towers required to reach the usual efficiency level are not practical in Alaska. Petitioners also contend that such taller towers can present a hazard to air navigation. Moreover, they assert that these towers are more difficult to maintain under the severe wind and icing conditions that prevail in Alaska.

6. We agree that it is appropriate to explore ways of responding to the unique needs of the State of Alaska. There is no question that much of the state's areas (and a significant portion of its population as well) has had to depend on service from far distant AM stations. There is little reason to expect this to change as many of these remote locations are too small to support radio stations of their own. Thus, for the foreseeable future, there will be no choice but to continue to place reliance on the reception of these distant signals. Since the present rules provide only partial protection to such reception, we believe it appropriate to explore rule changes to increase this protection.

Issues

7. In order to determine what rule changes might be appropriate, there are a number of issues to explore. The first issue (the central one raised by the petition) is the status to accord these Alaskan AM stations. Petitioners urge Class I status for the 16 listed stations, but in a number of major respects many of these stations fall short of the power and efficiency requirements applicable to Class I stations. Thus, the second issue we need to consider is whether different minimum standards should be placed on Alaskan Class I stations with regard to such power and efficiency requirements. Finally, we need to consider the appropriateness of changing the interference prediction methods affecting Alaskan stations to take the effects of higher latitudes into account.[7]

Status of Alaskan AM Stations

8. The petition focuses on providing enchanced interference protection for the 16 stations which operate in Alaska on frequencies denominated as U.S. I–A or I–B clear channels. In order to understand this aspect of the proposal, some discussion is required regarding the regulatory framework governing AM frequency use. Internationally, such use has been governed by the 1950 North American Regional Broadcasting Agreement ("NARBA"). Under this agreement, some of the 107 AM channels were denominated as Class I–A clear channels with priority in the use of such channels being given to one of the signatory nations.[8] The agreement also accorded Class I–B priorities[9] on other clear channels to specific nations, sometimes on a shared basis. In addition to these clear channels designed to provide wide area coverage, Local (Class IV) channels are specified which are designed to provide limited, essentially localized service. Regional (Class III) channels designed to perform an intermediate role are specifie.[10] This classification system is reflected in the Commission's rules which also define the protection and operating requirements applicable to each class of station. This system, however, is in the process of being changed internationally.

9. Several years ago the nations in Region 2 [11] began negotiations looking toward an AM agreement which would apply throughout the Western hemisphere, not just the North American area covered by NARBA. The First Session of these negotiations was held at Buenos Aires in 1980 and the Second

[4] In addition, the coverage potential of FM is further reduced because of shadowing problems caused by Alaska's rugged terrain.

[5] Petitioner refers to a CCIR (International Radio Consultative Committee) Report which shows that the atomspheric noise level in Alaska is 10 to 20 dB below the level throughout the lower 48 states and in certain cases could be as much as 50 dB below it.

[6] Presumably, figure 2 also would be used to calculate interference to Alaskan stations. In either event, figure 2 would be used in lieu of figure 1(a) of § 73.190 of the Commission's rules which is based on data applicable to propagation in the lower 48 states. Efforts are currently underway to develop more accurate curves for use in Alaska, but their completions is some years away. This subject is discussed further below.

[7] Although for convenience sake reference is made to *geographic* latitudes, the effect itself is related to *geomagentic* latitudes.

[8] Although Mexico was not a signatory to NARBA, there is a bilateral agreement between the U.S. and Mexico which provides a parallel framework for AM arrangements between the United States and Mexico. Even though it is not relevant here, there is a question regarding which nation has the Class I–A priority on 540 kHz. Also, Mexico and the United States share a I–B priority on one of the 16 frequencies under consideration.

[9] In a few cases, nations were given Class I–C or even Class I–D priorities.

[10] There is a fourth category, namely Class II stations. These stations operate on clear channels and are required to protect the dominant Class I station(s) on the channel. The facilities employed vary greatly depending on the category of station and the protection it is reqiured to provide.

[11] Region 2 includes the Americas, the Caribbean and Greenland.

Session was held during November and December of 1981 at Rio de Janeiro. The agreement, adopted at the Second Session on December 19, 1981, is referred to as the Rio *Final Acts*. This agreement makes a number of important changes in the arrangements governing AM broadcasting in the region,[12] some of which have a bearing on the Alaskan petition. For the purpose of this rule making, the most important aspect is the change in the system of classifications. No longer are the channels themselves to be classified, instead stations will be classified. Under the new system, stations will be Class A, B or C, roughly paralleling Class I, Class II and III, and Class IV stations respectively. Under the new arrangement, any class of station may be operated on any channel.

10. In effect, the proposal before us is to accord Class I domestic protection and Class A international protection to these stations.[13] The domestic aspect is a straight-forward one of rule making to consider whether to accord Class I protection to some or all of these 16 stations. The international situation is more complicated. As part of the process of negotiating a bilateral agreement between the United States and Canada, the two administrations agreed to a "freeze" in the data base of applications and proposals under negotiation. Existing stations and applications were categorized by the system adopted at Rio, and this designation also was to remain unchanged during the process of negotiations. Thus, a change in the status of any of these stations or applications vis-a-vis existing stations or already notified proposals which form the basis for negotiations is not possible during the "freeze" period which exists while the U.S. and Canada complete their negotiations. Nonetheless, the Commission has notified the Canadian Department of Communications that it wishes all of these 16 stations to be treated as Class A.[14] Since the date of notification is controlling, this means that future Canadian proposals will have to afford Class A protection to the entire group of 16 Alaskan stations. Although previously notified Canadian proposals are not affected, none of them appears to pose a significant problem in that regard. As a consequence, the Commission is free to proceed with the rule making, but in so doing it needs to address the question of the degree to which the needs of Alaska warrant the reclassification of some or all of these stations. It should be noted that each new Class I station introduced in Alaska will restrict future growth of other Alaskan stations on those channels. Thus, we need to consider how many Class I stations are warranted in Alaska and which stations, if not all, should be reclassified. In fact, under the new Region 2 system, there is no need to restrict our consideration of this subject to this group of stations. Other stations operating on different channels also could warrant such designation in addition to or in lieu of the stations in the petition. Parties wishing us to consider this possibility should indicate the basis for such a request and should include material responsive to the issue to which we now turn, that of power and efficiency requirements applicable to Class I stations.

Power and Efficiency Requirements

11. Section 73.21 of the Commission's rules specifies that Class I stations are to operate with a power of at least 10 kW but not more than 50 kW. Class I–A stations are called upon to use 50 kW and Class I–B stations are allowed to used a lower power but not less than 10 kW.[15] Several of the stations in the group now under consideration operate with powers substantially below the levels specified for Class I–A stations or even Class I–B stations. In addition, § 73.182(r) specifies that Class I stations (Class I–A or I–B) are required to have an effective field of at last 225 mV/m. Petitioners seek to avoid this requirement, urging the Commission to exempt these stations from this obligation. Instead, it would utilize the 175 mV/m minimum field requirement that is applied to Class III stations.

12. Petitioners assert that there would be a problem if these stations had to meet the minimum field requirement because such more efficient operations require taller towers. Such taller towers are said to raise a possible problem with air navigation, and construction in remote areas is said to be a problem in itself. In addition, concern is expressed about the burden that would be imposed if they had to meet the power requirements. The petition points to the difficulty in bringing in the necessary fuel to supply the generators used to provide the current for existing station operation. Finally, as the petition points out, the cost of fuel delivered to the transmitter site (that is, with the transportation costs included) is very high so that fuel consumption itself can be a matter of importance.

13. There is no question that the petition raises legitimate concerns from a licensee's viewpoint. On the other hand, the request to allow lower power and efficiency runs directly counter to the premise of the petition itself. The petition has amply demonstrated that Alaska needs to rely on stations providing wide area service. However, without the more substantial power and efficiency ordinarily associated with Class I stations, there is a question as to whether these stations would be able to perform their intended purpose of providing wide area coverage. Moreover, as discussed in the following paragraphs, skywave field strengths propagated at high latitudes are less than at lower latitudes for equivalent facilities. Thus, it can be argued that more efficient facilities may be warranted in Alaska rather than less efficient. In fact, we question whether it would be appropriate to accord Class I (or, under the new system, Class A) status to all of these stations without regard to their power or efficiency. On the other hand, it does not follow that we need to insist on the exact same requirements as are applied in the lower 48 states. Alaska does face special problems in this regard, and we believe that this point requires careful examination. Since at least a certain minimum power and efficiency is required in order to provide the service contemplated by the petition, the question is whether the level needs to be the same as is currently specified by the rules. Parties urging use of a different level of power or efficiency should explain the basis upon which they believe such to be consistent with the role to be played by these stations. Although a strict requirement of 50 kW and 225 mV/m may well be unnecessary, some minimum standard regarding power and efficiency does appear to be necessary. Therefore, in

[12] In addition, the agreement makes provision for bilateral and multilateral agreements between the Rio signatories. In fact, the United States and Canada are in the process of negotiating just such an agreement. It is designed to be a "stand alone" agreement, complete in itself. It follows the Rio *Final Acts* in many respects but contains other provisions derived from previous arrangements that the two nations wish to maintain. Once the agreements are finalized, the Commission can proceed to consider the necessary changes in its rules to conform them the the changed standards.

[13] Class A protection is essentially equivalent to Class I–B protection under the current Commission rules.

[14] In fact, in anticipation of the needs of the State of Alaska, the Commission on its own initiative notified the International Frequency Registration Board in preparation for the Region 2 Conference that two of these stations were to be considered as Class A. The two are: KFQD in anchorage and KCBF in Fairbanks.

[15] These requirements are also reflected in § 73.182(a)(1)(i) for Class I–A stations and § 73.182(a)(1)(ii) for Class I–B stations. In addition, § 73.182 contains a chart of the powers and protection requirements applicable to each class of station and the same standards are reiterated therein.

order to be eligible for Class I status, we propose to require use of 10 kW and antenna efficiency of 225 mV/m field or equivalent. In this regard, parties should note that under provisions of the new Region 2 agreement, Class A stations are those which operate with substantial power and which are able to generate the skywave fields to be protected for that class of station.

High Latitude Curves

14. In the lower 48 states, the respective latitudes of the stations involved on clear channel frequencies have no important bearing on the calculations of skywave interference. The curve used for depicting the 0.5mV/m 50% coverage of clear channel stations is based on a path mid-point latitude of 41 degrees, and the same holds true for the 10% interference curve.[16] On the other hand, it has long been recognized that latitude has an important effect on skywave propagation. In fact, recent research has shown that latitude (*i.e. geomagnetic* latitude of the mid-point of the path between the stations involved) could very well be the single most important factor in AM propagation. The Commission's rules are not completely silent on this point. While figure 1(a) of Section 73.190 is employed for calculations on clear channel frequencies, figure 2 represents an effort to take the effects of latitude into account and are used for calculations on Regional channels. However, it only extends to a geographic mid-point latitude of 50 degrees. Much of Alaska, however, lies north of 60 degrees.

15. Based on data obtained in the contiguous 48 states, during times of low sunspot activity, skywave field strength decreases by about 1 dB for each one degree increase in latitude. The change in field strengths is even more pronounced during periods of high sunspot activity. Unfortunately, the data obtained from areas of high latitude is limited. A research project underway in cooperation with the University of Alaska will be able to provide the data that is required. In order for the data to be complete, it must extend through at least half of the 11 year sunspot cycle.[17] Even though there is general agreement that the current data on these changes at higher latitudes is insufficient to establish definitive curves that would fully take the effects of latitude into account, it is an important matter for consideration in this proceeding.

16. The petition dealt with one aspect of the high latitude issue, the impact of Alaskan proposals on U.S. I–A clear channels. As the petition points out, figure 1(a) of § 73.190 exaggerates the extent of radiation toward these U.S. I–A stations. Figure 2 attempts to take the effects of high latitudes into account, but the rules do not provide for its regular use. This point was dealt with in the clear channel rule making proceeding in Docket No. 20642. Although the Commission concluded that the available data was insufficient for creation of a suitable high latitude curve, it agreed "to give favorable consideration to applications for waiver" to permit use of figure 2 in calculating the field strength of Alaskan stations within the lower 48 states.

17. When examining the effects of high latitude, it makes a considerable difference if one or both stations being considered are at high latitudes. This is so because it is the mid-point between them which is used in the calculations. If one station is located in Anchorage and the other is in New Orleans, the mid-point would be near 45 degrees. In such a case, the high latitude effect would be small. On the other hand, if both stations were in Alaska, the mid-point could be north of 60 degrees. In such a cae, the effcts of high latitude would be great, but not even figure 2 would provide a suitable approximation. While it is true that a final high latitude curve would have to await the completion of the observations now going on, an interim curve could offer markedly improved accuracy in depicting high latitude effects. We believe that sufficient studies have been conducted to provide the basis for an interim curve which is being proposed.[18] We are proposing to use this interim curve for all calculations involving one or more stations in Alaska regardless of class of channel. Therefore, this curve would apply to interference both caused and received.

18. Various efforts have been made to take the effects of high latitude into account. The CCIR approach [19] and the FCC method parallel one another for shorter paths. However, for longer paths, the CCIR rethod has the strong tendency to underestimate field strengths. In view of the substantial distances between Alaska and pertinent points in the lower 48 states, as well as the distances typically experienced between Alaska stations, the CCIR method could produce unacceptable results. The Commission's staff has done considerable work in developing an interim high latitude curve. This interim curve is comparable to the CCIR curve for distances from 750 to 2500 km, but it offers more realistic estimates of field strengths over longer paths. The interim curve (which is attached) extends to 6000 km. Using the formula from which the curve was derived, the curve can be extended beyond this point.[20] It is our belief that the interim curve, while more realistically introducting the effects of higher latitudes, is still conservative and still somewhat overpredicts skywave field strength. However, we think that this is desirable pending completion of the high latitude studies.

19. The last question relates to what to do while the rule making proceeding is underway. If we continued to apply the rules now in effet, it is possible that applications could be granted that would vitiate the benefits we hope to derive through greater protection of Alaskan stations. Under these circumstances, we believe it is appropriate to withhold action on any any application that is in conflict with the rules being proposed. Any subsequently filed application having such conflict will not be accepted for

[16] The difference between the 10% and 50% curves is nominally 8db. In actuality, there is no need for more than one curve. Eight db can be added to values derived from the 50% curve to give values representing skywave field factors for 10% of the time. This point is further discussed in connection with the new curve being proposed for use in Alaska.

[17] Specifically it must extend from the point of highest activity to the lowest. It does not have to repeat the process by continuing until reaching the next point of highest activity.

[18] A copy of the curve is attached as an appendix to this *Notice*. This is a 50% curve that can be converted to 10% values by adding 8 dB. [Thus: F (10) = F (50) dBu + 8 dB] of [F (10) = F (50) × 2.513].

[19] This curve appears in CCIR recommendation 435.

[20] The formula is as follows: (field strength versus distance) (two hours after sunset) (100 mV/m at 1 km).

$$F_c = 95 - 20 \log d - 20 \left[\frac{d}{1000}\right]^{1/2} \text{(dBu)}$$

where d = great circle distance in km.

This formula yields the following field strengths expressed in dBu and uV/m:

Distance (km)	Field strength (dBu)	Field strength (uV/m)
250	37.0	71.1
500	26.9	22.1
750	20.2	10.2
1000	15.0	5.6
1500	7.0	2.2
2000	0.72	1.05
2500	−4.6	0.6
3000	−9.2	0.35
3500	−13.3	0.22
4000	−17.0	0.14
4500	−20.5	0.095
5000	−23.7	0.065
5500	−26.8	0.046
6000	−29.6	0.033

filing. Consideration of it will be withheld pending the outcome of this proceeding. If rules are adopted that conflict with the application in question, the applicant will be permitted a reasonable opportunity to amend its proposal to bring it into conformity. Unless thereafter amended in a timely fashion, the application would be dismissed.

Regulatory Flexibility Initial Analysis

I. *Reason for Action.* The proposed rule could provide needed protection for AM radio service in Alaska.

II. *Objective.* The *Notice* proposes to consider reclassifying certain Alaska stations as a means of insuring needed AM coverage.

III. *Legal Basis.* Section 307(b) of the Communication Act of 1934, as amended, directs the Commission to provide fair, efficient and equitable distribution of radio service. Various provisions of section 303 of the Communications Act empower the Commission to foster more efficient use of radio in the public interest.

IV. *Description, Potential Impact and Number of Small Entities Affected.* The only group affected would be the licensees which could receive greater protection from interference.

V. *Recording, Record Keeping and Other Compliance Requirements.* None would be added by the proposed action.

VI. *Federal Rules which Overlap, Duplicate or Conflict with the Proposed Rules.* None.

VII. *Any Significant Alternative Minimizing Impact on Small Entities and Consistent with Stated Objectives.* No adverse impact on small entities is expected.

20. Comments are invited on the rule making proposals outlined above. Other suggestions on how to respond to the needs of Alaska are invited as well. Such suggestions should be accompanied by relevant engineering studies as necessary.

21. This *Notice of Proposed Rule Making* is issued pursuant to authority contained in Sections 4(i), 303(a), (d) and (f) and 307(b) of the Communications Act of 1934, as amended. Interested parties may file comments on or before September 12, 1983, and reply comments on or before September 27, 1983. For further information concerning this proceeding, contact either Wilson La Follette, Mass Media Bureau, (202) 632-9660, or Jonathan David, Mass Media Bureau, (202) 632-7792. However, 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, *ex parte* contacts in this proceeding which affect individual license rights, will not be permitted. An *ex parte* contact is a message (spoken or written) concerning the merits of pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D.C.

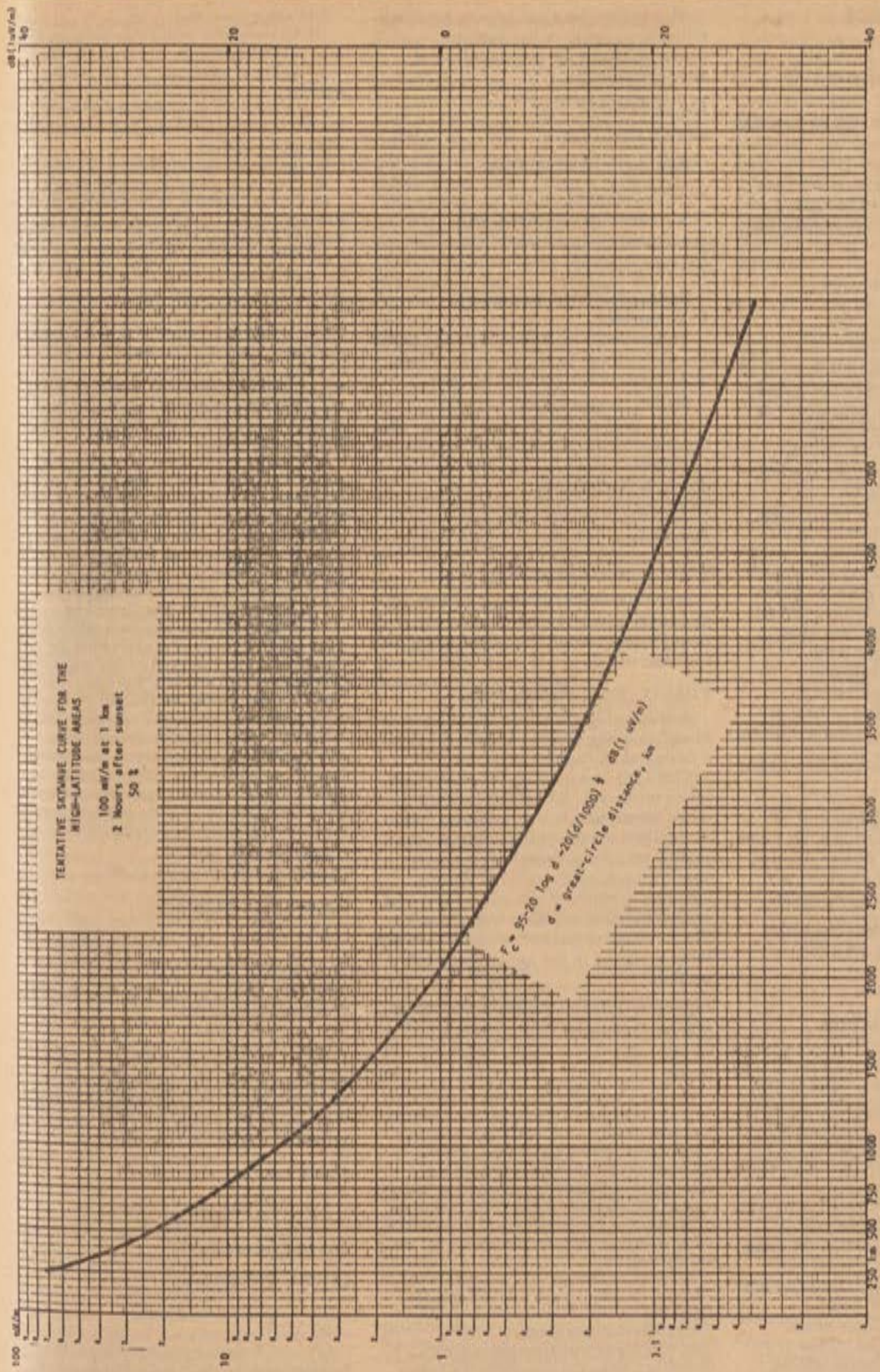
(Secs. 4, 303, 48 stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

William J. Tricarico,

Secretary.

BILLING CODE 6712-01-M



[FR Doc. 83-21721 Filed 8-9-83; 8:45 am]
BILLING CODE 6712-01-C

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1105, 1152 and 1180

[Ex Parte No. 274 (Sub-No. 10); Ex Parte No. 282 (Sub-No. 3)]

Environmental Notices in Abandonment and Rail Exemption Proceedings; Railroad Consolidation Procedures

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed rules.

SUMMARY: The Commission's Section of Energy and Environment issues notices in abandonment proceedings under 49 U.S.C. 10903 and rail exemption proceedings under 49 U.S.C. 10505, requesting interested persons to address areas of concern relating to environmental and energy matters, so that such parties may investigate the affected areas and provide the Commission with necessary information in a timely fashion. We propose to stop issuing these notices and to require rail carriers to issue them instead. This proposal is intended to save the Commission and ultimately the taxpayers the expense of issuing environmental notices and to hasten notification to appropriate State offfices.

DATES: Comments are due on September 9, 1983.

ADDRESSES: Send an original and 10 copies of comments referring to Ex Parte No. 274 (Sub-No. 10), *et al.* to: Office of the Secretary, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Louise E. Gitomer, (202) 275–7245.
or
Van Bosco, (202) 275–7655.

SUPPLEMENTARY INFORMATION:

Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InforSystems, Inc., Room 2227, Interstate Commerce Commission, Washington, DC 20423, or call 289–4357 (D.C. Metropolitan area) or toll free (800) 424–5403.

We certify that the proposed revisions will not have a significant economic impact on a substantial number of small entities. However, this proposal will save the Commission and ultimately the taxpayers the expense of issuing environmental notices. Some small entities might be benefited by the hastened notification to State offices.

This action does not appear to affect either the quality of the human environment or the conservation of energy resources.

List of Subjects

49 CFR Part 1105

Railroads, Environment.

49 CFR Part 1152

Administrative practice and procedure, Railroads.

49 CFR Part 1180

Railroads, Common carriers, Environment.

This rulemaking notice is issued under the authority of 49 U.S.C. 10321, 10505, and 10903–10906, and 5 U.S.C. 553.

Decided: August 1, 1983.

By the Commission, Chairman Taylor, Vice Chairman Sterrett, Commissioners Andre and Gradison.

Agatha L. Mergenovich,

Secretary.

Appendix

PART 1105—[AMENDED]

1. 49 CFR Part 1105 would be amended by redesignating § 1105.11 as § 1105.12. A new § 1105.11 would be added to read as follows:

§ 1105.11 Environmental notice.

A carrier filing a notice of intent to abandon a line under 49 CFR 1152.20(d), a notice of exemption under 49 CFR 1180.2(d)(5) or a petition for exemption pursuant to 49 U.S.C. 10505 [except when exemption is sought for an action normally not subject to environmental review under § 1105.6(c) of this part] shall serve upon designated State agencies a notice of environmental and energy matters, together with its notice. The environmental notice shall be in the form specified in the appendix to this section.

Appendix—Form for Environmental Notice

(Carrier Letterhead)

(Addressees)

(Date)

Simultaneous with this letter, we are filing with the Interstate Commerce Commission a notice of [intent to exempt a transaction or abandon a line or a petition to exempt a transaction or class of transactions from regulation]. A description of the filing and a map of the affected area are provided in an attachment to this letter. The purpose of this letter is to raise relevant environmental and energy matters.

Areas of concern, which you are invited to address, include but are not limited to the following:

(1) Local land use plans.

(2) The existing transportation system including alternative transportation modes.

(3) Energy consumption.

(4) Air emissions, ambient conditions, and relevant Federal, State, and local standards.

(5) Bodies of water and overall water quality.

(6) Terrestrial and aquatic ecosystems, limited or unique resources and threatened or endangered species.

(7) Ambient noise levels.

(8) Existing or potential safety hazards.

(9) Cultural, historic, or archaeological sites listed or eligible for inclusion in the National Register of Historic Places.

(10) Potenial for use for other public purposes of any property proposed for abandonment, including rights-of-ways.

We are providing this notice so that you may investigate the affected area and provide the Commission with necessary information in timely fashion. This request for environmental information, however, is not related to your right to file administrative protests or appeals, which are governed by separate procedures.

Because the applicable statutes impose stringent deadlines for processing this action, your response within three weeks would be appreciated. Please address the original of your comments directly to the Section of Energy and Environment, Room 4143, Interstate Commerce Commission, Washington, DC 20423, with a copy to us.

The information you provide will be considered by the Commission together with other material received in evaluating the overall environmental and energy impact of the contemplated action. If you have any questions concerning the affected area or other matters related to the proposal, please contact *our representative directly.* In any communications, please refer to the docket number assigned to this action: (docket number). Our representative in this matter is (name) and may be contacted by telephone at (telephone number) or by mail at (address).

(Complementary close)

(Name and title of author of letter)

PART 1152—[AMENDED]

2. 49 CFR 1152.20 would be amended by adding new paragraph (d) as follows:

§ 1152.20 Notice of intent to abandon line or discontinue service.

* * * * *

(d) At the same time it serves upon the Commission its notice of intent to abandon a line, the carrier shall comply with the environmental notice procedure provided in 49 CFR 1105.11.

PART 1180—[AMENDED]

3. 49 CFR 1180.4(g)(1) would be amended by adding the following at the end of the paragraph:

§ 1180.4 Procedures.

* * * * *

(g) * * *

(1) * * * Before a notice is filed, the railroad shall obtain a docket number

from the Commission's Office of Secretary.

* * * * *

[FR Doc. 83-21771 Filed 8-9-83; 8:45 am]
BILLING CODE 7035-01-M

49 CFR Part 1160

[Ex Parte No. 55 (Sub-No. 43A)]

Acceptable Forms of Requests for Operating Authority (Motor Carriers and Brokers of Property)

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: In accordance with the court's mandate in *American Trucking Associations, Inc.* v. *ICC,* 659 F. 2d 452 (5th Cir. 1981), clarified and enforced by mandamus in 669 F. 2d 957 (5th Cir. 1982), the Commission proposes modifications to its rules governing applications for operating authority filed by motor property carriers and brokers of motor property transportation.

The proposed rules would permit applications for any reasonably broad commodity description. However, applicants for general commodities authority would be restricted against the transportation of household goods and commodities in bulk unless they specifically demonstrate their fitness, willingness and ability to provide those specialized services. Moreover, applicants seeking nationwide authority would be restricted against serving Alaska and Hawaii unless they specifically show their fitness, willingness and ability to serve those two States and a public demand or need for their service in those States.

DATE: Comments are due on September 26, 1983.

ADDRESSES: Send an original and, if possible, 15 copies of comments to: Ex Parte No. 55 (Sub-No. 43A) Room 2203, Office of the Secretary, Interstate Commerce Commission, Washington, D.C. 20423.

FOR FURTHER INFORMATION CONTACT: Suzanne Higgins, (202) 275-7181; or Howell I. Sporn, (202) 275-7691.

SUPPLEMENTARY INFORMATION:

Background

The Motor Carrier Act of 1980, Pub. L. No. 96-296, 94 Stat. 793 [MCA], was enacted to promote greater competition and efficiency in the motor carrier industry through relaxation of entry standards and decisional criteria, simplification of licensing procedures and lessening of service restrictions on motor carrier operations. To implement this statutory mandate, the Commission issued a series of rules, policy and decisional standards, and procedural guidelines to ensure that service authorizations would be sufficiently broad and unencumbered by operating restrictions to further the revised national transportation policy goals. 49 U.S.C. 10101(a). In this proceeding, the Commission set forth guidelines to assist applicants in framing appropriately broad requests for authority. Ex Parte No. 55 (Sub-No. 43A), *Acceptable Forms of Requests for Operating Authority (Motor Carriers and Brokers of Property),* 45 FR 86798, (December 31, 1980),[1] 364 I.C.C. 432 (1980).

Upon review, the United States Court of Appeals for the Fifth Circuit held that these guidelines had the force of rules and affirmed in part and invalidated in part these rules.[2] *American Trucking Associations* v. *T.C.C.,* 659 F.2d 452 (5th Cir. 1981) [*ATA I*], clarified and enforced by mandamus, 669 F.2d 957 (5th Cir., 1982) [*ATA II*], *cert. denied,* 51 U.S.L.W. 3647 (1983). Consequently, we are reopening this proceeding to comply fully with the court's mandate.[3] We here propose to promulgate replacement rules for those portions of our earlier decision invalidated by the Court and to codify the remaining portions.[4]

Briefly, the portions of the rules that were affirmed (which we propose here simply to codify) provide for framing authority: (A) for common carriage—using two-way authorizations (serving all intermediate points on regular routes) and service areas no smaller than a county; and (B) for all property carriage—precluding restrictions, except for restrictions in general commodities authority against transporting Classes A and B explosives, household goods and commodities in bulk. The rules also provided for: (A) contract carrier permits without any territorial limitations; and (B) the use of standardized descriptions for "fitness only" licenses issued under 49 U.S.C. 10922(b)(4) (A)–(E), licenses issued to owner-operations under 49 U.S.C. 10923(b)(5)(A); and property broker licenses issued under 49 U.S.C. 10924(b).[5]

However, the court ruled that, in pursuit of competitive enhancement and operating efficiencies, the Commission may not unreasonably require all applicants to conform their requests for authority to prescribed commodity classifications. The court also ruled that we may not grant authority to serve Alaska and Hawaii based solely on evidence related to the other 48 States.

To satisfy the court's mandate we propose to revise and codify our rules to provide that:

—Applicants shall be permitted to seek any reasonably broad commodity designation. The two-digit STCC Code commodity classifications may be used by applicants as a guideline for framing reasonably broad authority.

—An applicant for general commodities authority will not be authorized to provide household goods or bulk service unless it presents evidence of its fitness, willingness, and ability to meet the particularized transportation requirements of these specialized service sectors.

—An applicant for nationwide common carrier authority will not be authorized to serve Alaska and/or Hawaii unless it makes the required demonstration (of its fitness, willingness, and ability to provide the service and a public demand or need for its service) not only as to the contiguous 48 States generally, but also as to Alaska and Hawaii individually.

Applicants will have discretion in the design of their operating authorities. We encourage them to exercise this latitude to frame service requests that are fully responsive to their operating capabilities, competitive circumstances, and commercial needs. Where a requested description is not as broad as the forms used as guidelines by the Commission, applicant should provide an explanation of its more limited proposal, i.e., insurance requirements, etc. Applications that are unreasonably narrow will be rejected.

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[1] **Editorial note.**—This document was submitted for publication in the "Notices" section of the Federal Register.

[2] To the extent that the Fifth Circuit may have amplified or clarified its position in *ATA* in subsequent proceedings, we have incorporated such refinements into the rules proposed here. *See, e.g. Central Freight Lines, Inc.* v. *United States,* 669 F.2d 1063 (5th Cir. 1982); *J. H. Rose Truck Line, Inc.* v. *I.C.C.,* 683 F.2d 943 (5th Cir. 1982); *J.H. Rose Truck Line, Inc.,* v. *I.C.C.* 683 F.2d 952 (5th Cir. 1982); *Steere Tank Lines, Inc.* v. *I.C.C.,* 687 F.2d 104 (5th Cir. 1982).

[3] By notice of March 31, 1982 (47 FR 13603), we announced those portions of our previously published rules found invalid in *ATA* and stated our intention to comply with the writ of mandamus in *ATA II* in the interim period while we sought certiorari from the United States Supreme Court. The Supreme Court denied certiorari on March 7, 1983. Accordingly, on April 7, 1983, we announced (47 FR 15167) our intention to reopen this proceeding and to modify the policy statement as required by the mandamus order.

[4] While we encourage parties to comprehensively assess all aspects of the proposed rules, we caution that this proceeding is not an appropriate vehicle for considerations which exceed the scope of the rules invalidated in the *ATA* proceedings.

[5] These portions of the rules were not challenged in court and will simply be codified here.

"Fitness" Consideration

The first portion of the statutory requirements for any grant of authority—fitness, willingness, and ability to provide the service and comply with applicable laws and regulations—collectively known as the "fitness test," were not changed by the MCA. *See* H.R. Rep. No. 1069, 96th Cong. 2d Sess., *reprinted* in [1980] U.S. Code Cong. & Ad. News 2283, 2296; 49 U.S.C. 10922(b)(1)(A), 10923(a)(1). However, with the substantial easing of the public need portion of the entry requirements and the mandate to grant broad authority under the MCA [6], there recently has been substantial litigation on the elements of fitness. Because of the uncertainty that has arisen concerning the scope of this test in evaluating applications for new board authorities, we propose to define generally the three elements of fitness and to outline the showings necessary to satisfy each of the licensing prerequisites.

1. Standards for Establishing Fitness, Willingness, and Ability Generally

A. *Fitness*—In demonstrating its fitness, a carrier should indicate its general knowledge of, and good faith intent to comply with, the Commission's statutes and regulations, as well as the safety laws and regulations administered by the Department of Transportation (DOT).

Normally, once an applicant states its familiarity and shows a readiness to comply with applicable DOT and ICC regulations, the burden shifts to protestants to demonstrate the contrary with any relevant information available. Additionally, the Commission's Office of Compliance and Consumer Assistance may be directed by the Commission to participate in those licensing proceedings where it has information bearing materially on a carrier's fitness. *See* 49 CFR 1067.4.

Finally, DOT's enabling statute [Pub. L. No. 89-670, 80 Stat. 931 (1966)] specifically provides for review of the safety records of carriers seeking operating authority from this Commission and permits DOT intervention in proceedings where a carrier's safety compliance appears deficient. *See also* 49 CFR 1067.5. In view of these procedures, we are of the opinion that we properly can rely on the primary jurisdiction and expertise of our sister agency, DOT, to monitor a carrier's safety and bring to our attention any serious safety deficiencies of which it may be aware. *See Consolidated Rail Corp.* v. *ICC*, 646 F.2d 642, 650 (D.C. Cir. 1981), *cert. denied*, 454 U.S. 1047 (1981). Of course, the Commission must ultimately make the appropriate fitness findings after consideration of all evidence presented.

b. *Willingness*—This aspect of "fitness" bears directly upon the authority sought. When an applicant seeks operating authority from this Commission, it is reasonable to presume that it is willing to perform that service. This is particularly so because applicants are to frame the authority requested in terms of their needs and abilities.

However, in permitting an applicant flexibility to tailor the authority to its needs and abilities, we cannot allow an applicant's peculiar service preferences and commercial inclinations to eclipse our general responsibility to oversee a competitive and efficient transportation system responsive to the service needs of the shipping and consuming public. Indeed, the court in *ATA I* acknowledged our broad discretion, within appropriate statutory limits, to define acceptable service descriptions and to "refuse to grant excessively narrow application." *ATA I*, 659 F.2d at 470. *See also, Chicago, ST. P., M & O. Ry. Co.* v. *United States*, 322 U.S. 1, 4 (1944); *McCracken* v. *United States*, 47 F. Supp. 444, 447 (D.C. Cir. 1942). In instances where an applicant seeks authority of such an unreasonably narrow scope as to jeopardize its service ability, compromise operational feasibility, and generally disserve the interests of an adequate and responsive transportation system we will deny the request. [7]

C. *Ability*—An applicant's ability to perform a proposed operation involves such considerations as its access to necessary equipment and facilities, prior transportation experience, the qualifications of its personnel and any other relevant evidence. Normally, a general showing of ability is sufficient. An applicant need not specifically establish its ability with respect to each commodity or location potentially involved in the proposed service. *See J. H. Rose Truck Line, Inc.* v. *I.C.C.*, 683 F.2d 943, 949 (5th Cir. 1982) (*Rose I*). A carrier must show simply that it is able to serve representative commodities and territorial points within a reasonably broad service classification.

Moreover, we will assess an applicant's service ability in accord with our mandate to ease entry policies and issue broader licenses. *Port Norris Exp. Co., Inc.* v. *I.C.C.*, 697 F.2d 497, 504 (3rd Cir. 1982). Thus, it is not necessary for an applicant already to have the equipment or capacity to meet all potential demands within the territory or service range. *See Steere Tank Lines, Inc.* v. *United States*, 675 F.2d 103, 104 (5th Cir. 1982).

Indeed, to require applicants seeking to enter new markets to acquire the equipment, facilities, and personnel needed to accommodate the traffic prior to obtaining the authority clearly would contravene prudent business practices. *Id.*, at 104 n.2. Moreover, it particularly would prejudice the interests of two classes of applicants favored under the national transportation policy—small carrier entrants and those proposing significant service innovations. [8] *See G.R.M., Inc., Ext.—Automobiles from California*, 131 M.C.C. 919, 926 (1980).

To demonstrate its service ability, an existing carrier may point to its past successful operations, its established terminal, equipment, and/or financial resources, or its access to equipment and facilities through leasing arrangements. *See e.g., Steere Tank Lines, Inc.* v. *I.C.C., supra*, 687 F.2d at 106; *J.H. Rose Truck Line* v. *I.C.C.*, 683 F.2d 952, 955 (5th Cir. 1981) (*Rose II*); *Rose I*, 683 F.2d at 949. A prospective carrier should demonstrate its capacity to acquire or develop the facilities, equipment, and service features necessary to the proposed operations. It should indicate whether it will acquire the necessary equipment and/or facilities through purchase, lease, or by

[6] Common carrier applicants need now only come forward with some evidence demonstrating "that the service proposed will serve a useful purpose, responsive to a public demand or need." 49 U.S.C. 10922(b)(1)(B). The MCA also directed the Commission to establish procedures to "reasonably broaden" the service description in existing authorities. 49 U.S.C. 10922(i)(1). The legislative history confirms that the new entry standards should be interpreted in a manner which will afford applicants for new authority operational parity with carriers holding authority susceptible to expansion under the restrictions removal procudures. 126 Cong. Reg. S. 7685 (daily ed. June 20, 1980). The court in *ATA I* expressly acknowledged the relevance of the statutory restriction removal mandate to the standards for authorizing new certificates and permits. *ATA I*, 659 F.2d at 472.

[7] As discussed below, this action has been taken where applicants seek specified commodity authority restricted against service of those commodities moving in bulk form. *See* No. MC-143776 (Sub-No. 34), *C.D.B. Incorporated, Extension-Texas* (not printed), served March 2, 1983, on appeal sub. nom., *Steere Tank Lines, Inc.* v. *I.C.C.*, No. 83-4175 (5th Cir. filed May 5, 1983).

[8] An applicant is not required to provide comprehensive evidence of operational feasibility. We do not view operational feasibility as a primary consideration in our licensing policies, but rely instead on marketplace competition in an appropriate service allocation mechanism. Ex Parte No. 55 (Sub-No. 43), *Rules Governing Applications for Operating Authority*, 364 I.C.C. 508, 534-35 (1980), 45 FR 86771, December 31, 1980. This policy has been affirmed by the Fifth Circuit. *Central Freight Lines, Inc.* v. *United States*, 669 F.2d 1063, 1071 (5th Cir. 1982).

arrangements with owner-operators. This will permit the Commission to make "a reasonable prediction with respect to future performance." *Coastal Tank Lines, Inc.* v. *I.C.C.*, 690 F.2d 537, 541 (6th Cir. 1982).

2. Specific Fitness Showing for Certain Specialized Services

An applicant for general commodities authority will be restricted against certain specialized services—the transportation of commodities in bulk, household goods, and Classes A and B explosives—unless it specifically shows that it is able to provide these particularized services.[9] With regard to bulk and household goods transportaion, the applicant must certify that it is familiar with the specilized service needs of those types of lading and that it has, or is willing and able to acquire, the expertise and specialized equipment to accommodate them. *See ATA I*, 659 F.2d at 470; *Port Norris Exp. Co., Inc., supra*, 697 F.2d at 503. To transport explosives, an applicant should also confirm its familiarity and intent to comply with the appropriate safety requirements of DOT.

A carrier may demonstrate its ability to handle these specialized services by evidence of its existing operations and service record in these fields, as well as its prospective assurances of capability and compliance. *See e.g., Baggett Transportation Co.* v. *United States*, 666 F.2d 524, 527 (11th Cir. 1982); *Port Norris Exp. Co., Inc., supra*, 687 F.2d at 813; *Ritter Transp., Inc.* v. *I.C.C.*, 697 F.2d 1153, 1155 (D.C. Cir. 1983).

Formulating Acceptable Service Descriptions

In our prior rules, 45 FR 86798, we explained how unduly narrow or restricted service authorizations could undermine the national transportation policy. Such unreasonably restricted service descriptions can compromise operating efficiency; accelerate energy consumption; prevent optimally effective use of equipment; preclude carriers from responsively adapting to changing market conditions, technological innovations, shifting industrial patterns, or shipper service preferences; and significantly weaken potential competition and carrier's instincts to enter inadequtely served markets.

The court in *ATA I* approved of, and affirmed in several respect, our reliance on broad service authorizations to further significant transportation policy goals. *ATA I*, 659 F.2d at 472. Indeed, in various pronouncements since *ATA I*, the Fifth Circuit has expressly acknowledged "the breadth of the amended Act in its policy of encouraging the granting of new and expanded certificates of authority." *Rose I*, 683 F.2d at 948. However, the Court found that some of our policies, designed to implement broad commodity or territorial descriptions, in fact thrust upon applicants unwanted or unwarranted service authorizations. *ATA I*, 659 F.2d at 471–72.

The court prescribed several revisions to our *rules* to assure that they might not be coercively applied or perceived by applicants as binding norms and to ensure that the "fitness criteria" might be adequately factored into all services authorizations. *ATA II*, 669 F.2d at 963. The rules proposed here reflect our commitment to comply in good faith with the court's mandate.

1. Commodity Descriptions

To guide carriers in fashioning appropriately broad service requests under the MCA, we directed them to use a commodity description from either the two-digit Standard Transportation Commodity Code (STCC Code) [as developed by the rail industry but modified by the Commission for use in this proceeding], one of the Commission's previously developed categories [as set forth in *Descriptions of Motor Carrier Certificates*, 61 M.C.C. 209 (1952) and 766 (1953)], or any other description that is as broad or broader than those designated.[10] 45 FR at 86800–02. However, the Court found that our rules, as previously drafted, inflexibly constrained applicants to seek authority involving two-digit STCC classifications and, in practical effect, foreclosed applicants from seeking other reasonably broad service authorizations. *ATA I*, at 472.

We propose to maintain the two-digit STCC Code categories as instructive guidelines to carriers—*i.e.*, examples of commodity groupings that we consider to be reasonably broad. Indeed, the Fifth Circuit acknowledged the STCC descriptions as an acceptable starting point for defining permissible commodity service authorizations. *ATA I*, at 472. Thus, an applicant demonstrating its fitness, willingness, and ability and a corresponding public demand or need for service involving representative commodities embraced by a particular STCC category may reasonably invoke these rules to seek authority to serve the entire commodity classification.[11]

We are mindful, however, that the commercial interests and operating circumstances of applicants vary and may dictate the use of alternative commodity descriptions, such as some of the broad, generic groupings contained in the *Descriptions* cases, as well as broad service class descriptions that we have traditionally recognized. We wish to make clear that an applicant may propose any commodity description that represents a reasoned assessment of its servce interests and prevailing commercial needs. However, we will require that a carrier requesting a description narrower than a STCC category provide an adequate explanation as to why, in the circumstances of its case, the category is not unduly restrictive. We must be assured that the authority granted will permit responsive service, allow operational flexibility, and promote competition and efficiency in the industry.

We reiterate our firm conviction that it is both inappropriate and potentially anticompetitive to reduce the scope of an otherwise reasonable commodity description simply to minimize opposition to an application or settle litigative interests. *See* Ex Parte No. 55 (Sub-No. 43), *Supra*, at 896774–75; No. MC–158930 (Sub-No. 8), *U.S. Transportation, Inc., Extension—United States* (not printed), served April 26, 1983. A request for narrower service descriptions must represent the carrier's independent exercise of operating and marketing discretion in a manner not inconsistent with national transportation policy goals.

2. Service Restrictions

a. *General Commodities*

We previously stated that we view the exclusion of specific commodities from more general service categories as a restrictive regulatory practice serving primarily to protect competing categories. Accordingly, we stated that we would no longer routinely restrict general commodities authority, except that Classes A and B explosives would be excluded for safety reasons. (Interim rules, 45 FR 45545, July 3, 1980; final rules, 45 FR at 86801.)

[9] We stress that this is only a limitation on "general commodities" requests. Although certain specialized services may be involved in more limited, specific commodity descriptions, we will not require a special demonstration of "fitness" beyond that required to obtained the basic commodity authority in those instances.

[10] However, the Commission and the carriers have relied most heavily on the 29 classifications set out in the STCC Code.

[11] We have already determined that the the two-digit STCC service categories are manifestly reasonable and provide an optimal mechanism for accomodating fluctuating commercial conditions, market developments, and varying service requirements of transportation consumers. 45 FR 86800.

However, the court in *ATA I* found that our policy of including bulk and household goods services, without a separate showing of fitness, willingness, and ability to provide those services, failed to accord sufficient deference to their specialized nature (659 F.2d at 473). Accordingly, as directed by the Court (*ATA II*, 669 F.2d at 963), we will require an applicant seeking unrestricted general commodities authority to specifically establish its fitness, willingness, and ability to meet the needs of those specialized service areas.

b. *Specified Commodities*

Significantly different considerations are evoked by restrictions on authority to transport specified commodities.[12] In instances where an applicant's service range is limited to a designated commodity or commodity class, it is our view that restrictions against bulk transportation or other service categories would unreasonably contrain the carrier in pursuing competitive service alternatives and in adapting its operations to the most economical and efficient means of transportation available to particular shipments. *See* No. MC–143776 (Sub-No. 34), *C.D.B. Incorporated Extension—Texas, supra.* When specific service authorizations are thus fragmented by restrictions which preclude complete service for the commodities involved, they become inherently unresponsive to the transportation policy goals of competitive and efficient service. *See* No. MC–136635 (Sub-No. 69), *Whiteford Truck Lines, Inc., Nationwide Points* (not printed), served October 29, 1982.

As noted above, the Court in *ATA I* acknowledged our broad discretion, within appropriate statutory limits, to define acceptable service descriptions and to "refuse to grant excessively narrow applications." 659 F.2d at 470. *See also, Chicago, St. P., M. & O. Ry. Co.* v. *United States, supra; McCracken* v. *United States, supra.* Therefore, we propose to deny summarily specific commodity applications containing bulk restrictions or similar service limitations unless the applicant has demonstrated the reasonableness of its proposed service description.

3. *Territorial Service Descriptions*—The court in *ATA I* also held that a representative showing of fitness and public demand or need for service to the 48 contiguous States could not support authority to serve Alaska and Hawaii. *ATA I*, 659 F.2d at 473–74

We continue to encourage expansive territorial descriptions, permitting optimal response to shifting industrial patterns, marketing preferences of transportation consumers, and service initiatives of competitors. *See Kenosha Auto Transport Corp.* v. *United States*, 684 F.2d 1020, 1029–30 (D.C. Cir. 1982). However, in accordance with the Court's directive, we will require *common carrier* applicants seeking to serve Alaska and/or Hawaii to demonstrate their fitness, willingness, and ability to serve those States, as well as a representative showing of a public demand or need for their service in those States.[13]

Finally, we have included in the replacement rules a provision reflecting our determination that facilites restrictions on territorial service descriptions are contrary to Commission policy and will not be authorized. *See Eckert Trucking, Inc., Ext.—Building Material*, 132 M.C.C. 829 (1982).

Environmental and Energy Considerations

The proposed rules do not appear to affect significantly the quality of the human environment or the conservation of energy resources. However, we specifically invite interested parties to comment on these issues.

Regulatory Flexibility analysis

Pursuant to 5 U.S.C. 603, the Commission is requried to examine specifically the impact of proposed rules on small business and small organizations. The rules proposed here afford applicant for operating authority greater latitude for designing service descriptions which reflect their particular service interests and competitive instincts.

In ful accord with the mandate of the court in the ATA proceedings, we have specifically endeavored to relieve the rules of any statement, nuance, or prescription which might wrongly suggest to applicants that they are inextricably bound to conform their present operations and prospective service interests to a limited range of commodity and territorial descriptions.

At the same time, we anticipate that the proposed rules will serve as a valuable instructive device to apprise small carriers and first-time applicants of the types of broadly defined service alternatives which might best promote their operating efficiencies and enhance their competitive service posture. We envision that carriers which follow these instructive guidelines will realize expanded service opportunities which, in turn, will be reflected in increased fuel efficiency, reduced operating ratios, and a generally improved transportation system.

We, therefore, conclude that the proposed rules will have a significant positive economic impact upon a substantial number of small carrier and shipper entities, as well as upon transportation consumers generally.

The prospects afforded under these rules for tailoring operating authorities to the circumstances of individual carriers do not impose additional reporting, recordkeeping, or compliance requriements upon small entitites. Nor will these rules duplicate, overlap, or conflict with any existing Federal rule.

Proposal

The proposed rules would replace those portions of the rules defining appropriate service descriptions (adopted at 45 FR 86798, December 31, 1980) that were declared invalid in *ATA I*, as clarified and enforced by mandamus in *ATA II*, with the rules set forth in the Appendix. We request comments on all aspects of the proposed *replacement* rules.

Because our initial decision in this proceeding was in the form of a policy statement, there were no specific rules codified in the Code of Federal Regulations. However, we propose that the rules promulgated here be set out in the Code of Federal Regulations.

This action is taken under the authority of 49 U.S.C. 10101, 10321, 10922, 10923, 10924, and 11102, and 5 U.S.C. 553.

List of Subjects in 49 CFR Part 1160

Brokers, Administrative practice and procedure.

Decided: July 25, 1983.

By the Commission, Chairman Taylor, Vice Chairman Sterrett, Commissioners Andre and Gradison. Chairman Taylor concurred in part and dissented in part and will submit a separate expression at a later date. Vice

[12] The Fifth Circuit confined its consideration to restrictions on general commodities authority. *See ATA I*, at 465, 472–73. *See also*, No. MC–158495, *OMH Trucking Company d/b/a Hubbard Cartage Company Common Carrier Application* (not printed), served June 29, 1982. Even prior to the MCA, the Commission was not required to accept operating restrictions on specific commodity authorizations. *See* Ex Parte No. MC–66, *Removal of Truckload Lot Restrictions*, 106 M.C.C. 455 (1968), and cases cited therein. In fact, except for the traditional restrictions on general commodities grants, restrictions on a carrier's service capacity traditionally have been considered an undesirable means of defining operating authority and have been generally disfavored as contrary to the public interest. *See Fox-Smythe Transp. Co. Extension—Oklahoma*, 108 M.C.C. 1 (1967).

[13] We are prohibited by statute from restricting the territorial scope of *contract carrier* permits. 49 U.S.C. 10923(d)(1). Therefore, a contract carrier applicant cannot be given authority any less extensive than antionwide (i.e., all 50 States).

Chairman Sterrett and Commissioner Andre dissented in part with a separate expression.

Agatha L. Mergenovich,
Secretary.

Vice Chairman Sterrett and Commissioner Andre, Dissenting in Part

The Commission is now evenly divided over how to implement the "motor substitute for abandoned rail service" provision in 49 U.S.C. 10922(b)(4)(B). The Congress intended through this provision to offer a motor carrier alternative for shippers who formerly used abandoned rail service. Thus, we believe, authorities granted under this provision should not be encumbered with restrictions and exclusions which would preclude provision of sevice as complete as that previously available from the rail carrier.

Our position on this issue has consistently prevailed with a majority of the Commission, and this notice offers no reasons for a departure from now well-established precedent.[14] Finally, the public should be advised that a majority of this Commission has not approved the proposed regulation in 49 CFR 1160.106(b), and that we intend to seek change in this regulation before it is made final.

Appendix

We propose to amend Title 49 of the Code of Federal Regulations, Part 1160, by adding Subpart F as follows:

PART 1160—[AMENDED]

* * * * *

Subpart F-Rules for Determining Scope of Applications for Operating Authority—Motor Carriers and Brokers of Property

Sec.

[14] See No. 149565 (Sub-No. 3), *G.L. Dunphy & Son, Inc., Extension-Substituted Motor For Rail Service* (not printed), decided November 10, 1982; No. MC-152914 (Sub-No. 3), *Stateway Trucking, Inc., Extension-Substitution (Motor For Rail Service) Application* (not printed), decided November 10, 1982; No. MC-144757 (Sub-No. 19), *Dakota Pacific Transport, Inc.-Substitution Motor For Rail* (not printed), decided October 20, 1982; No. MC-147311 (Sub-No. 9), *T&S Transportation, Inc., Extension-Substitution For Rail Service* (not printed), decided October 20, 1983 No. MC-143885 (Sub-No. 3), *Harland A. Wilcox and Leroy H. Wilcox, d/b/a Wilcox Trucking, Extension-Government Traffic and Substitution Motor For Rail Service Application* (not printed), decided August 9, 1982; No. MC-121649 (Sub-No. 11), *Milan Express, Inc., Extension-Motor For Rail Service* (not printed), decided July 28, 1982; and No. MC-159639, *Fla-Tex, Inc., Common Carrier Application* (not printed), decided July 21, 1982.

Authority: 49 U.S.C. 10101, 10321, 10922, 10923, 10924, 11102, and 5 U.S.C. 553.

§ 1160.100 Scope of this subpart.

This subpart contains rules designed to assist motor common and contract property carriers and brokers in filing applications for new operating authority. The rules indicate the types of commodity and territorial descriptions that encourage efficient and competitive transportation.

§ 1160.101 Commodity descriptions.

(a) *General commodities carriers.* Authority to transport general commodities will be restricted against the transportation of Classes A and B explosives, commodities in bulk, and household goods, unless the applicant specifically demonstrates its fitness, willingness, and ability to perform these specialized services. Other restrictions on general commodities authority are considered unduly restrictive and will not normally be imposed.

(b) *Named commodities or limited classes of commodities.* Authority to transport a named commodity or limited classes of commodities shall not normally contain any commodity or service restrictions. An applicant seeking such authority shall frame its request using:

(1) The two-digit Standard Transportation Commodity Code on file with the Commission; or

(2) One or more of the broad generic groupings contained in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 (1952) and 766 (1953); or

(3) A broad class description generally accepted by the Commission, such as commodities in bulk, commodities which because of their size and weight require special equipment, oilfield commodities as described in *Mercer Extension-Oil Field Commodities*, 74 M.C.C. 459 (1946), or commodities dealt in by a particular business; or

(4) Any other reasonably broad commodity descriptions that the applicant shows will permit responsive service, allow operational flexibility, and promote competition and efficiency in the industry.

§ 1160.102 Intermediate point service.

Regular-route authority shall encompass service to all intermediate points on the service route. An applicant may also seek authorization to serve specified off-route points.

§ 1160.103 Round-trip service.

Certificates or permits shall not be restricted to one-way authority. Authority to transport the necessary materials, equipment, and supplies used in the manufacture, sale, or distribution of the commodity involved is implied in all service authorizations.

§ 1160.104 Territorial authority.

(a) *County-wide minima.* Authorities shall be expressed in service areas at least as large as a county (*i.e.*, a county in any State, a judicial district in Alaska, a parish in Louisiana, any city, town, or village which is not administratively part of a county, or commercial zones as defined by the Commission).

(b) *Nationwide authority.* A common carrier receiving authority to serve the 48 contiguous States will not be authorized to serve Alaska and Hawaii unless it individually demonstrates (i) its fitness, willingness, and ability to serve those two States and (ii) a public demand or need for its service in those States.

(c) *Facilities restrictions.* Authority shall not be restricted to service at particular plantsites and/or facilities.

§ 1160.105 Contract carriers.

Permits to operate as a contract carrier to serve a single named shipper or class of shipper (industry or industries) shall authorize service "between points in the United States."

§ 1160.106 Fitness-only authority.

Service descriptions to be used in the respective fitness only categories shall be as follows:

(a) *Transportation to any community not regularly served by a motor carrier.* To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting [commodity group] ——— between [the specified community(ies)] ———, on the one hand, and, on the other, points in the United States.

(b) Transportation service as a direct substitute for abandoned rail service. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *general commodities* between [the abandoned community(ies)], ——— on the one hand, and, on the other, points in the United States. [Applicants may elect to exclude commodities in bulk, household goods, and Alaska and Hawaii from their service description].

(c) *Transportation for the United States Government.* To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting for or on behalf of the United States Government, *general commodities* (except used

household goods, hazardous or secret materials, and sensitive weapons and munitions), between points in the United States.

(d) *Transportation of shipments weighing 100 pounds or less.* To operate as a *common carrier,* by motor vehicle, in interstate or forign commerce, over irregular routes, transporting shipments weighing 100 pounds or less if transported in a motor vehicle in which no one package exceeds 100 pounds, between points in the United States.

(e) *Transportation by either a common or a contract carrier of food and other edible products and related farm items.* (1) For common carriage.—To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes transporting *food and other edible products and byproducts intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizer, and other soil conditioners* by the owner of the motor vehicle in such vehicle, between points in the United States. (2) For contract carriage.—To operate as a *contract carrier,* by motor vehicle, over irregular routes, transporting, *food and other edible products and byproducts intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizer, and other soil conditioners* by the owner of the motor vehicle in such vehicle between points in the United States, under continuing contract(s) with (person or class of persons, an industry or industries).

(f) *Motor carrier brokers for transportation of property.* To operate, in interstate or foreign commerce, as a *broker* of *general commodities* (except household goods), between points in the United States.

(g) *Transportation for the United States Government of used household goods which transportation is incidental to a pack-and-crate service on behalf of the Department of Defense.* To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *used household goods* for the account of the United States Government incidental of the performance of a pack-and-crate service on behalf of the Department of Defense, between points in the United States.

[FR Doc. 83-21773 Filed 8-9-83; 8:45 am]

BILLING CODE 7035-01-M

49 CFR Part 1165

[Ex Parte No. MC-142 (Sub-1)]

Removal of Restrictions From Authorities of Motor Carriers of Property

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: In accordance with the court's mandate in *American Trucking Ass'ns.* v. *ICC,* 659 F.2d 452 (5th Cir. 1981), clarified and enforced by mandamus in 669 F.2d 957 (5th Cir. 1982), the Commission proposes modifications to its existing restriction removal rules. The proposed rules would allow applicants to use an alternate commodity description upon a showing that the use of the Commission's classifications would (1) either require the transportation of commodities unrelated to those previously authorized or would require institution of a new service, and (2) that it is not fit, or willing, or able to provide the service. In broadening authorities, restriction removal applicants would be required to make a general showing of fitness, willingness, and ability to conduct operations under the expanded authority. A specific showing of fitness, willingness, and ability would be required of general commodities carriers which seek to remove the bulk or household goods exceptions using these procedures. The revised rules would allow protesting carriers to comment on the reasonableness of the applicant's proposal, as well as on any aspect of the applicant's fitness, willingness, or ability to perform the service to be authorized.

DATE: Comments are due on September 26, 1983.

ADDRESS: Send an original and, if possible, 15 copies of comments to: Ex Parte No. MC-142 (Sub-No. 1), Room 2203, Office of the Secretary, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Robin K. Williams, (202) 275-7697

or

Howell I. Sporn, (202) 275-7691

SUPPLEMENTARY INFORMATION

Background

Section 6 of the Motor Carrier Act of 1980 (MCA), Pub. L. No. 96-296, 94 Stat. 793 (1980) (49 U.S.C. 10922(i)(1)(B)),[1] directed the Commission to implement regulations to process expeditiously applications seeking to remove operating restrictions or to broaden unduly narrow authorizations in outstanding certificates and permits. In response to this mandate, the Commission instituted a rulemaking proceeding and adopted final rules in Ex Parte No. MC-142 (Sub-No. 1), *Removal of Restrictions, Motor Car. of Property,* 45 FR 86747 (December 31, 1980); 132 M.C.C. 374 (1980). Subsequently, a petition was filed in the United States Court of Appeals for the Fifth Circuit seeking review of the Commission's rules and policy statements dealing with the removal of restrictions from existing motor carrier authority and issuance of new motor carrier authority. In *American Trucking Ass'ns.* v. *ICC,* 659 F.2d 452 (5th Cir. 1981) *[ATA I],* the Fifth Circuit held that the guidelines and policy statements promulgated in Ex Parte No. 55 (Sub-No. 43A), *Acceptable Forms of Request for Operating Authority (Motor Carriers and Brokers of Property),* 45 FR 86798 (December 31, 1980); 364 I.C.C. 432 (1980), and Ex Parte No. MC-142 (Sub-No. 1), *supra,* were to be considered rules, and that certain parts of those rules were invalid. On February 25, 1982, the court entered a writ of mandamus requiring the Commission to comply with its prior decision, to publish notice of the rescission of the invalidated portions of the rules, and to issue new replacement rules. In addition, the court clarified its prior decision. *American Trucking Ass'ns.* v. *ICC,* 669 F.2d 957 (5th Cir. 1982) *[ATA II].*

Although the Fifth Circuit's mandamus order was temporarily stayed by Supreme Court justice White while the agency sought certiorari from the Supreme Court, the Commission acknowledged the requirements of the Fifth Circuit's decision and by **Federal Register** notice publicly assured its interim compliance with the Fifth Circuit's order. *See* 47 FR 13603 (March 31, 1982.) With the Supreme Court's recent denial of the Commission's petition for certiorari,[2] the stay has been dissolved and the Fifth Circuit's 1982 mandamus order as well as its 1981 mandate are fully effective. Thus, as the Commission stated in its most recent **Federal Register** notice in this proceeding, published at 48 FR 15167 (April 7, 1983), we must now promulgate replacement rules consistent with the Fifth Circuit's holdings.

Accordingly, we are reopening this proceeding for the limited purpose of

[1] Formerly 49 U.S.C. 10922(h)(1)(B). Section 10922(h) was redesignated section 10922(i) by Section 6(b) of the Bus Regulatory Reform Act of 1982, Pub. L. 97-261 (1982).

[2] 51 U.S.L.W. 3649 (March 7, 1983).

bringing the restriction removal rules into compliance with the Fifth Circuit's findings in the *ATA* decisions.[3] Interested parties are invited to comment upon these proposed changes in the restriction removal rules. Pending the adoption of final rules, our 1982 notice will remain in full force and effect and the Commission will continue to comply with the Fifth Circuit's mandate in deciding individual cases.

The Fifth Circuit's Specific Findings

To facilitate better understanding of our proposed revisions to the restriction removal rules, we will highlight briefly the Fifth Circuit's holdings in the *ATA* decisions. First, the court found that the guidelines set forth in part two of the Restriction Removal Statement were in fact "normative rules, and must be evaluated as such." 659 F.2d at 464. While parts of the guidelines were affirmed, certain others were declared invalid as exceeding the MCA.[4] Much of the court's concern centered on the Commission's exclusive use of a commodity classification standards,[5] and whether carriers were fit, willing, and able to perform the broader service to be authorized.

While the court found the Standard Transportation Commodities Code [STCC] classification basis and the other two types of commodity descriptions to be a "[reasonable] starting point," it determined that "[b]ecause the carrier's action is voluntary, and the carrier must be fit, willing, and able, it is not reasonable to require only these classifications or others at least as broad." 659 F.2d at 464. Within this context, the Fifth Circuit expressed concern that "within some of these classifications may lurk commodities unrelated to each other or requiring different types of service." *Id.* The court also observed that the Commission's commodity broadening requirement "makes it likely that a carrier with authority to transport only one commodity would be required to seek authority for an entire class of commodities, some of which the carrier may not wish to transport or may lack the ability to transport." *Id.* at 462. The court then went on to set forth criteria it deemed appropriate for the Commission to use in reasonably broadening categories of property authorized by existing certificates and permits:

> The carrier must be permitted, both by the Commission's express statement and actual agency practice, to seek some other commodity classification if it can show that use of the tripartite Commission standard would require the transportation of commodities unrelated to those previously authorized or would require the institution of a different type of service, and that the carrier is not fit or is unwilling or is unable to provide the service. The procedure for seeking such a modification must be reasonably flexible so that applications will neither be arbitrarily prejudged nor condemned to excessive expense.

ATA I, 659 F.2d at 464–65; *ATA II*, 669 F.2d at 962.

Secondly, the Fifth Circuit found that the Commission's routine elimination of bulk service restrictions in general commodities authorizations exceeded its authority to "reasonably broaden the categories of property authorized by the carrier's certificate or permit." 659 F.2d at 465. Emphasizing that bulk commodities encompassed a specialized service, the court noted that "many of the applicants for general commodities authority under the restriction removal procedures will not even possess the equipment necessary to transport the commodities authorized by the certificate." *Id.* The Fifth Circuit directed the Commission not to grant general commodities carriers bulk commodities authority without requiring some showing that the applicant is fit, willing, and able to provide the bulk commodity transportation sought.

Similarly, the court determined that "the ICC shall not permit the general commodities carrier to eliminate the restriction against household goods without demonstrating more than its general commodities certificate," and that "the carrier is fit, willing, and able to carry household goods." *Id.* at 465–68. The Fifth Circuit instructed the Commission to rescind and revise its guidelines with respect to bulk and household goods restrictions in general commodities authorities. *Id.* at 465 and 468.

Finally, the court determined that in every restriction removal proceeding the Commission must provide "some opportunity for opposition to [the] application to be voiced." *Id.* at 465. In so doing, the court stated that the Commission may devise its own procedures, "so long as it provides a method by which opponents to an application may enter an appearance and make the basis of their opposition known." 669 F.2d at 962.

The Rules Proposed

These proposed modified rules will be applicable to motor carriers of property that wish to remove restrictions or to broaden authority in certificates and permits issued pursuant to applications filed before the effective date of the final rules to be adopted in this proceeding. While our initial rules imposed a cut-off date of December 28, 1980,[6] the date Ex Parte No. MC–142 (Sub-No. 1) and Ex Parte No. 55 (Sub-No. 43A) became effective, it is clear from the MCA that Congress sought to achieve a parity and harmony in the scope of the operating rights of existing carriers and new entrants. Since we are contemporaneously proposing new rules in Ex Parte No. 55 (Sub-No. 43A) to assist carriers applying for new authority, we conclude preliminarily that these rules should be made applicable to authorities granted as a result of applications filed before the effective date of our final revised rules to be adopted in this proceeding and those in Ex Parte No. 55 (Sub-No. 43A). The two proceedings are closely related and our proposal should establish consistency between the types of grants awarded new applicants and those of existing carriers.[7] This approach should

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[3] In Ex Parte No. 55 (Sub-No. 43A), *supra*, the companion case to this, the Commission is contemporaneously reopening that proceeding to modify existing rules affecting applications for new operating authority.

[4] The Fifth Circuit concluded that the Commission's procedural rules for the processing of restriction removal applications were consistent with general principles of administrative law and the Administrative Procedure Act. 659 F.2d at 461. In addition, the court found the Commission's standards and guidelines used to "'eliminate unreasonable or excessively narrow territorial limitations,'" as required under 49 U.S.C. 10922(i)(1)[B](iv), to be "reasonable and * * * well within the Commission's discretion." *Id.* at 468. Accordingly, these segments of the proceeding will not be reopened for consideration of comments.

[5] The Commission's standards were set forth at 49 CFR 1137.21(b), now 49 CFR 1165.21(b). The Fifth Circuit, citing to 45 FR at 86759, interpreted the Commission's standards as follows: Authority to transport one or more named commodities or a limited class of commodities is considered unduly restrictive but, if the commodity classification is broadened, the redefinition must conform either to one of the twenty-nine categories of the Standard Transportation Commodities Code (STCC), the [broad generic] commodities definitions set forth in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 (1952) and 766 (1953), or to any other broader class description previously recognized by the Commission. 659 F.2d at 463.

[6] 49 CFR 1165.2, formerly 49 CFR 1137.2.

[7] Since passage of the MCA we recognize that some rather narrow authorities have been issued, including certificates with broad territorial descriptions limited to service at facilities not precisely located. In response to this problem the Commission stressed in *Eckert Trucking, INc., Extension—Building Materials*, 132 M.C.C. 829, 830 (1982), that any facilities restriction is unacceptable in an application or future grants of new authority. Despite this determination, we are not inclined to revise the territorial aspects of the restriction removal rules. 49 CFR 1165.2d (a) and (b). As discussed in footnote 4, *supra*, the court concluded that our initial rules regarding territorial expansions were well-founded. With the uncertainty caused by the protracted litigation surrounding this proceeding, we do not seek to have the territorial aspects of the rules relitigated. In No. MC-141033 (Sub-No. 95)X, *Continental Carrier Corp., Territorial Broadening* (not printed), decided January 18, 1983, we advised applicants that hold

also assist in eliminating much of the confusion that has surrounded these proceedings during the last several years as a result of the litigation in these two proceedings.

In processing restriction removal applications, we will continue to use the expedited procedures set forth in 49 CFR 1165.11, Notice (formerly 49 CFR 1137.11) and 49 CFR 1165.14, Disposition of the application (formerly 49 CFR 1137.14), inasmuch as the Fifth Circuit found such procedures to be in compliance with the Administrative Procedure Act (APA) and general principles of administrative law. 659 F.2d at 461.

The proposed revised rules for implementation of the Fifth Circuit's holdings are set forth in the appendix to this notice. Comments are invited upon every aspect of these proposed rules, including the discussion in the text of this notice as set forth immediately above, and in Parts A, B, and C below.

A. Commodity Descriptions

1. *Applications in general.* The MCA required the Commission to establish a procedure, on application of individual motor carriers, "to reasonably broaden the categories of property authorized." 49 U.S.C. 10922(i)(1)(B)(i). In the second part of the initial rules the Commission set forth guidelines indicating what it considered to be a "reasonable" broadening of commodity descriptions.[8] In sum, these guidelines required that restriction removal applicants broaden their commodity descriptions using one of three sources: the two-digit STCC Code (as modified by the Commission),[9] one of the broad generic commodity descriptions contained in *Descriptions in Motor Carrier Certificates,* 61 M.C.C. 209 (1952) and 766 (1953), or a broad class description approved by the Commission, such as "commodities in bulk" or "Mercer commodities".

As discussed previously, the Fifth Circuit found these guidelines to be binding norms and noted that the Commission "has instead put each applicant into the Commission's mold while merely professing to allow opportunity for deviation." 695 F.2d at 465. While the court emphasized that "[t]he Commission's broadening of commodities classifications must be reasonable," it qualified that term by stating that " '[r]easonable' implies that the broadening must be rational, logically supportable, and fair." *Id.* at 464. It is our judgment based upon the experiences of the past several years under the MCA that use of the tripartite commodity descriptions have afforded restriction removal applicants more flexibility in the marketplace; have aided in business development; and have fostered competition and improved efficiency—two goals set forth in the national transportation policy. 49 U.S.C. 10101(a)(7). In the interests of promoting the goals of the national transportation policy, we would encourage restriction removal applicants to use these three commodity classification standards whenever their particular circumstances warrant. While we conclude that the three classification standards are presumptively reasonable, we recognize that an applicant's business judgment must control the scope of the expansion request. Therefore, in implementing the holding of the Fifth Circuit, we propose to allow an applicant to seek some other broad commodity classification, if it can show that the use of the three classification standards set forth above would: (1) Either require the transportation of commodities unrelated to those previously authorized or would require institution of a different type of service, *and* (2) that the carrier is not fit, or is unwilling, or is unable to provide the service. *See ATA I,* 659 F.2d at 464–65; *ATA II,* 669 F.2d at 962.

Therefore, if a carrier's particular circumstances indicate, under the court's two-pronged test above, that another classification is better suited to its operations, it may propose an alternative commodity description of its choice.[10] An application will not be adversely prejudged merely because it seeks a different commodity broadening than those suggested by the Commission. In those instances, however, the carrier's proposal should be accompanied by a succinct statement indicating the particular circumstances which warrant use of an alternative commodity description. Such statement should also include information showing that the proposed category is reasonably broad. The carrier may demonstrate this by explaining, for example, how the proposal would promote the goals of the national transportation policy or enhance the carrier's operations. We specifically request comments on this proposal.

Notwithstanding the addtional flexibility that will be accorded applicants in seeking expanded authority, there may be situations where the carrier seeks authority that we consider to be unreasonably narrow. Clearly a grant of unreasonably narrow authority would be contrary to Congress mandate in the MCA requiring us to ensure that authorities granted are reasonably broad to effect the purposes of the national transportation policy. 49 U.S.C. 10101(a)(7). Even prior to the MCA, the Commission developed a detailed analysis of the many different kinds of operating restrictions it considered unduly burdensome and provided guidelines for distinguishing unacceptable restrictions. *Fox-Smythe Transp. Co., Extension-Oklahoma,* 106 M.C.C. 1 (1967); *See also* Ex Parte No. MC–68, *Removal of Truckload Lot Restrictions,* 106 M.C.C. 455 (1968) and cases cited therein. As we have repeatedly recognized, less restrictive grants allow carriers (1) to meet the changing transportation needs of shippers, receivers, and consumers, (2) to take advantage of technological modifications within the industry, and (3) to adjust to changing industrial patterns. *See, e.g.,* No. MC–158495, *OHM Trucking Company, Common Carrier Application* (not printed), served June 29, 1982. Thus, in cases where we find the proposed expansion to be unreasonably narrow, the application will be rejected. This procedure for dealing with unreasonably narrow applications was suggested by the Fifth Circuit in its *ATA I* decision both for new applications and restriction removals, wherein the court wrote that "the statute gives the Commission discretion to deny applications for inconsequential expansion." 659 F.2d at 464 and 470. Moreover, this is consistent with our statutory authority as recognized by various courts. *See Chicago, St. P., M. & O. Ry. Co.* v. *United States,* 322 U.S. 1, 4 (1944); *McCracken* v. *United States,* 47 F. Supp. 444, 447 (D.C. Cir. 1942).

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authority to serve a broad territory limited to service at the facilities of a specific company whose locations are not stated in the certificate, that such restrictions may be removed expeditiously by filing either an OP–1 application or a petition to reopen the underlying proceedings for determination under the principles of *Eckert, supra.*

[8] In the notice of final rules, the Commission noted that the STCC would be used as an indication of the kinds of the broad, generic commodity descriptions found to be generally acceptable. The decision indicated, however, that any other description proposed by a carrier would be considered acceptable if it was as broad or broader than the STCC groupings. The Commission also determined that "it makes little sense to allow a carrier to seek a commodity classification which is narrower than the kinds of descriptions found in the three sources we have discussed." Ex Parte No. MC–142 (Sub-No. 1), *supra,* 45 Fed. Reg. at 86752; 132 M.C.C. at 387.

[9] In our companion rulemaking, in Ex Parte No. 55 (Sub-No. 43A), we propose to maintain the 29-category STCC Code initially developed, using those classifications merely as instructive guidelines as to the scope of commodity authorizations that the Commission considers reasonably broad under the MCA.

[10] Applicants should be forewarned that alternative commodity descriptions, which are designed to eliminate opposition to an application, do not constitute a sufficient reason to deviate from our standards.

We have already implemented this procedure with regard to not allowing bulk restrictions in specific commodity operating rights. *See* No. MC–143776 (Sub-No. 34), *C.D.B. Incorporated, Extension-Texas* (not printed), served March 2, 1983, *on appeal sub nom., Steere Tank Lines, Inc.* v. *ICC*, No. 82–4175 (5th Cir. filed May 5, 1982); *accord* No. MC–87451, *Cargo Transport, Inc., Common Carrier Application* (not printed), served March 2, 1983, *on appeal sub nom., Port Norris Express Co., Inc.* v. *ICC*, No. 82–3222 (3rd. Cir. filed June 7, 1982); and No. MC–148353 (Sub-No. 4), *Porter Lines, Incorporated, Extension-New York* (not printed), decided June 14, 1982. With respect to bulk restrictions in specific commodity authorities, the Commission has determined that such restrictions are contrary to the public interest in that they inhibit the development of competitive, efficient and economical interstate motor carrier transportation. *See C.D.B., supra,* and 49 U.S.C. 10922(i)(1)(B)(v). Such restrictions limit the method in which a carrier can transport specific commodities, thus making the authorization unduly narrow. Moreover, for decades the Commission has had a general policy against equipment restrictions. Therefore, when a carrier chooses a broader commodity authorization using these procedures, the specific commodity authority will not contain a restriction against bulk. This is consistent with the proposals in Ex Parte No. 55 (Sub-No. 43A).

Similarly, we do not consider it to be necessary for grants of specific commodities to contain restrictions against Classes A and B explosives or other hazardous materials. Therefore, when a carrier broadens its authority to one of the tripartite classifications or an alternative commodity description, the new description should not contain restrictions against Classes A and B explosives or other hazardous commodities. A and B explosives will continue to be excepted from grants of general commodities and may not be removed from authorities using these procedures. This is in conformance with our *ATA I* and *ATA II* and our decisions in Ex Parte No. 55 (Sub–No. 43B), *Acceptable Forms of Requests for Operating Authority—Classes A and B Explosives and Other Hazardous Materials*, 46 FR 22814 (April 21, 1981); 132 M.C.C. 554 (1981) (proceeding discontinued, by notice served March 16, 1983). In that proceeding, we pointed out that our previous policies have allowed both new entrants and existing carriers to receive unrestricted generic authority which allows the carrier to transport commodities with dangerous transportation characteristics. There, we concluded that "[the United States Department of Transportation] DOT safety efforts, insurance company examination, and the carrier's interests in self-preservation may be sufficient to protect the public." 132 M.C.C. at 558.

Other situations involving commodity broadenings which the Commission considers to be unduly narrow will be developed on a case-by-case basis.

2. *General commodities.* The court determined that within the context of general commodities authorizations, bulk and household goods transportation are specialized services requiring specialized equipment and facilities and skilled personnel. Accordingly, in contrast to authorities involving specific commodities, a showing above and beyond general fitness, willingness or ability to conduct basic operations is now required of both new applicants and those using the restriction removal procedures. We propose to modify the rules in this proceeding to require such an additional fitness showing if a general commodities applicant seeks to remove the commodities in bulk or a household goods exception.

Since a more specific showing of fitness, willingness, and ability is now required, we suggest that the preferable way for general commodities carriers to remove these two exceptions is to file an OP–1 (new application), supported solely with an applicant's verified statement. Unlike restriction removal, the OP–1 procedures were designed particularly with evidentiary matters in mind. Use of the new application procedures allow applicants to more fully develop showings of fitness, willingness, and ability. In Ex Parte No. 55 (Sub-No. 43A), we have set forth guidelines suggesting the kinds of evidentiary showings that could be submitted by general commodities carriers in order to demonstrate fitness, willingness, and ability to handle commodities in bulk and household goods.

While we conclude that the OP–1 procedures may generally be more appropriate for most general commodities carriers that seek to broaden their operations, this is not to foreclose such carriers from using the restriction removal procedures in situations where summary removal would be appropriate. Examples of such situations would include applications from (1) carriers that hold other certificates or permits authorizing the transportation of household goods or bulk commodities, or other grants of unrestricted general commodities authority, and (2) carriers already possessing specialized equipment, or carriers that are able to make some affirmative showing that they have handled those excepted commodities in the past. Statements by general commodities carriers which illustrate prior experience in handling commodities in bulk and household goods or refer to such authority in other certificates or permits, along with an affirmation of fitness, willingness, and ability would, in our opinion, fulfill the "specific showing" requirement.

Fitness requirements pertaining to bulk and household goods authorizations in grants or general commodities authority have been somewhat controversial. Therefore, within the framework of the discussion set forth above, we are particularly interested in receiving comments on our proposed rules allowing carriers to remove those two exceptions from general commodities authorities upon the kind of showing set forth above.

B. Scope of the "Fitness" Examination

The Fifth Circuit emphasized that "[i]n mandating the removal of unreasonable restrictions, the statute does not dispense with the requirement that every carrier be 'fit, willing, and able to provide the transportation authorized by the certificate.' " 659 F.2d at 464. In subsequent decisions the courts have construed the MCA to require a finding of fitness, willingness and ability in both applications for new authority [49 U.S.C. 10922(b)] and restriction removal [49 U.S.C. 10922(i)]. *See Ritter Transportation, Inc.* v. *ICC*, 684 F.2d 86, 87 (D.C. Cir. 1982), *cert. denied*, 51 U.S.L.W. 3647 (March 7, 1983); *Steere Tank Lines, Inc.* v. *ICC*, 666 F.2d 255, 258 (5th Cir. 1982), *cert. denied*, 51 U.S.L.W. 3648 (March 7, 1983). Accordingly, the definitional standards for determining fitness, willingness and ability, as set forth in Ex Parte No. MC–55 (Sub–No. 43A), will be applicable in restriction removal proceedings. The form of this showing and its detail, however, need not be as extensive in restriction removal proceedings as that required of new applicants. Indeed, while the courts have acknowledged that the form of the fitness showing and its detail are matters that should be determined by the Commission, they have indicated that the fitness showing for restriction removal applicants need not be elaborate or detailed. *See Ritter I, supra,* and *Steere Tank Lines, supra.* Of course, the quantum of proof required will differ from case to case, depending upon the

breadth of the expansion sought. *See B. J. McAdams* v. ICC, 698 F.2d 498, 503 (D.C. Cir. 1983). (ICC may tailor its scrutiny of the restriction removal applicant's fitness to the requested expansion in operating authority.) With the court's instructions in mind, we propose to outline generally the kinds of showings necessary to satisfy each of the three elements.

1. *Fitness.* Fitness includes safety considerations. *See B. J. McAdams, supra,* at 502 n.10. In demonstrating fitness, a carrier should indicate its knowledge of and, good faith intent to comply with the Commission's statutes and regulations (*i.e.*, insurance requirements), as well as the safety laws and regulations issued by the United States Department of Transportation (DOT). Since restriction removal applicants presumably are conducting operations under existing authority, a brief statement concerning the applicant's familiarity and willingness to comply with DOT regulations, coupled with a statement that it is in compliance with applicable Commission regulations, would meet the first prong of the tripartite test.

2. *Willingness.* This aspect of "fitness" bears directly upon the authority sought by an applicant. Where an applicant seeks expanded operating authority from the Commission, we conclude that it is reasonable to presume that the applicant is willing to perform the service if authorized. This presumption, however, is subject to the caveat that the Commission may reject a proposal as being unreasonably narrow or where such description gives the appearance of satisfying litigative interests. *See* discussion in Part A, *supra.*

3. *Ability.* Since in most instances "fitness" and "willingness" of a restriction removal applicant could be inferred from the fact that it conducts safe operations under existing authority and has sought expanded authority, the major question in restriction removal applications is the applicant's ability to perform the expanded service. This concept of ability addresses the applicant's ownership of or access to equipment and facilities necessary to perform the proposed operations.[11]

Accordingly, where a carrier has existing equipment and its operations involve the same or similar commodities, we conclude it is reasonable to presume that it is fit to perform the service proposed. Indeed, the courts have approved this approach in numerous cases. In *Steere Tank Line, Inc.* v. *ICC,* 687 F.2d 104, 106 (5th Cir. 1982), *cert. denied,* 51 U.S.L.W. 3685 (March 21, 1983), the court found a small carrier seeking authority to transport petroleum and petroleum products between points in Texas and New Mexico who already engaged in the petroleum hauling business in Texas to be fit, willing, and able to perform the sought service. *See also J. H. Rose Truck Lines* v. *ICC,* 683 F.2d 952, 955 (5th Cir. 1982) (fitness proven through prior leasing experience); *J. H. Rose Truck Lines.* v. *ICC,* 683 F.2d 943, 949 (5th Cir. 1982) (applicant need not own terminals if it arranges for truck maintenance and repair elsewhere); *American Trucking Ass'ns.* v. *ICC,* 669 F.2d 957, 963 n.7 (5th Cir. 1981) (Commission need not require possession of specialized equipment and can infer fitness from past successful operations), *Baggett Transportation Co.* v. *United States,* 668 F.2d 524, 527 (11th Cir. 1982) (past successful operations demonstrated fitness).

Thus, in our view, since restriction removal applications by definition involve carriers with existing operations and equipment, all that we will normally require is a statement to that effect. Indeed, the United States Court of Appeals for the District of Columbia has already acknowledged that "prior operations of a described kind might well serve as a sufficient indicator of fitness for certain expansions." *Ritter Transportation, Inc.,* v. *I.C.C.,* 697 F.2d 1153, 1155 n.1 (D.C. Cir. 1983) (*Ritter II*) When carriers seek to broaden their authority from a single commodity within a much larger commodity classification which requires different equipment than presently utilized, however, they should indicate their ability to obtain that equipment through purchase, lease, use of owner-operators, or other means.[12] Reference to similar existing operations authorized by a carrier's other certificates, or operations under intrastate or temporary authority may also be used to support a particularly broad commodity expansion. *See Steere Tank Lines* v. *ICC,* 694 F.2d 413, 420 (5th Cir. 1982) (court upheld the reasonableness of expanding one narrow commodity in bulk to commodities in bulk based on the existence of numerous existing certificates authorizing the transportation of a wide variety of commodities in bulk). Of course, as we have discussed above, removal of household goods or bulk restrictions in general commodities authority requires an additional specific showing of fitness.

C. Other Considerations

As we mentioned previously, we are not modifying the procedures pertaining to the expedited processing of restriction removal applications. Among other things, these procedures provide that "[a]pplications will be published in the **Federal Register** [13] in the form of tentative decisions granting the authority requested." 49 CFR 1165.13(b), formerly 49 CFR 1137.13(b). Applications will continue to be screened prior to publication to insure that the application is complete, contains the necessary showing for fitness, willingness, and ability, and that applicant's proposed expansion is reasonable. In order to meet the court's mandate, however, some revisions are necessary to our rules so to afford "some opportunity for opposition to the application to be voiced." 659 F.2d at 465; 669 F.2d at 962. Our previous rules prescribed that "[c]omments should be directed to (1) either the merits of the particular proposal, or (2) whether the proposal should properly be considered under these rules." 49 CFR 1165.12, Participation of interested persons (formerly 49 CFR 1137.12). Parties were also permitted to raise issues pertaining to an applicant's unfitness on safety grounds. We now propose that carriers, in addressing the merits of the proposal, be allowed to comment upon the reasonableness of the proposed commodity expansion and the applicant's fitness, willingness and ability to perform the broadened operations. Comments are sought on this proposal.

Secondly, although the initial restriction removal rules never expressly provided for the removal of Alaska and Hawaii from common carrier certificates authorizing operations to 48-contiguous states,

[11] Although a specific showing of ability is required where an applicant seeks to remove the household goods or bulk exceptions from its general commodity authority, as discussed in Part A *supra,* we do not consider it necessary for applicants to make a *specialized* showing of ability in other situations.

[12] In *Steere Tank Lines* v. *ICC,* 675 F.2d 103, 105 (5th Cir. 1982) the court stated, "there is no requirement that a carrier be able quantitatively to perform all or any substantial part of the transportation in all covered areas." The Fifth Circuit indicated it is enough that an applicant is willing and able to obtain equipment since it would not be prudent business practice for a carrier to operate terminals or buy equipment before it knows whether the authority it seeks will be granted. *Id.* at 104 n.2.

[13] In our recent decision in Ex Parte No. MC-163, *Procedures For Providing Notice of Specified Applications Through An ICC Register in Lieu of Federal Register Notice,* 48 FR 32175 (July 14, 1983) we decided to establish an *ICC Register.* Notices of the filing of motor carrier related applications, including restriction removal applications, will appear in the ICC Register rather than the **Federal Register.** The first issue of the *ICC Register* will be published on September 1, 1983.

carriers were, at one time, allowed to use these rules to remove those exceptions. As we discuss in Ex Parte No. 55 (Sub-No. 43a), a specific showing of fitness, willingness, and ability, and public need, is now required in order to receive the right to serve Alaska and Hawaii in a grant of nationwide authority. *See ATA I*, 659 F.2d at 473–74. Therefore, because of the directive in *ATA I* and *II* towards new applicants, and a subsequent court decision,[14] use of the restriction removal procedures is not the proper forum for applicants seeking removal of the Alaska and Hawaii exceptions.[15] In order to do so, carriers are requested to use the OP–1 application procedures. Contract carriers may continue to use the procedures in 49 CFR 1165.26 to obtain expanded territorial authority between points in the United States because 49 U.S.C. 10923(d)(1) prohibits grants that are less than nationwide in scope.

Environmental and Energy Considerations

The proposed revised rules do not appear to affect significantly the quality of the human environment or conservation of energy resources. However, we specifically invite interested parties to comment on these issues.

Regulatory Flexibility Analysis

The Commission is reopening this proceeding in order to revise the restriction removal rules in compliance with the United States Court of Appeals' mandate in *American Trucking Ass'ns. v. ICC*, 659 F.2d 452 (5th Cir. 1981), clarified and enforced by mandamus in 669 F.2d 957 (5th Cir. 1982), *cert. denied*, 51 U.S.L.W. 3649 (March 7, 1983).

These rules were adopted initially pursuant to Congressional directives in Section 6 of the Motor Carrier Act of 1980, 49 U.S.C. 10922(i)(1). The restriction removal rules have permitted motor carriers to use expeditious procedures in reasonably broadening categories of property; eliminating unreasonable or excessively narrow territorial limitations, or other restrictions which the Commission deems to be wasteful of fuel, inefficient, or contrary to the public interest; authorizing service to intermediate points; and providing for round trip operations where one-way authority exists. Numerous small entities have already used the procedures to reform their authorities.

These proposed rules will continue to allow carriers to remove backhaul and territorial restrictions, thus allowing for greater efficiency in operations. While we have modified our initial rules somewhat, our proposal still provides for the reasonable broadening of categories of property authorized by the carrier's certificate or permit. Receipt of such expanded, unrestricted authority provides carriers with greater opportunities to compete more effectively in the marketplace. Therefore, the rules will continue to have a significant economic impact upon a substantial number of small entities.

We invite comments on the foregoing issues.

Conclusions

We propose:

To revise pertinent sections of title 49, Code of Federal Regulations, Part 1165, as described in the appendix to this notice, in order to comply with the United States Court of Appeals' mandate in *American Trucking Ass'ns v. ICC*, 659 F.2d 452 (5th Cir. 1981), clarified and enforced by mandamus in 669 F.2d 957 (5th Cir. 1982).

This notice is issued pursuant to 49 U.S.C. 10321 and 10922(i) and 5 U.S.C. 553.

List of Subjects in 49 CFR 1165

Administrative practice and procedure, Buses, Motor Carriers, Freight Forwarders.

Decided: July 25, 1983.

By the Commission, Chairman Taylor, Vice Chairman Sterrett, Commissioners Andre and Gradison. Chairman Taylor concurred in part and dissented in part and will submit a separate expression at a later date.

Agatha L. Mergenovich,

Secretary.

Appendix

Proposed Revisions to the Code of Federal Regulations, Title 49 Part 1165 [1]

Title 49 CFR Part 1165, would be amended as follows:

PART 1165—[AMENDED]

1. Section 1165.2 would be revised to read as follows:

§ 1165.2 Applicability of rules.

Applications may be filed under these rules to remove restrictions or to broaden authority in certificates and permits issued pursuant to applications filed before (the effective date of the rules). Motor carriers of passengers may file applications under these rules to remove intermediate point restrictions in certificates issued pursuant to applications filed before November 19, 1982.

2. Section 1165.10(b) would be amended by redesignating paragraph (6) as paragraph (7) and adding a new paragraph (6) to read as follows:

§ 1165.10 Form and content of application.

* * * * *

(b) * * *

(6) A brief statement, where the applicant is a motor carrier of property, affirmatively indicating that it is fit, willing, and able to perform the broader service to be authorized.

* * * * *

3. Section 1165.12(a) would be amended by revising paragraph (a)(1) to read as follows:

§ 1165.12 Participation of interested persons.

* * * * *

(a) * * *

(1) The merits of the particular proposal, including in property applications the reasonableness of the sought commodity expansion, and applicant's fitness, willingness, and ability to perform operations under the broadened authority, or

* * * * *

4. Section 1165.21 would be revised as follows:

§ 1165.21 Commodity descriptions.

(a) *General commodities carriers.* Where a carrier is authorized to

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[14] In *B.J. McAdams, Inc. v. ICC, supra*, at 506, the court of appeals concluded that in an application where the exception of Hawaii was removed, the Commission's "policy" does not rationally implement the requirement that an applicant establish its fitness to operate under the expanded license.

[15] The Commission has followed this policy since the issuance of the *ATA I* decision.

[1] Due to the revision and redesignation of the Commission's Rules of Practice [49 FR 49534 (November 1, 1982)], 49 CFR Part 1137 has been redesignated as 49 CFR Part 1165. Two rulemaking proceedings instituted after the adoption of rules in Ex Parte No. MC–142 (Sub-No. 1) have amended and revised numerous sections and paragraphs of 49 CFR Part 1165. First, in Ex Parte No. MC–142 (Sub-No. 2), *Freight Forwarder Restriction*, 47 FR 31281 (July 19, 1982), 47 FR 39687 (September 9, 1982), 132 M.C.C. 832 (1982), the Commission amended the restriction removal rules to afford freight forwarders access to the procedures for reformations of authority as contemplated by 49 U.S.C. 10922(i)(B)(1). On October 8, 1982 the United States Court of Appeals for the Fifth Circuit issued a stay of those rules, pending judicial review. *Global Van Lines, Inc. et al. v. ICC*, U.S.C.A., 5th Cir. No. 82–4284. Second, in implementing Section 7 of the Bus Regulatory Reform Act of 1982, the Commission adopted rules enabling passenger carriers to remove restrictions in outstanding certificates that limit service along certificated interstate routes. Ex Parte No. MC–142 (Sub-No. 3), *Removal of Restrictions from Authorities of Motor Carriers of Passengers—Intermediate Points*, 47 FR 53286 (November 24, 1982); 133 M.C.C. 35 (1982). As a result of those two rulemakings the heading of 49 CFR Part 1165 now reads: REMOVAL OF RESTRICTIONS FROM AUTHORITIES OF MOTOR CARRIERS OF PROPERTY, MOTOR CARRIERS OF PASSENGERS AND FREIGHT FORWARDERS.

transport general commodities, restrictions having the effect of precluding the transportation of Classes A and B explosives are not considered unduly restrictive and are not normally subject to removal under these procedures. Other restrictions on the commodities which a general commodities carrier may transport are considered unduly restrictive and usually may be removed under these procedures. In order to remove the household goods or commodities in bulk restrictions, a general commodities carrier must make a specific showing of its fitness, willingness, and ability to transport those commodities.

(b) *Named commodities or limited classes of commodities.* Where a carrier is authorized to transport one or more named commodities, the authority is considered unduly restrictive and may normally be broadened under these procedures. The same is true where a carrier is authorized to transport a limited class of commodities, except as indicated in paragraph (c) of this section. Commodity classes which carry designations of three digits or more in the Standard Transportation Commodity Code are normally considered unduly narrow. Use of these procedures is normally appropriate for applications which seek—

(1) To expand such a commodity authorization to the two-digit STCC level; or

(2) To replace such an authorization with a commodity description such as the broad generic groupings contained in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 (1952) and 766 (1953); or

(3) To replace such an authorization with a broader class description generally accepted by the Commission, such as commodities in bulk, commodities which because of their size or weight require special equipment, or oilfield commodities as described in *Mercer Extension—Oil Field Commodities*, 74 M.C.C. 459 (1946); or

(4) To replace such an authorization with a broad commodity description other than those in paragraphs (b) (1), (2) or (3) of this section, upon a showing that use of any of the above three commodity classifications would either require the transportation of commodities unrelated to those previously authorized or would require the institution of a different type of service *and* that the carrier is not fit or is unwilling or is unable to provide the service.

(c) *Commodities dealt in by a particular business.* Where a carrier is authorized to transport "such commodities as are dealt in by" a particular industry, such as mail order houses or retail grocery stores, the authority is not considered excessively narrow, and applications for modification should not normally be filed under these procedures.[2]

[FR Doc. 83-21772 Filed 8-9-83; 8:45 am]
BILLING CODE 7035-01-M

[2] The Commission rules will remain unchanged in this particular paragraph under § 1165.21. The Fifth Circuit did not find fault with the Commission's conclusions with respect to the "such commodities" descriptions as set forth above. Accordingly, comments on this rule would exceed the scope of this reopened proceeding and, therefore, will not be considered.

Notices

Federal Register
Vol. 48, No. 155
Wednesday, August 10, 1983

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ACTION

Information Collection Request Under Review

AGENCY: ACTION.

ACTION: Information collection request under review.

SUMMARY: This notice sets forth certain information about an information collection proposal by ACTION, the national volunteer agency.

SUPPLEMENTARY INFORMATION:

Background

Under the Paperwork Reduction Act (44 U.S.C. Chapter 35), the Office of Management and Budget (OMB) reviews and acts upon proposals to collect information from the public or to impose recordkeeping requirements. ACTION has submitted the information collection proposal described below to OMB. OMB and ACTION will consider comments on proposed collection of information and recordkeeping requirements. Copies of the proposed forms and supporting documents (request for clearance (SF 83), supporting statement, instructions, transmittal letter and other documents) may be obtained from the agency clearance officer.

Information About This Proposed Collection

Agency Clearance Officer—William W. Lovelace 202–634–9310.

Agency Address: ACTION, 806 Connecticut Ave., N.W., Washington, D.C. 20525.

Office of ACTION Issuing Proposal: Office of Policy and Planning/ Evaluation Division.

Title of Form: Impact Evaluation of LTC Demonstration Research Projects (RSVP & SCP): Round Two Data Collection.

Type of Request: New/Revision/ Extension (adjustment to burden)/ Extension (no burden change)./ Reinstatement

Frequency of Collection: Nonrecurring.

General Description of Respondents: Individuals—Participants and matched comparison groups of SCP and RSVP programs.

Estimated Number of Annual Responses: 915.

Estimated Annual Reporting or Disclosure Burden: 686 hours.

Respondent's Obligation to Reply: Voluntary/Required for obtaining benefit/Mandatory.

Person responsible for OMB Review: James L. Thomas, 202–395–6880.

William W. Lovelace,

ACTION Clearance Officer.

[FR Doc. 83–21842 Filed 8–9–83; 8:45 am]

BILLING CODE 6050–01–M

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Forms Under Review by Office of Management and Budget

August 5, 1983.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Pub. L. 96–511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Marshall L. Dantzler, Acting Department Clearance Officer, USDA, OIRM, Room 108–W Admin. Bldg., Washington, D.C. 20250, (202) 447–6201.

Comments on any of the items listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503, ATTN: Desk Officer for USDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

Revised

- Forest Service
- Application for Transportation and Utility Systems and Facilities on Federal Lands
- SF 299
- On occasion
- Individuals or households, state or local governments, farms, businesses, Federal agencies, nonprofit insitutions: 50 responses; 200 hours; not applicable under 3504(h)
- James M. Dear (703) 235–2410
- Forest Service
- Special-Use Application and Report
- FS 2700–3
- On occasion
- Individuals or households, state or local governments, businesses, farms, Federal agencies, nonprofit institutions: 2,000 responses; 8,000 hours; not applicable under 3504(h)
- James M. Dear (703) 235–2410
- Food and Nutrition Service
- Child Care Food Program Regulations (Part 226) and Related Forms FNS 341, 342, 343, 344, 345, 345–1, 430, 431, 432, 433, 82 Monthly, annually, on occasion
- State or local government, business, Federal agencies, nonprofit institutions: 381,389 responses; 1,300,524 hours; not applicable under 3504(h)
- Norma D. Bell (703) 756–3888

Dewayne E. Hamilton,

Acting Department Clearance Officer.

[FR Doc. 83–21734 Filed 8–9–83; 8:45 am]

BILLING CODE 3410–01–M

Commodity Credit Corporation

1983 Peanut program; Notice of Determination

AGENCY: Commodity Credit Corporation USDA.

ACTION: Notice of determination—1983-Crop Peanut Price Support Differentials

for Warehouse and Farm-Stored Loan Program.

SUMMARY: This notice of determination sets forth specific price support loan and purchase rates for the 1983-crop of quota and additional peanuts which reflect adjustments for differences in type, quality, location and other factors. These adjusted loan and purchase rates apply to both warehouse-stored loans and farm-stored loans. The adjustments are made in accordance with Section 403 of the Agricultural Act of 1949 ("The 1949 Act").

EFFECTIVE DATE: August 19, 1983.

FOR FURTHER INFORMATION CONTACT: Robert G. Burton, Tobacco and Peanuts Division, ASCS, USDA, Room 5723 South Building, P.O. Box 2415, Washington, D.C. 20013, (202) 447-7127. The Final Analysis describing options considered in developing this determination and the impact of implementing such options is available upon request from Mr. Burton.

SUPPLEMENTARY INFORMATION: This notice of determination has been reviewed under USDA procedures in accordance with Executive Order 12291 and Secretary's Memorandum No. 1512-1 and has been classified "not major". It has been determined that this determination will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local governments, or geographical regions; or (3) significant adverse effects on competition, employment, investment productivity, innovation or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The title and number of the Federal assistance program to which this determination applies are: Commodity Loans and Purchases, 10.051, as found in the Catalog of Federal Domestic Assistance.

It has been determined that the Regualtory Flexibility Act is not applicable to this notice of determination since the Commodity Credit Corporation is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this determination.

Under the provisions of the 1949 Act, the Secretary is required to announce price support levels for quota peanuts (peanuts marketed under a quota held by or acquired by the producer) and additional peanuts (non-quota peanuts). The 1983 quota support level of $550 per ton was announced on February 28, 1983. The 1983 additional peanut support level of $185 per ton was announced on February 15, 1983. Section 403 of the 1949 Act provides that adjustments may be made in these support levels for type, quality, location and other factors. Section 403 also provides that on the application of such adjustments the average level of support shall, to the extent practicable, be equal to the support level announced by the Secretary for the crop year involved.

A Notice of Proposed Determination regarding adjustments in the levels of price support for the 1983 crop of peanuts was published in the **Federal Register** on May 11, 1983 (48 FR 21153). The notice proposed to continue the differentials that were in effect for the 1982—crop. There were 39 commenters on the proposal: 19 individual producers, 13 peanut sheller/handlers, four grower organizations, two peanut processor/manufacturers, and one government organization. Many of the commenters made more than one suggestion for changing, for the 1983-crop, and adjustments which applied to the 1982 crop.

Eight commenters suggested that the basic differentials be changed to make the base value for Sound Mature Kernels (SMK) uniform for all peanut types: i.e., uniform for Virginia, Runner, Spanish and Valencia-type peanuts. Under the differentials which applied to the 1982-crop and all preceding crops since 1976, the base SMK value for Virginia-type peanuts has been 2 percent higher than the SMK value for Runner-type peanuts. For Spanish-type peanuts, the base SMK value has been ½ percent higher than the Runner SMK value. The Valencia SMK value has not been established as a proportion of any other SMK value.

Thirty-one commenters suggested that a uniform excess moisture level be used for all peanut types and areas. The present differentials—i.e., those which applied to the 1982-crop—call for a deduction for excess moisture for peanuts in the Virginia-Carolina area when the moisture level exceeds 8 percent of the gross weight of the peanuts, whereas such deductions are made for peanuts in the traditional peanut-growing States of the Southwestern and Southeastern areas when the moisture level exceeds 7 percent of gross weight. Three commenters recommended a uniform level for excess moisture of 8 percent. Twenty-eight commenters suggested that the excess moisture level be made uniform at 7 percent.

Six commenters suggested that the premium for extra Large Kernels (ELK) for Virginia-type peanuts be reduced from the present 45-cents for each percentage of ELKs to 30 cents for each percentage of ELKs. Twenty commenters suggested that the premium for Virginia-type ELKs be limited to a maximum percentage of the particular peanuts offered for price support, which would mean that no premium would be paid for ELKs in excess of a certain percentage. These commenters varied in the maximum percentage level they recommended as a cap for the ELK premium. The highest recommended maximum percentage level was 32 percent. Under the recommendation for a 32 percent maximum percentage level for example, no premium would be paid for ELKs in excess of 32 percent of the gross weight of the particular peanuts involved. Four commenters recommended lowering the ELK premium but did not specify the level to which it should be reduced. Four commenters recommended continuation of the present premium of 45 cents for each percentage of ELKs. One commenter recommended that there be no premium on ELK. One commenter recommended that there be no premium on ELKs.

One commenter suggested that in taking ELKs into account in the calculation of 1983 differentials, the expected occurrence of ELKs in the 1983-crop of Virginia-type peanuts should be based on the average of the ELKs in the past 2 marketing seasons rather than on a 5-year average. Five-year averages are traditionally used by the agency for estimating the expected incidence of quality factors. One other commenter suggested that a 3-year average be used for estimating the expected incidence of ELKs in the 1983-crop.

One commenter said that the national average additional peanut support level of $185/ton which was established for the 1983-crop by the Secretary is too low.

Seven commenters supported adoption of the proposed determination as published in the **Federal Register**.

The commenters recommending changes in the differentials themselves—i.e., those commenters other than the commenter who addressed the basic support level of $185/ton for 1983 additional peanuts—suggested that such changes are needed to make Virginia-type peanuts competitive in the market. It has been determined, however, that the 1982 differentials should be maintained for an additional crop year except that the differentials have been adjusted, as is customary, to reflect expected production weights and incidences of

quality factors in the 1983-crop estimated on the basis of a 5-year average of the occurrences of such factors in previous crop years. In using a 5-year average, figures from the 1980-crop have been excluded because of the extreme drought conditions which existed that year.

If Virginia-type peanuts were not currently competitive, it would be expected that large quantities of such peanuts would be crushed for oil and meal because of the absence of a vigorous edible use market for such peanuts. Crushing produces the lowest returns to producers and the diversion of peanuts to crushing results in losses to CCC. The sales of Virginia-type peanuts for crushing, however, have been at a minimum. In 9182, more than 348,000 tons of Virginia-type peanuts were produced. Of that amount, less than 5,000 tons were crushed. Thus, crushing accounted for only about 1 percent of the total 1982 Virginia-type peanut production. That figure is far smaller than the percentage of crushing for Runner-type peanuts. Virginias and Runners are the leading peanut type in terms of total production. Runner and Virginia-type peanuts together account for approximately 93 percent of United States peanut production.

The higher SMK value assigned to Virginia-type peanuts under present differentials, the higher triggering moisture levels for peanuts in the Virginia-Carolina area where Virginia-type are traditionally grown, and the ELK premium reflect traditional levels of demand between peanut types and reflect the fact that Virginia-type peanuts have traditionally been utilized in commercial markets where large whole kernels are particularly desirable. Insofar as the moisture level is concerned, drier peanuts split more easily.

There is a high edible use demand for Virginia-type peanuts and no reason to concluded that demand for the 1983-crop of such peanuts will be any less vigorous than the demand for the 1982-crop. In addition, under the proposed differentials, the quota support level for an average gross ton of Virginia-type peanuts is actually less than the level which is applicable to the Runner-type peanut, due to the normal composition of an average gross ton of Virginia-type peanuts. Adopting the suggested changes would further lower the support for Virginia-type peanuts and increase that difference in price support levels between the two types of peanuts. The edible use level of Virginia-type peanuts is already at or near the maximum expected 1983 production of quota and additional peanuts of the Virginia-type. Therefore, it is highly doubtful that a reduction in the support level for Virginia-type peanuts could produce any increase in edible sales significant enough to offset the reduction in producers' revenue caused by an abrupt reduction in the support level for this type of peanut for the 1983-crop year.

Furthermore, producers of other peanut types could be adversely affected as well by the adoption of the suggested changes. Under section 403 of the 1949 Act the average support price for a commodity must equal, as nearly as possible after the application of the differentials, the national average level of support established by the Secretary (i.e., $550/ton for quota peanuts for the 1983-crop year and $185/ton for additional peanuts for the 1983-crop year). Reducing the support level for Virginia-type peanuts would thereby require compensatory increases in the support level for other peanut types. This would mean that, using the differentials, the support level calculated, for other peanut types would increase. However, to the extent that such increases in price would, as expected, discourage sales of these other peanut types for edible uses, the net effect could be a reduction in the return to producers of other peanut types and potential losses to CCC on quota peanuts pledged as collateral for a price support loan which may eventually have to be sold for crushing. With respect to additional peanuts which would be displaced, producers would lose the difference between the quota support level, at which peanuts purchased for edible uses must be bought, and the level of price support for additional peanuts. For 1983, this difference is nearly $400/ton.

Not all of the suggested modifications for Virginia-type peanuts, would, as such, produce an increase in the levels of support for other peanut types. A decrease in the maximum permissible moisture level for peanuts in the Virginia-Carolina area to 7% would mean only that the actual amount of a gross ton of peanuts which could be considered eligible for support would be reduced; i.e., the eligible net weight of the Virginia-type peanuts for support purposes would be reduced. Nonetheless, this would reduce the return on Virginia-type peanuts to producers of that type and would not reflect the value of the higher moisture level for peanuts in the Virginia-Carolina area.

The commenters have also suggested that in taking ELKs into account in the calculation of the differential determinations, a two-year average or three-year average should be used to determine the expected incidence of ELKs in the 1983-crop. ELKs in Virginia-type peanuts increased in 1982 and the commenters urge that new varieties of Virginia-type peanuts will make the presence of ELKs more likely for the 1983-crop and upcoming crops. However, weather may have played a large role in the 1982 increase. Further, the commenters on this question have indicated that new varieties will account for about 30 percent of expected production of Virginia-type peanuts in 1983. In any event, the 1982 increase standing along does not in the Department's view produce a sufficient basis on which to override the advantages of a 5-year average which avoids skewed results which may be due to weather and other variables. In 1976, for example, the level of ELKs increased to a level which was about the same as the level reached last year. In the year following the high 1976 level, the ELK level for Virginia-type peanuts dropped markedly. The 1982 increase is reflected in the rolling 5-year average utilized by the agency and if new varieties do produce a marked, identifiable acceleration of the trend in ELKs, a revision of the 5-year average may prove to be warranted insofar as future crop years are concerned. To date, however, there has been no such trend nor such a substantial increase in ELKs as would warrant the adoption of a shorter averaging period.

The single comment directed at the basic additional support level for the 1983-crop is outside the scope of this Notice of Determination. The additional support level was considered under a proposal issued on January 25, 1983 (48 FR 3389). The $185/ton figure, in any event, is the level which has been estimated will avoid losses to CCC on additional peanuts pledged as loan collateral under the 1983 price support program.

With respect to the substantial changes suggested regarding Virginia-type peanuts, it is the concern of the commenters that Runner-type peanuts have an unfair advantage in competing for certain uses, such as roasted nut uses, for which Virginia-type peanuts have traditionally been used. Because of these concerns, the possible effect of changes in peanut markets on the price support program and the fact the differentials have not been changed substantially since 1976, the Department is considering seeking further comments for the 1984-crop on the issues raised by the commenters regarding Virginia-type peanuts. For the reasons given, however,

it has been determined that no change from the proposed differentials is justified for the 1983-crop year. In addition, making substantial changes in the differentials for the 1983-crop at this time would be highly disruptive and could not either increase or decrease the supply of any peanut type for 1983 since the crop has already been planted.

In adopting the proposed determination for carrying forward the basic 1982 differentials, the differentials for farm-stored loans for the 1983 crop, as in 1982, will continue to be the same, except as otherwise indicated, for peanuts pledged as collateral for price support loans at warehouses. Also, as with last year's crop, the value of additional peanuts for price support purposes will, in effect, be calculated by using a two-step process. The first step is to calculate the level at which the peanuts would be supported if the particular peanuts involved were quota peanuts. That figure is then reduced by a factor that represents the ratio of the national average support level for additional peanuts for the 1983-crop ($185/ton) by the national average support level for quota peanuts for the 1983-crop ($550/ton). That figure for the 1983 crop year is .3364.

Determination

(a) *Average 1983 support values by type per average grade ton of peanuts.*

(1) *Support Value for Warehouse-Stored Loans:*

Type	Per average grade ton
Virginia	$544.71
Runner	553.77
Spanish	528.86
Valencia:	
Southwest area—suitable for cleaning and roasting	544.71
Southwest area—not suitable for cleaning and roasting	528.86
Areas other than Southwest	528.86

(2) *Support Value for Farm-Stored Loans:*

Types	Per average grade ton
Virginia	$545
Runner	554
Spanish	529
Valencia:	
Southwest Area	545
Areas Other Than Southwest	529

(b) *Calculation of Support Prices for Quota Peanuts.*

The support price per ton for 1983-crop quota peanuts of a particular type and quality shall be calculated on the basis of the following rates, premiums, and discounts (with no value assigned to damaged kernels), except that the minimum support value for any lot of eligible peanuts of any type shall be 8 cents per pound of kernels in the lot:

(1) *Kernel value per ton excluding loose shelled kernels.*

(i) The price per ton for each percent of sound mature and sound split kernels shall be:

Type	Per percent
Virginia	$7.910
Runner	7.755
Spanish	7.794
Valencia:	
Southwest area—not suitable for cleaning and roasting	8.184
Southwest area—suitable for cleaning and roasting	7.794
Areas other than Southwest	7.794

(ii) The price per ton for each percent of other kernels shall be: All types, per percent, $1.40

(iii) The premium per ton for each percent of extra large kernels for Virginia-type peanuts shall be: $045. However, no premium for extra large kernels shall be applicable to any lot of such peanuts containing more than 4 percent damaged kernels.

(2) *Price of Loose Shelled Kernels Per Pound.* The price for each pound of loose shelled kernels shall be: All types, per pound, $0.07.

(3) *Foreign material discount.* For all types of peanuts, the discount per ton for foreign material shall be as follows:

Percent	Discount
0 to 4	$0
5	1.00
6	2.00
7	3.00
8	4.00
9	5.00
10	6.00
11	7.00
12	8.50
13	10.00
14	11.50
15	13.00
16 and over	(1)

[1] For each full percent in excess of 15 percent deduct an additional $2.

(4) *Sound split kernel discount.* For all types of peanuts, the discount per ton for sound split kernels shall be as follows:

Percent	Discount
1 through 4	$0
5	1.00
6	1.60
7 and over	(1)

[1] For each full percent in excess of 6 percent deduct an additional $0.80.

(5) *Damaged kernel discount.*

(i) For all types of peanuts, the discount per ton for damaged kernels shall be as follows:

Percent	Discount
1	$0
2	3.40
3	7.00
4	11.00
5	25.00
6	40.00
7	60.00
8 to 9	80.00
10 and over	100.00

(ii) Not withstanding the above discount schedule, the damaged kernel discount for Segregation 2 peanuts transferred from additional to quota loan pools shall not exceed $25 per ton.

(6) *Price adjustment for peanuts sampled with other than a pneumatic sampler.* The support price per ton for Virginia-type peanuts sampled with other than a pneumatic sampler shall be reduced by $0.10 per every percentage point of sound mature and sound split kernels.

(7) *Mixed type discount.* Individual lots of farmer stock peanuts containing mixtures of two or more types in which there is less than 90 percent of any one type will be supported at a rate which is $10 per ton less than the support rate available to the type in the mixture having the lowest support rate.

(8) *Location adjustments.*

(i) Farmers stock peanuts delivered to the associations for a warehouse stored loan for price support advances in the States specified, where peanuts are not customarily shelled or crushed, shall be discounted as follows:

State	Per ton
Arizona	$25
Arkansas	10
California	33
Louisiana	7
Mississippi	10
Missouri	10
Tennessee	25

(ii) Farmers stock peanuts placed under farm stored loan for price support advances in the States where peanuts are not customarily shelled or crushed, shall be discounted as follows:

(A) In States specified in paragraph (8)(i), the peanuts shall be discounted as specified therein.

(B) In Puerto Rico and all other States, territories and possessions of the United States (excluding the States specified in paragraph (8)(i) and Alabama, Florida, Georgia, New Mexico, North Carolina, Oklahoma, South Carolina, Texas, and

Virginia), the peanuts shall be discounted at $40.00 per ton.

(9) *Virginia Type Peanuts.* Virginia type peanuts, to receive peanuts price support as Virginia type, must contain 40 percent or more "fancy" size peanuts, as determined by a presizer with the rollers set at 31/64 inch space. Virginia type peanuts so determined to contain less than 40 percent "fancy" size peanuts will be supported (but not classed) as though they were Runner type.

(10) *Discount for Aspergillus Flavus Mold (Segregation 3 peanuts).* There will be no discount applied to segregation 3 peanuts for Aspergillus flavus mold when such peanuts are placed under loan at the additional loan rate. Should such peanuts later be transferred to a quota loan pool under 7 CFR 1446.66, they will be discounted at the rate of $25 per net ton from the quota price support rate.

(c) *Calculation of support values for additional peanuts.* The support price per ton for 1983-crop additional peanuts of a particular type and quality shall be calculated on the basis of 33.64 percent of the same rates, premiums, and discounts as are applicable to quota peanuts. This percentage has been computed by dividing the national average support rate per ton for 1983-crop additional peanuts by the national average support rate per ton for 1983-crop quota peanuts.

Signed at Washington, D.C. on August 5, 1983.

Everett Rank,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 83-21760 Filed 8-9-83; 8:45 am]

BILLING CODE 3410-05-M

CIVIL AERONAUTICS BOARD

[Docket 41619]

U.S. Aviation, Inc., d.b.a. Air U.S.; Application To Surrender Its Section 401 Certificate and Reinstate Its Part 298 Authority

Notice is hereby given that on August 2, 1983, U.S. Aviation, Inc., d.b.a. Air U.S., filed an application with the Civil Aeronautics Board in Docket 41619 to surrender its section 401 certificate and reinstate its Part 298 operating authority.

Dated at Washington, D.C., August 4, 1983.

Ava B. Kleinman,

Chief, Legal Division, Bureau of Domestic Aviation.

[FR Doc. 83-21846 Filed 8-9-83; 8:45 am]

BILLING CODE 6320-01-M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket No. 25-83]

Proposed Foreign-Trade Zone—Maverick County, Texas, Adjacent to the Eagle Pass Customs Port of Entry; Application and Public Hearing

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the City of Eagle Pass, Texas, requesting authority to establish a general-purpose foreign-trade zone in Maverick Country, adjacent to the Eagle Pass Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on July 25, 1983. The applicant is authorized to make this proposal under Article 1446.14 of Vernon's Annotated Civil Statutes of Texas.

The proposed zone involves 5 sites totalling 1380 acres. Site 1 is the Eagle Pass Industrial Park covering 188 acres at Industrial Boulevard and Brown Street in Eagle Pass. Existing warehouse facilities are available at this site for initial zone operations. Site 2 involves the City's Mini Industrial Park covering 17 acres at Industrial Boulevard and Adams Street, Eagle Pass. Site 3 is a standby area for heavy manufacturing involving 1100 acres at the Maverick County Airport, U.S. Highway 277 in Maverick County. Site 4, covering 55 acres on State Highway 1588 near Highway 277 in Maverick County, and Site 5, covering 17 acres on Highway 277 in northern Eagle Pass, are standby areas for future zone development. The City has selected the Maverick County Development Corporation, a Texas non-profit development corporation, to operate the zone project.

The application contains evidence of the need for zone services in the Eagle Pass area. Local firms have indicated an interest in using the zone for warehousing/distribution and processing of construction materials and apparel. No approval is being requested for manufacturing at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: Dennis Puccinelli (Chairman), Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, D.C. 20230; Donald Gough, Director, Inspection and Control, U.S. Customs Service, Southwest Region, 500 Dallas Street, Houston, TX 77002; and Colonel Theodore G. Stroup, Jr., District Engineer, U.S. Army Engineer District Fort Worth, P.O. Box 17300, Fort Worth, TX 76102.

As part of its investigation, the examiners committee will hold a public hearing on September 8, 1983, beginning at 9:00 a.m., in the Zaragoza Room of the La Posada Hotel, 1000 Zaragoza, Laredo.

Interested parties are invited to present their views at the hearing. Persons wishing to testify should notify the Board's Executive Secretary in writing at the address below or by phone (202/377-2862) by September 1. Instead of an oral presentation, written statements may be submitted in accordance with the Board's regulations to the examiners committee, care of the Executive Secretary, at any time from the date of this notice through October 8, 1983.

A copy of the application and accompanying exhibits will be available during this time for public inspection at each of the following locations:

Port Director's Office, U.S. Customs Service, 160 Garrison Street, P.O. Box KK, Eagle Pass, TX 78852

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 1872, 14th and Pennsylvania NW., Washington, D.C. 20230

Dated: August 4, 1983.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 83-21779 Filed 8-9-83; 8:45 am]

BILLING CODE 3510-25-M

[Docket No. 24-83]

Proposed Foreign-Trade Zone—Starr County, Texas, Adjacent to the Rio Grande City and Roma Customs Ports of Entry; Application and Public Hearing

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Starr County Industrial Foundation (SCIF), a Texas non-profit development corporation, requesting authority to establish a general-purpose foreign-trade zone in Starr County, Texas, adjacent to the Rio Grande City and Roma Customs ports of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on July 25, 1983. The applicant is authorized to make this proposal under Article 1446.12, Vernon's Annotated Civil Statutes of Texas.

The proposed zone covers 42 acres on three separate sites. Site 1, located on U.S. Highway 83 east of Roma in Starr County, has 8.6 acres of space available for firms needing separate zone facilities. Site 2 covers 3 acres at 1401 North U.S. Highway 83 in Roma. An existing 20,000 square foot warehouse is available at this site for initial zone activity. Site 3 is a standby area for future zone development covering 30 acres within the 45-acre Santa Cruz Industrial Park off U.S. Highway 83 in Starr County. SCIF will be the operator of the project.

The application contains evidence of the need for zone services in the Rio Grande City—Roma area. Prospective uses of the zone include warehousing/distribution of machinery and equipment, and liquor. No approval is being requested for manufacturing at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: Dennis Puccinelli (Chairman), Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, D.C. 20230; Donald Gough, Director, Inspection and Control, U.S. Customs Service, Southwest Region, 500 Dallas Street, Houston, TX 77002; and Colonel Alan L. Laubscher, District Engineer, U.S. Army Engineer District Galveston, P.O. Box 1229, Galveston, TX 77553.

As part of its investigation, the examiners committee will hold a public hearing on September 8, 1983, beginning at 9:00 a.m., in the Zaragoza Room of the La Posada Hotol, 1000 Zaragoza, Laredo.

Interested parties are invited to present their views at the hearing. Persons wishing to testify should notify the Board's Executive Secretary in writing at the address below or by phone (202/377–2862) by September 1. Instead of an oral presentation, written statements may be submitted in accordance with the Board's regulations to the examiners committee, care of the Executive Secretary, at any time from the date of this notice through October 8, 1983.

A copy of the application and accompanying exhibits will be available during this time for public inspection at each of the following locations:

Port Director's Office, U.S. Customs Service, Port Building, P.O. Box 518, Rio Grande City, Texas 78582

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 1872, 14th and Pennsylvania, NW., Washington, D.C. 20230

Dated: August 4, 1983

John J. Da Ponte, Jr.,

Executive Secretary

[FR Doc. 83-21778 Filed 8-9-83; 8:45 am]

BILLING CODE 3510-25-M

[Docket No. 26-83]

Proposed Foreign-Trade Zone—Val Verde County, Texas, Adjacent to the Del Rio Customs Port of Entry; Application and Public Hearing

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the City of Del Rio, Texas, requesting authority to establish a general-purpose foreign-trade zone in Val Verde County, adjacent to the Del Rio Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on July 25, 1983. The applicant is authorized to make this proposal under Article 1446.13, Vernon's Annotated Civil Statutes of Texas.

The proposed zone covers 422 acres on 4 separate sites. Site 1 involves the Del Rio Industrial Park covering 151 acres on Cienegas Road and Johnson Boulevard, within the extraterritorial limits of Del Rio. Site 2 is a City-owned industrial park covering 220 acres at 10th Street and Johnson Boulevard, within the Del Rio International Airport complex. Site 3 is an existing public warehousing facility on 1½ acres at 100 Jasper Road in Del Rio, to be used for initial zone activity. Site 4 involves 50 acres near Amistad Dam in Val Verde County, to be used as standby space for future zone development. Amistad Transfer and Storage has been designated to operate the zone project.

The application contains evidence of the need for zone services in the Del Rio area. Prospective uses of the zone include the warehousing/distribution of appliances, appliance parts and house slippers. No approval is being requested for manufacturing at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: Dennis Puccinelli (Chairman), Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, D.C. 20230; Donald Gough, Director, Inspection and Control, U.S. Customs Service, Southwest Region, 500 Dallas Street, Houston, TX 77002; and Colonel Theodore G. Stroup, Jr., District Engineer, U.S. Army Engineer District Fort Worth, P.O. Box 17300, Fort Worth, TX 76102.

As part of its investigation, the examiners committee will hold a public hearing on September 8, 1983, beginning at 9:00 a.m., in the Zaragoza Room of the La Posada Hotel, 1000 Zaragoza, Laredo.

Interested parties are invited to present their views at the hearing. Persons wishing to testify should notify the Board's Executive Secretary in writing at the address below or by phone (202/377–2862) by September 1. Instead of an oral presentation, written statements may be submitted in accordance with the Board's regulations to the examiners committee, care of the Executive Secretary, at any time from the date of this notice through October 8, 1983.

A copy of the application and accompanying exhibits will be available during this time for public inspection at each of the following locations:

Port Director's Office, U.S. Customs Service, International Bridge, Starr Route 2, Del Rio, TX 78840

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 1872, 14th and Pennsylvania NW., Washington, D.C. 20230

Dated: August 4, 1983.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 83-21780 Filed 8-9-83; 8:45 am]

BILLING CODE 3510-25-M

[Docket No. 23-83]

Proposed Foreign-Trade Zone—Webb County, Texas, Adjacent to the Laredo Customs Port of Entry; Application and Public Hearing

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the City of Laredo, Texas, requesting authority to establish a general-purpose foreign-trade zone in Webb County, adjacent to the Laredo Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on July 25, 1983. The applicant is authorized to make this proposal under Article 1446.1 of Vernon's Annotated Civil Statutes of Texas.

The proposed zone involves 3 sites totalling 221 acres. Sites 1 and 2 are at the Laredo International Airport, a 1600-acre industrial and transportation complex owned by the City. Site 1 covers 42 acres within the 100-acre

Laredo International Airport Industrial Park at Naranjo Avenue and Bustamante Street. This facility has 18,000 square feet of existing warehouse space for initial zone activity. Site 2 involves 100 acres at the site of a future airport industrial park expansion on the east side of the airport. Site 3 covers 80 acres within the proposed 300-acre Texas Mexican Railway Industrial Park on Highway 359 in Webb County. The City's Office of the Airport Director will assume responsibility for operating the zone.

The application contains evidence of the need for zone services in the Laredo area. A number of firms have expressed an interest in using the zone for warehousing/distribution and processing of products such as luggage, tile, electronic equipment, handicraft items, textile products and valves. No approval is being requested for manufacturing at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: Dennis Puccinelli (Chairman), Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, D.C. 20230; Donald Gough, Director, Inspection and Control, U.S. Customs Service, Southwest Region, 500 Dallas Street, Houston, TX 77002; and Colonel Theodore G. Stroup, Jr., District Engineer, U.S. Army Engineer District Fort Worth, P.O. Box 17300, Fort Worth, TX 76102.

As part of its investigation, the examiners committee will hold a public hearing on September 8, 1983, beginning at 9:00 a.m., in the Zaragoza Room of the La Posada Hotel, 1000 Zaragoza, Laredo.

Interested parties are invited to present their views at the hearing. Persons wishing to testify should notify the Board's Executive Secretary in writing at the address below or by phone (202/377-2862) by September 1. Instead of an oral presentation, written statements may be submitted in accordance with the Board's regulations to the examiners committee, care of the Executive Secretary, at any time from the date of this notice through October 8, 1983.

A copy of the application and accompanying exhibits will be available during this time for public inspection at each of the following locations:

Director's Office, U.S. Customs Service, Mann Road and Santa Maria, P.O. Box 3130, Laredo, TX 78041

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 1872, 14th and Pennsylvania, NW., Washington, D.C. 20230

Dated: August 4, 1983.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 83-21777 Filed 8-9-83; 8:45 am]

BILLING CODE 3510-25-M

International Trade Administration

Industrial Nitrocellulose From France; Antidumping Duty Order

AGENCY: International Trade Administration, Commerce.

ACTION: Antidumping duty order—industrial nitrocellulose from France.

SUMMARY: In separate investigations, the U.S. Department of Commerce ("the Department") and the U.S. International Trade Commission ("ITC") have determined that industrial nitrocellulose from France is being sold at less than fair value and that these sales are materially injuring a U.S. industry. Therefore, all entries, or warehouse withdrawals, for consumption of this merchandise made on or after May 13, 1983, the date on which the Department published its "Suspension of Liquidation" notice in the **Federal Register**, will be liable for the possible assessment of antidumping duties. Further, a cash deposit of estimated antidumping duties must be made on all such entries, and withdrawals from warehouse, for consumption made on or after the date of publication of this antidumping duty order in the **Federal Register**.

EFFECTIVE DATE: August 10, 1983.

FOR FURTHER INFORMATION CONTACT: Betty H. Laxague or Stuart Keitz, Office of Investigations, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, telephone (202) 377-5222 or (202) 377-1769.

SUPPLEMENTARY INFORMATION: For the purpose of this antidumping duty order the product covered is industrial nitrocellulose containing between 10.8 percent and 12.2 percent nitrogen. It should not be confused with explosive grade nitrocellulose which contains over 12.2 percent nitrogen. Industrial nitrocellulose is a dry, white, amorphous synthetic chemical produced by the action of nitric acid on cellulose. The product comes in several viscosities and is used to form films in lacquers, coatings, furniture finishes and printing inks. It is currently classified as cellulosic plastic materials, other than cellulose acetate, under item number 445.2500 of the Tariff Schedules of the *United States Annotated*.

In accordance with section 733 of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673b), on December 23, 1983, the Department preliminarily determined that industrial nitrocellulose from France was not being sold, or was not likely to be sold, in the United States at less than fair value (47 FR 57308). On May 9, 1983, the Department made its final determination that imports of this merchandise were being sold at less than fair value (48 FR 21615).

On July 26, 1983, in accordance with section 735(b) of the Act (19 U.S.C. 1673d(b)), the ITC determined and notified the Department that such importations are materially injuring a U.S. industry.

The Department intends to conduct an administrative review within twelve months of publication of this order, as provided in section 751 of the Act (19 U.S.C. 1675).

Therefore, the Department directs U.S. Customs officers to assess, upon further instruction from the Department, in accordance with sections 736 and 751 of the Act (19 U.S.C. 1673e and 1675), antidumping duties equal to the amount by which the foreign market value of the merchandise exceeds the U.S. price for all entries of industrial nitrocellulose from France. These antidumping duties will be assessed on all of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after May 13, 1983, the date on which the Department published its "Suspension of Liquidation" notice in the **Federal Register**, and all future entries of said merchandise.

On or after the date of publication of this notice, U.S. Customs officers must require, at the same time that importers deposit their estimated normal customs duties on the merchandise, an additional cash deposit of estimated antidumping duties equal to the weighted-average margin of 1.38 percent.

We have deleted from the Commerce Regulations, Annex 1 to 19 CFR Part 353, which listed antidumping findings and orders currently in effect. Instead, interested parties may contact the Office of Information Services, Import Administration, for copies of the updated list of orders currently in effect.

This notice is published in accordance with section 736 of the Act (19 U.S.C. 1673e) and section 353.48 of the

Department of Commerce Regulations (19 CFR 353.48).

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

August 2, 1983.

[FR Doc. 83-21776 Filed 8-9-83; 8:45 am]

BILLING CODE 3510-25-M

Postponement of Final Determinations; Certain Carton Closing Staples and Staple Machines From Sweden

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of postponement of final antidumping determinations: Certain carton closing staples and staple machines from Sweden.

SUMMARY: This notice informs the public that the Department of Commerce (the Department) has received a request from Josef Kihlberg Trading AB (Kihlberg) that the final determinations be postponed as provided for in section 735(a)(2)(A) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673d(a)(2)(A)), and, that the Department has decided to postpone its final determinations as to whether sales of certain carton closing staples and staple machines from Sweden have occurred at less than fair value, until not later than September 15, 1983.

Kihlberg is qualified to make this request since they are the exporter which accounts for a significant proportion of the exports of the carton closing staples and the staple machines which are the subjects of these investigations.

EFFECTIVE DATE: August 10, 1983.

FOR FURTHER INFORMATION CONTACT: Deborah A. Semb, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, telephone: (202) 377-3534.

SUPPLEMENTARY INFORMATION: On January 6, 1983, the Department of Commerce published a notice in the **Federal Register** (48 FR 1530) that it was initiating, under section 732(b) of the Act (19 U.S.C. 1673(b)), antidumping investigations to determine whether certain carton closing staples and staple machines from Sweden are being, or are likely to be, sold at less than fair value. The Department published affirmative preliminary determinations on June 2, 1983 (48 FR 24755). The notice stated that if these investigations proceeded normally we would make our final determinations by August 9, 1983. Section 735(a)(2) of the Act provides that the Department of Commerce may postpone its final determination concerning sales at less than fair value if an exporter who accounts for a significant proportion of exports of the merchandise which is the subject of the investigation requests an extension after an affirmative preliminary determination. These postponements were requested by counsel for Kihlberg on July 5, 1983 and amended July 27, 1983.

Accordingly, the Department will issue final determinations in these investigations not later than September 15, 1983.

This notice is published pursuant to section 735(d) of the Act.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

August 2, 1983.

[FR Doc. 83-21775 Filed 8-9-83; 8:45 am]

BILLING CODE 3510-25-M

National Oceanic and Atmospheric Administration

Grays Harbor Estuary Management Plan and Draft Environmental Impact Statement; Public Hearing

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of public hearing.

SUMMARY: Notice is hereby given that the Office of Ocean and Coastal Resource Management (OCRM), National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce, and the Grays Harbor Regional Planning Commission (GHRPC) will hold a joint public hearing for the purpose of receiving comments on the Draft Environmental Impact Statement (DEIS) prepared on the draft Grays Harbor Estuary Management Plan (GHEMP) as a proposed amendment to the Washington State Coastal Zone Management Program. The DEIS was distributed for public review the week ending August 5, 1983. Public comments will be accepted until October 4, 1983.

The GHEMP is a long-range, coordinated, comprehensive plan designed to guide future land and water use activities in Grays Harbor. If adopted and approved, it will be implemented through individual local Shoreline Master Programs under the Washington State Shoreline Management Act, other ordinances, and through various State and Federal regulations and permit actions. The focus of the plan is to define areas in which future activities and growth would be deemed acceptable while minimizing adverse impacts.

The hearing will be held on Friday, September 16, 1983 from 2:00 to 5:00 p.m. and 7:00 to 10:00 p.m., at the following location:

Grays Harbor College Auditorium
Aberdeen, Washington

The views of interested persons and organizations on the impacts associated with approving the draft GHEMP are solicited and may be expressed orally or through written statements. Presentations will be scheduled on a first-come, first-heard basis, and may be limited to a maximum of 5 minutes. This time allotment may be extended before the hearing when the number of speakers can be determined. A verbatim transcript of the hearing will be prepared.

All comments received at this hearing or in writing before October 4, 1983, will be considered in the final decision on approval of the GHEMP. A response to the comments and a description of the proposed final action will be included in the Final Environmental Impact Statement.

A limited number of copies of the DEIS may be obtained from Jane Ornett, OCRM, 3300 Whitehaven Street, N.W., Washington, D.C. 20234 (202/634-4245), or Janet Richardson, GHRPC, 2109 Sumner Ave., Suite 202, Aberdeen, WA 98520 (206/532-8812).

(Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Administration)

Dated: August 5, 1983.

K. E. Taggart,

Acting Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 83-21774 Filed 8-9-83; 8:45 am]

BILLING CODE 3510-08-M

Sea World, Inc.; Receipt of Application for Permit

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

1. Applicant:

a. Name: Sea World, Inc. (P2N).

b. Address: 1720 South Shores Road, San Diego, California 92109.

2. Type of Permit: Public Display.

3. Name and Number of Animals: Commerson's Dolphin (*Cephalorhynchus commersonii*), 12.

4. Type of Take: Take and import for public display.

5. Location of Activity: Waters off Chile and Argentina.

6. Period of Activity: 3 years.

The arrangements and facilities for transporting and maintaining the marine mammals requested in the above described application have been inspected by a licensed veterinarian, who has certified that such arrangements and facilities are adequate to provide for the well-being of the marine mammals involved.

Concurrent with the publication of this notice in the Federal Register, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, D.C. 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the dicretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, D.C.;

Regional Director, National Marine Fisheries Service, Southwest Region, 300 South Ferry Street, Terminal Island, California 90731; and

Regional Director, National Marine Fisheries Service, Alaska Region, P.O. Box 1668, Juneau, Alaska 99802.

Dated: August 5, 1983.

R. B. Brumsted,

Acting Chief, Protected Species Division, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 83-21648 Filed 8-9-83; 8:45 am]

BILLING CODE 3510-22-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Department of Defense Wage Committee; Closed Meetings

Pursuant to the provisions of section 10 of Pub. L. 92-463, the Federal Advisory Committee Act, notice is hereby given that a meeting of the Department of Defense Wage Committee will be held on Tuesday, October 4, 1983; Tuesday, October 11, 1983; Tuesday, October 18, 1983; and Tuesday, October 25, 1983 at 10:00 a.m. in Room 1E801, the Pentagon, Washington, D.C.

The Committee's primary responsibility is to consider and submit recommendations to the Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics) concerning all matters involved in the development and authorization of wage schedules for Federal prevailing rate employees pursuant to Pub. L. 92-392. At this meeting, the Committee will consider wage survey specifications, wage survey data, local wage survey committee reports and recommendations, and wage schedules derived therefrom.

Under the provisions of section 10(d) of Pub. L. 92-463, meetings may be closed to the public when they are "concerned with matters listed in 5 U.S.C. 552b." Two of the matters so listed are those "related solely to the internal personnel rules and practices of an agency" (5 U.S.C. 552b.(c)(2)), and those involving "trade secrets and commercial or financial information obtained from a person and privileged or confidential" (5 U.S.C. 552b.(c)(4)).

Accordingly, the Deputy Assistant Secretary of Defense (Civilian Personnel Policy & Requirements) hereby determines that all portions of the meeting will be closed to the public because the matters considered are related to the internal rules and practices of the Department of Defense (5 U.S.C. 552b(c)(2)), and the detailed wage data considered by the Committee during its meetings have been obtained from officials of private establishments with a guarantee that the data will be held in confidence (5 U.S.C. 552b.(c)(4)).

However, members of the public who may wish to do so are invited to submit material in writing to the chairman concerning matters believed to be deserving of the Committee's attention. Additional information concerning this meeting may be obtained by writing the Chairman, Department of Defense Wage Committee, Room 3D264, the Pentagon, Washington, D.C. 20301.

August 5, 1983.

M. S. Healy,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc.83-21727 Filed 8-9-83; 8:45 am]

BILLING CODE 3810-01-M

Defense Logistic Agency

Privacy Act of 1974; Deletion and Amendments to Notices for Systems of Records

AGENCY: Defense Logistic Agency, DOD.

ACTION: Deletions and amendments to notices for systems of records.

SUMMARY: The Defense Logistics Agency (DLA) proposes to delete the notices for two systems of records subject to the Privacy Act of 1974 and to amend the notices for 12 other systems. The proposed amendments and the amended system notices are set forth below.

DATES: This action will be effective without further notice on September 9, 1983.

ADDRESS: Send any comments to: Mr. Preston B. Speed, Chief, Administrative Management Branch, HQ Defense Logistics Agency, Cameron Station, Alexandria, Va 22314, Telephone (202) 274-6234.

FOR FURTHER INFORMATION CONTACT: Mr. P. B. Speed at the above address and telephone number.

SUPPLEMENTARY INFORMATION: The notices for the DLA systems of records subject to the Privacy Act of 1974, as amended, Title 5, United States Code section 552a appear at 48 FR 26199, June 6, 1983.

August 4, 1983.

M. S. Healy,

OSD Federal Register Liaison Officer, Department of Defense.

Deletions

S233.20 DLA-L

System Name: Data Processing Project Control Assignment.

Reasons: Information no longer retrievable by employee name.

S672.70 DLA-X

System Name: Dependents Travel.

Reason: Information is not retrieved by employee name.

Amendments

S153.20 DLA-T

SYSTEM NAME:

Personnel Security Clearance Status-CAPSTONE.

Changes:

PURPOSE(S):

Add caption and insert:

"These records are used by Security Officers at all levels as well as other appropriate supervisors to determine whether or not DLA civilian employees or military personnel have been cleared for and/or granted access to classified information: and, if so, the level of such clearance or access."

In route uses of records maintained in the system, including categories of users and the purposes of such uses: remove entire entry and insert:

"Information as to the clearance status of individual employees may be provided to the appropriate clearance/access officials of other agencies when necessary in the course of official business.

"See also blanket routine uses set forth above."

In Record Source categories: remove the phrase "Civil Service Commission" and substitute therefor the phrase "Office of Personnel Management."

SYSTEM NAME:

Invention Disclosures.

Changes:

In Purpose(s): add caption and insert:

"Used by DLA Patent Counsel for determinations regarding acquisition of patents and rights of inventors".

In Routine uses of records maintained in the system, including categories of users and the purposes of such uses: remove first sentence beginning with the work "Used" and ending with the word "inventors."

In System manager(s) and address: before the word "Counsel" add the work "General."

* * * * *

In Record address procedures: Before the word "Counsel" add the word "General."

SYSTEM NAME:

Royalties.

Changes:

In Categories of records in the system: remove the phrase "Armed Services Procurement Regulation under Report (ASPR)" and substitute therefor the phrase "Defense Acquisition Regulation (DAR)."

Before the word "Counsel" add the word "General."

In Authority for maintenance of the system: remove the acronym "ASPR" and substitute therefor "DAR."

In Purpose(s): add caption and insert: "Reviewed by DLA Patent Counsel for approval of royalties on continuing basis."

In Routine uses of records maintained in the system, including categories of users and the purposes of such uses: remove first sentence beginning "Reviewed" and ending with "basis."

In System manager(s) and address: before the word "Counsel" add the word "General."

SYSTEM NAME:

Patent Licenses and Assignments.

Changes:

In Authority for maintenance of the system: remove the phrase "Armed Services Procurement Regulation (ASPR)" and substitute therefor the phrase "Defense Acquisition Regulation (DAR)."

In Purpose(s): add caption and insert:

"Used by DLA Patent Counsel for acquisition and administration of patent license and assignment agreements."

In Routine uses of records maintained in the system, including categories of users and the purposes of such uses: remove first sentence beginning with "Used" and ending with "agreements".

In System manager(s) and address: before the word "Counsel" add the word "General."

S253.40 DLA-G

SYSTEM NAME:

Patent infringement.

In Authority for maintenance of the system:

Remove the phrase "Armed Services Procurement Regulation (ASPR)" and substitute therefor the phrase "Defense Acquisition Regulation (DAR)."

In Purpose(s): add caption and insert:

"Used by DLA Patent Counsel for actions, determinations or recommendations regarding disposition of claims or litigation by DLA, Military Departments or Department of Justice".

In Routine uses of records maintained in the system, including categories of users and the purposes of such uses: Remove entire entry and insert:

"Information may be referred to the Department of Justice and other Government agencies or to non-Government personnel (including contractors or prospective contractors) having an identified interest in the potential or actual infringement of particular patents."

In Record access procedure: before the word "Counsel" add the word "General."

S259.05 DLA-G

SYSTEM NAME:

Legal Assistance.

Changes:

In System location: before the word "Counsel" add the word "General."

In Purpose(s): add caption and insert:

"Documents are used to provide copies for individuals requesting the assistance, their representative or where otherwise appropriate members of their immediate families. Documents may also be used as models or examples for preparing future documents."

In Routine uses of records maintained in the system, including categories of users and the purposes of such uses: Remove entire entry and insert:

"See blanket routine uses listed above"

* * * * *

In System manager(s) and address: before the word "Counsel" add the word "General."

S270.30 DLA-B

SYSTEM NAME:

Biography File.

Changes:

In System location: after the word "Office of" remove the phrase "the Special Assistant for" and substitute therefor the words "Legislative and."

In Purpose(s): add caption and insert:

"Information is maintained as background material for news and feature articles covering activities, assignments, retirements, and reassignments of key DLA commanders and executives, in the preparation of speeches by the Director/Deputy Director at Change of Command, Retirement and awards ceremonies; and for annual visits or other activities by persons affiliated with DLA or DoD."

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

"Information is used by DLA public affairs personnel to prepare news and feature articles with the knowledge and consent of the individual concerned.

"See also blanket routine uses set forth above."

In System Manager(s) and Address: remove the words "Special Assistant for" and substitute therefor the words "Staff Director, Legislative and."

S333.10 DLA-6

SYSTEM NAME:

Attorney Personal Information and Applicant Files

Changes:

In System location: before the word "Counsel" add the word "General."

In Authority for maintenance of the system: remove the phrase "Civil Service Regulation, Section 213.3102(d) and (e)" and substitute therefor the phrase "Office of Personnel Management, Title 5, Part 213."

After the citation "10 U.S.C. 137" add "DLAR 1442.1."

In Purpose(s): add caption and insert:

"Applications are used for filling positions in all DLA legal offices. Attorney information folders are maintained for review incident to personnel actions including promotions performance appraisals, reassignments, etc. and as a general performance and experience record."

In Routine uses of records maintained in the system, including categories of users and the purposes of such uses: remove first sentence beginning with the word "Applications" and ending with the word "record".

In Safeguards: remove the word "safe" in the first line and substitute therefor the phrase "locked file cabinet."

In Retention and disposal: remove the word "two" and substitute therefor the word "one."

In System manager(s) and address: Before the word "Counsel" add the word "General."

S339.50 DSAO-S

SYSTEM NAME:

Staff Information File.

Changes:

Remove the identification "DASO-S" and substitute therefor the identification "DSAC-L."

In System location: remove the words "Data Systems Automation Office" and substitute therefor the words "Systems Automation Center (DASC)."

In Purpose(s): add caption and insert:

"Information is maintained to provide readily accessible data about staff which are required for day-to-day operations and which would be impractical to organize and use on a manual basis or from other records. Information is used by officials of the DSAC and the Defense Construction Supply Center (DCSC): As a reference report to determine or verify data concerning each staff member in the process of day-to-day operations; to provide the Operations Control Center the capability to contact individuals during non-duty hours for providing assistance to system users; to determine staff members eligible for retirement in the next five years and develop plans as necessary for replacement of personnel who could retire; to provide a complete list by organization assignment and to identify location of each staff member, account for vacancies and encumbered positions and determine progress toward average grade level goal(s); for accounting purposes in submitting jobs to the computer center; to provide a list of the identifying numbers assigned to each staff position for use in various personnel actions; to provide a list of subsidiary cost codes assigned to each individual, to determine that correct code is assigned, for use on various personnel actions; to assign parking spaces; to identify individuals assigned responsibility under the War Emergency Support Plan (WESP); to identify individuals eligible to authorize AUTOVON calls during non-duty hours; to verify and/or modify the Profile Data Analysis Report concerning minority and female employees; and to produce a telephone list for DSAO staff use."

In routine uses of records maintained in the system, including categories of users and the purposes of such uses: remove entire entry and insert:

"See blanket routine uses set forth above."

S370.20 DLA-WH

SYSTEM NAME:

Individual Accident Case Files.

Changes:

In system location: remove the first sentence which begins "Primary System" and ends with "100 dollars" and substitute therefor: "Primary System—Case files on A, B, and C Class injuries/illness, property damage accidents when damage exceeds $1000, and motor vehicle accidents with A, B, or C Class injuries/illness or property damage exceeding $1000. Partial case files for all A, B, C, D and E Class injuries and illnesses; A, B, C, and D Class property damages and A, B, C, and D Class motor vehicle accidents are maintained in the automated record files:"

In Purpose(s) Add caption and insert:

"Information is maintained to identify cause of accident, to formulate accident prevention programs, to identify individual involved in repeated accidents, to present safety awards to individuals and to prepare statistical reports as required.

"Information is used by:

"Agency supervisors and managers to determine actions required to correct the causes of the accidents.

"Safety offices—to insure actions proposed by supervisors and managers are adequate to prevent future accidents, to identify accident repeaters and safety award recipients, to provide verification that accidents have occurred when processing workmen's compensation cases, to prepare statistical reports, accident summaries, and accident prevention information for inclusion in Agency internal publications.

"Security personnel—to determine accident causes, and to formulate possible changes in activity rules of conduct.

"Government and Non-Government Medical personnel—to make medical determinations about individuals involved in accidents.

"Facilities engineers and maintenance personnel—to formulate future installation facilities and equipment plans and budgets and to change operating procedures."

In routine uses of records maintained in the system, including categories of users and the purposes of such uses: remove entry and insert:

"See blanket routine uses set forth above."

S690.10 DLA-W

SYSTEM NAME:

Individual Vehicle Operators File.

Changes:

In Purpose(s): Add caption and insert:

Records are maintained and used by DLA officials to determine an individual's qualifications and fitness to operate government vehicles and/or equipment.

In Routine uses of records maintained in the system, including categories of users and the purposes of such uses: remove the first sentence beginning with the word "Records" and ending with the word "equipment."

In Record source categories: remove the figure "48" and substitute therefor the figure "46".

After the figure "46" add the following: "DD Form 1360, Motor Vehicle Operator Qualifications and Record of Licensing, Examination and Performance; DLA Form 1723, Application/Record for U.S. Government Motor Vehicle Operator's Identification Card (SF-46);"

S810.50 DLA-P-1

SYSTEM NAME:

Contracting Officer Files.

Changes:

In Categories of records in the system: After the initial phrase "DLA Headquarters" add the phrase "and Field Activities."

Remove the entire entry under the heading "Field Activities" which reads "Resumes, references and records of training necessary to support the appointment of each contracting officer. Summary of each contracting Officer's proficiency and evaluation of performance for the twelve (12) months preceding supplied by the employing procurement division. Comments and recommendations of the Contracting Officer Review Board on continuing the warrants of each reviewed Contracting Officer."

In Authority for maintenance of the system: remove the phrase "Armed Services Procurement" and substitute therefor the phrase "Defense Acquisition."

In Purpose(s): add caption and insert:

DLA Headquarters—Provide a current profile of contracting officers. Field Activities—Necessary to maintain an active, centralized control over the issuance of Contracting Officer warrants. It is a registry for the quantity of warrants and their distribution. The information is used by the members of the Contracting Officer Review Board, at activities where they exist, to perform their function of advising and recommending to the Commander the issuance or revocation of warrants.

In Routine use of records maintained in the system, including categories of users and the purpose of such uses: remove entire entry and insert:

"See blanket routine uses listed above."

In Retrievability: remove the sentence reading "Chronological actions by Contracting Officer Review Board are filed in separate folders."

In Safeguards: remove the word "only" from the sentence.

S153.20 DLA-T

SYSTEM NAME:

Personnel; Security Clearance Status—CAPSTONE.

* * * * *

PURPOSE(S):

These records are used by Security Officers at all levels as well as other appropriate supervisors to determine whether or not DLA civilian employees or military personnel have been cleared for and/or granted access to classified information, and, if so, the level of such clearance or access.

In Routine uses of records maintained in the system, including categories of users and the purposes of such uses: remove entire entry and insert:

"Information as to the clearance status of individual employees may be provided to the appropriate clearance/access officials of other agencies when necessary in the course of official business.

"See blanket routine uses set forth above."

* * * * *

RECORD SOURCE CATEGORIES:

Certificates of clearance and/or record personnel security investigation which are completed during a review of reports of investigation conducted by the Office of Personnel Management, the Federal Bureau of Investigation, the Defense Investigative Service, and investigative units of the Army, Navy, and Air Force, as well as other Federal investigative organizations. Also personnel security files maintained on individuals.

* * * * *

S253.10 DLA-G

SYSTEM NAME:

Invention Disclosures.

* * * * *

PURPOSE(S):

Used by DLA Patent Counsel for determinations regarding acquisition of patents and rights of inventors.

ROUTINE USE OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information may be referred to other Government agencies to non-Government personnel (including contractors or prospective contractors) having an identified interest in a particular invention and the Government's rights therein.

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

General Counsel, DLA–G.

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

General Counsel, Headquarters, DLA; Counsel, DLA Field Activities.

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RECORD ACCESS PROCEDURES:

Official mailing address of the SYSMANAGER is Office of General Counsel, Defense Logistics Agency. Written requests should include full name, current address and telephone numbers of requestor. For personal visits, each individual shall provide acceptable identification, e.g., driver's license or identification card.

* * * * *

S253.30 DLA-G-1

SYSTEM NAME:

Royalties.

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Reports from DLA procurement centers of patent royalties submitted pursuant to Defense Acquisition Regulation (DAR) under Reports forwarded to Defense Logistics Agency Headquarters, Office of General Counsel for approval, and included in pricing of respective contracts.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 2304(g) DLPR 9–110 DAR 9-110;

PURPOSES(S):

Reviewed by DLA Patent Counsel for approval of royalties on continuing basis.

ROUTINES USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information may be referred to other Government agencies or to non-Government personnel (including contractors or prospective contractors) having an identified interest in the allowance of royalties on DLA contracts.

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SYSTEM MANAGER(S) AND ADDRESS:

General Counsel, DLA–G., Headquarters DLA, Cameron Station, Alexandria, VA.

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Official mailing address of the SYSMANAGER is Office of General Counsel, Defense Logistics Agency. Written requests should include full name, current address and telephone numbers of requestor. For personal visits, each individual shall provide acceptable identification, e.g., driver's license or identification card.

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S253.30 DLA-G-2

SYSTEM NAME:

Patent Licenses and Assignments.

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AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 2386 Defense Acquisition Regulation (DAR) 9, Part 4; Defense Logistics Procurement Regulation (DLPR) 9–401.50.

PURPOSE(S)

"Used by DLA Patent counsel for acquisition and administration of patent license and assignment agreements."

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information may be referred to other Government agencies or to non-Government personnel (including contractors or prospective contractors) having an identified interest in the potential or actual infringement of particular patents.

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SYSTEM MANAGER(S) AND ADDRESS:

General Counsel, DLA–G.

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RECORD ACCESS PROCEDURES:

Official mailing address of the Sysmanager is Office of General Counsel, Defense Logistics Agency. Written requests should be include full name, current address and telephone numbers of requestor. For personal visits, each individual shall provide acceptable identification, e.g., driver's license or identification card.

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S253.40 DLA–G

SYSTEM NAME:

Patent Infringement.

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AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 2386; 10 U.S.C. 2356; 28 U.S.C. 520; 28 U.S.C. 1496; 35 U.S.C. 181–188; and 35 U.S.C. 286. Defense Acquisition Regulation (DAR) 9, Part 4; Defense Logistics Procurement Regulation (DLPR) 9–410–50.

* * * * *

In Purpose(s): Add caption and insert:

"Used by DLA Patent Counsel for actions, determinations or recommendations regarding disposition of claims or litigation by DLA, Military Departments or Department of Justice".

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES TO SUCH USES:

Information may be referred to the Department of Justice and other Government agencies or to non-Government personnel (including contractors or prospective contractors) having an identified interest in the potential or actual infringement of particular patents.

* * * * *

RECORDS ACCESS PROCEDURES:

Official mailing address of the SYSMANAGER is Office of General Counsel, Defense Logistics Agency. Written requests should include full name, current address and telephone numbers of requestor. For personal visits, each individual shall provide acceptable identification, e.g., driver's license or identification card.

* * * * *

S259.05 DLA–G

SYSTEM NAME:

Legal Assistance.

SYSTEM LOCATION:

Decentralized System of Office of General Counsel, Headquarters, Defense Logistics Agency, and at Primary Level Field Activities (PLFAs).

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PURPOSE(S):

Documents are used to provide copies for individuals requesting the assistance, their representative or where otherwise appropriate members of their immediate families. Documents may also be used as models or examples for preparing future documents.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES TO SUCH USES:

See blanket routine uses listed above.

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SYSTEM MANAGER(S) AND ADDRESS:

Office of General Counsel, Defense Logistics Agency, DLA–G, Office of General Counsel PLFAs.

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§ 270.30 DLA–B

SYSTEM NAME:

Biography File.

SYSTEM LOCATION:

Office of Legislative and Public Affairs, Headquarters Defense Logistics Agency (DLA) and Primary Level Field Activities (PLFAs).

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PURPOSE(S):

Information is maintained as background material for news and feature articles covering activities, assignments, retirements, and reassignments of key DLA commanders and executives, in the preparation of speeches by the Director/Deputy Director at Change of Command, Retirement and awards ceremonies; and for annual visits or other activities by persons affiliated with DLA or DoD.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Information is used by DLA public affairs personnel to prepare news and feature articles with the knowledge and consent of the individual concerned.

See also blanket routine uses set forth above.

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Staff Director, Legislative and Public Affairs, DLA and Public Affairs Officers, PLFAs.

* * * * *

S333.10 DLA–G

SYSTEM NAME:

Attorney Personal Information and Applicant Files.

SYSTEM LOCATION:

Primary System—Office of General Counsel, Headquarters, Defense Logistics Agency, DLA–G, holds personal information records of all DLA attorneys and applicants for DLA legal positions.

Decentralized segments—Office of General Counsel, Primary Level Field Activities (PLFAs) hold personnel records for resident attorneys and applicants for positions.

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 3101, General Authority to Employ, Executive Order 10577, Office of Personnel Managment, Title 5, Part 213; 10 U.S.C. 137, DLAR 1442.1.

purpose(s):

Applications are used for filling positions in all DLA legal offices. Attorney information folders are maintained for review incident to personnel actions including promotions performance appraisals, reassignments, etc. and as a general performance and experience record.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Parts of these folders may be submitted to other agencies considering the attorney for employment. Information may be used in answering inquiries from individuals, Congressmen or other Government agencies or for verification of employment.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

* * * * *

SAFEGUARDS:

Attorney information folders are kept in a locked file cabinet; applications are kept in file cabinets accessible only to authorized personnel of the Office of Counsel or as determined by Counsel.

RETENTION AND DISPOSAL:

Applications are kept for one year from receipt. Attorney information folders are kept indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Office of General Counsel, Defense Logistics Agency DLA–G, and Office of Counsel, PLFAs.

* * * * *

§ 339.50 DSAC–L

SYSTEM NAME:

Staff Information File.

SYSTEM LOCATION:

DLA, Systems Automation Center, P.O. Box 1605, Columbus, Ohio 43216.

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PURPOSE(S)

Information is maintained to provide readily accessible data about staff which are required for day-to-day operations and which would be impractical to organize and use on a manual basis or from other records. Information is used by officials of the DSAC and the Defense Construction Supply Center (DCSC): As a reference report to determine or verify data concerning each staff member in the process of day-to-day operations; to provide the Operations Control Center the capability to contact individuals during non-duty hours for providing assistance to system users; to determine staff members eligible for retirement in the next five years and develop plans as necessary for replacement of personnel who could retire; to provide a complete list by organization assignment and to identify location of each staff member, account for vacancies and encumbered positions and determine progress toward average grade level goal(s); for accounting purposes in submitting jobs to the computer center; to provide a list of the identifying numbers assigned to each staff position for use in various personnel actions; to provide a list of subsidiary cost codes assigned to each individual, to determine that correct code is assigned, for use on various personnel actions; to assign parking spaces; to identify individuals assigned responsibility under the War Emergency Support Plan (WESP); to identify individuals eligible to authorize AUTOVON calls during non-duty hours; to verify and/or modify the Profile Data Analysis Report concerning minority and female employees; and to produce a telephone list for DSAO staff use.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See blanket routine uses set forth above.

* * * * *

§ 370.20 DLA–WH

SYSTEM NAME:

370.20 Individual Accident Case Files.

SYSTEM LOCATION:

Primary System—Case files on A, B, and C Class injuries/illness, property damage accidents when damage exceeds $1000, and motor vehicle accidents with A, B, or C Class injuries/illness or property damage exceeding $1000. Partial case files for all A, B, C, D and E Class injuries and illnesses; A, B, C, and D Class property damages and A, B, C, and D Class motor vehicle accidents are maintained in the automated record files;

Office of Installation Services and Environmental Protection, Headquarters, Defense Logistics Agency (HQ DLA). Decentralized segments—Above files plus all other injuries and accidents: HQ DLA principal staff elements, DLA Primary Level Field Activities (PLFAS), secondary and third level field activities, where incidents occurred.

* * * * *

PURPOSE(S)

Information is maintained to identify cause of accident, to formulate accident prevention programs, to identify individual involved in repeated accidents, to present safety awards to individuals and to prepare statistical reports as required.

Information is used by:

Agency supervisors and managers—to determine actions required to correct the causes of the accidents.

Safety offices—to insure actions proposed by supervisors and managers are adequate to prevent future accidents, to identify accident repeaters and safety award recipients, to provide verification that accidents have occurred when processing workmen's compensation cases, to prepare statistical reports, accident summaries, and accident prevention information for inclusion in Agency internal publications.

Security personnel—to determine accident causes, and to formulate possible changes in activity rules of conduct.

Government and Non-Government Medical personnel—to make medical determinations about individuals involved in accidents.

Facilities engineers and maintenance personnel—to formulate future installation facilities and equipment plans and budgets and to change operating procedures.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

See Blanket routine uses listed above.

* * * * *

§ 690.10 DLA–W

SYSTEM NAME:

Individual Vehicle Operators File.

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PURPOSE(S):

Records are maintained and used by DLA officials to determine an individual's qualifications and fitness to operate government vehicles and/or equipment.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Referral to local, state, and federal law enforcement agencies and courts for use during investigations and court proceedings.

* * * * *

RECORD SOURCE CATEGORIES:

State driver's licenses, Standard Forms 47 and 46, DoD Form 1360, motor vehicle operator qualifications and record of licensing, examination and performance; DLA Form 1723, Application/Record for U.S. Government Motor Vehicle Operator's Identification Card (SF–46); court records, supervisors and related documents.

* * * * *

S810.50 DLA–P–1

SYSTEM NAME:

Contracting Officer Files.

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CATEGORIES OF RECORDS IN THE SYSTEM:

DLA Headquarters and Field Activities Contracting Officer Certificate of Appointments; Contracting Officer Appointment Documentation Sheet (contains information on education, training and experience).

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 2302, Defense Acquisition Regulation 1–405–2(b) and Defense Logistics Procurement Regulation 1–405.2(b). The Office of each appointing

authority shall maintain a file containing all documents (such as resumes, references, and records of training) necessary to support the appointment of each contracting officer.

PURPOSE(S):

DLA Headquarters—Provide a current profile of contracting officers. Field Activities—Necessary to maintain an active, centralized control over the issuance of Contracting Officer warrants. It is a registry for the quality of warrants and their distribution. The information is used by the members of the Contracting Officer Review Board, at activities where they exist, to perform their function of advising and recommending to the Commander the issuance of revocation of warrants.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

See blanket routine uses listed above.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

* * * * *

RETRIEVABILITY:

Filed by organizational activity and alphabetically by last name of Contracting Officer.

SAFEGUARDS:

Records are maintained in an area accessible to Office of Procurement Policy Personnel.

* * * * *

[FR Doc. 83-21634 Filed 8-9-83; 8:45 am]

BILLING CODE 3620-01-M

Department of the Navy

Privacy Act of 1974; Amendment to a System of Records

AGENCY: Department of the Navy (U.S. Marine Corps), DOD.

ACTION: Notice of amendment to a system of records.

SUMMARY: The U.S. Marine Corps proposes to amend a system of records to its inventory of systems of records subject to the Privacy Act of 1974. The proposed amendment notice is set forth below.

DATES: The proposed action will be effective without further notice on September 9, 1983, unless comments are received which would result in a contrary determination.

ADDRESSES: Send any comments to the system manager identified in the system notice.

FOR FURTHER INFORMATION CONTACT: Ms. B. L. Thompson, Privacy Act Coordinator, Headquarters, U.S. Marine Corps, Washington, D.C. 20380, telephone: (202) 694-1452.

SUPPLEMENTARY INFORMATION: The U.S. Marine Corps systems notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a) Pub. L. 93-579 were published in the **Federal Register** as follows:

FR Doc. 83-6317 (48 FR 10422) March 11, 1983
FR Doc. 83-6992 (48 FR 11312) March 17, 1983
FR Doc. 83-8688 (48 FR 14432) April 4, 1983
FR Doc. 83-13896 (48 FR 23296) May 24, 1983
FR Doc. 83-12048 (48 FR 25964) June 6, 1983

These changes do not require an altered system report as prescribed in 5 U.S.C. 552a(o).

M. S. Healy,

OSD Federal Register Liaison Office, Department of Defense.

August 4, 1983.

Amendment

MMN00049

SYSTEM NAME:

Manpower Management Information System (48 FR 23296, May 24, 1983).

Change:

In *Categories of Individuals Covered by the System,* at the end of the paragraph remove the words "and wage grade employees assigned to Base and tenant units." Substitute the following words: "and all civilian employees assigned to Base and tenant units."

MMN00049

SYSTEM NAME:

Manpower Management Information System.

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Marines who are joined to Base organizations and filling a Table of Organization (T/O) line number; all non-chargeable military personnel who are administratively attached to Base organizations (except students); and all civilian employees assigned to Base and tenant units.

* * * * *

[FR Doc. 83-21633 Filed 8-9-83; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[ERA Docket No. 83-CERT-234 et al.]

Natural Gas; Certifications To Displace Fuel Oil; American Can Co.; et al.

The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) has received the following applications for certification of an eligible use of natural gas to displace fuel oil pursuant to 10 CFR Part 595 (44 FR 47920, August 16, 1979). Notice of these applications, along with pertinent information contained in the applications, was published in the **Federal Register** and an opportunity for public comment was provided for a period of ten calendar days from the date of publication. No comments were received. More detailed information is contained in each application on file and available for inspection at the ERA Fuels Conversion Division Docket Room, RG-42, Room GA-093, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, from 8:00 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays.

Applicant and facility	Date filed	Docket No.	FEDERAL REGISTER Notice of application
American Can Co., Lemoyne Plant, Lemoyne, Pa	June 27, 1983	83-CERT-234	48 FR 33525, July 22, 1983.
Calgon Carbon Corp., Catlettsburg Plant, Catlettsburg, Ky	do	83-CERT-235	Do.
The Goodyear Tire & Rubber Co., Niagara Falls Plant, Niagara Falls, N.Y.	do	83-CERT-236	Do.
Swift Independent Packing Co., National Stockyards Plant, National Stockyards, Ill.	do	83-CERT-237	Do.
Anchor Hocking Corp., Monaca Plant, Monaca, Pa	do	83-CERT-239	Do.
Virginia Linen Service, Inc., Petersburg Plant, Petersburg, Va	do	83-CERT-240	Do.

The ERA has carefully reviewed the above applications for certification in accordance with 10 CFR Part 595 and the policy considerations expressed in the Final Rulemaking Regarding Procedures for Certification of the Use of Natural Gas to Displace Fuel Oil (44 FR 47920, August 16, 1979). The ERA has determined that the applications satisfy the criteria

enumerated in 10 CFR Part 595 and, therefore, has granted the certifications and transmitted those certifications to the Federal Energy Regulatory Commission.

Issued in Washington, D.C., on August 4, 1983.

Robert L. Davies,

Deputy Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 83-21830 Filed 8-9-83; 8:45 am]

BILLING CODE 6450-01-M

[ERA Docket No. 83-CERT-176, as amended]

Natural Gas; Application for Amendment to Existing Certification To Displace Fuel Oil; American Sugar Div., Amstar Corp.

On July 5, 1983, American Sugar Division, Amstar Corp. New York, N.Y., was granted a certificate of an eligible use of natural gas to displace fuel oil by the Administrator of the Economic Regulatory Administration (ERA) (Docket No. 83-CERT-176). The certification was for the eligible use of 2,150,000 Mcf per year of natural gas purchased from Yankee Resources, Inc., and Target Exploration, Inc., for use by American Sugar Div. at its facility located in Baltimore, Md. The volume of natural gas was estimated to displace the use of approximately 357,550 barrels of No. 6 fuel oil (1.0 percent sulfur) per year at the above facility. The transporters were Columbia Gas Transmission Corp. and Baltimore Gas and Electric Co. That certificate will expire July 4, 1984.

On June 28, July 5, and July 27, 1983, American Sugar Div. filed applications for amendment to the existing certification of an eligible use to add Cabot Corp., Houston, Tex., Viking Resources Corp., North Canton, Ohio, Rodco Petroleum, Inc., Canton, Ohio, Compass Energy Corp., Canton, Ohio, and Southland Oil and Gas Co., Dallas, Tex., as eligible sellers and to delete Yankee Resources, Inc., as an eligible seller pursuant to 10 CFR 595 (44 FR 47920, August 16, 1979). All other aspects of the July 5, 1983, certification remain unchanged. The application for amendment is on file and available for public inspection at the ERA Fuels Conversion Division Docket Room, RG-42, Room GA-093, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, from 8:00 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays.

To provide the public with as much opportunity to participate in this proceeding as is practicable under the circumstances, we are inviting any person wishing to comment concerning this application for amendment to submit comments in writing to the Economic Regulatory Administration, Office of Fuels Programs, Fuels Conversion Division, RG-42, Room GA-093, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, Attention: Richard A. Ransom, within ten (10) calendar days of the date of publication of this notice in the **Federal Register.**

An opportunity to make an oral presentation of data, views, and arguments either against or in support of this application for amendment may be requested by any interested person in writing within the ten (10) day comment period. The request should state the person's interest and, if appropriate, why the person is a proper representative of a group or class of persons that has such an interest. The request should include a summary of the proposal oral presentation and a statement as to why an oral presentation is necessary.

If ERA determines that an oral presentation is necessary, further notice will be given to the applicant and any person filing comments and will be published in the **Federal Register.**

Issued in Washington, D.C., on August 2, 1983.

Robert L. Davies,

Deputy Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 83-21829 Filed 8-9-83; 8:45 am]

BILLING CODE 6450-01-M

[ERA Docket Nos. 83-CERT-223, et al.]

Natural Gas; Certifications To Displace Fuel Oil; Appleton Papers Inc., et al.

The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) has received the following applications for certification of an eligible use of natural gas to displace fuel oil pursuant to 10 CFR Part 595 (44 FR 47920, August 16, 1979). Notice of these applications, along with pertinent information contained in the applications, was published in the **Federal Register** and an opportunity for public comment was provided for a period of ten calendar days from the date of publication. No comments were received. More detailed information is continued in each application on file and available for inspection at the ERA Fuels Conversion Division Docket Room, RG-42, Room GA-093, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, from 8:00 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays.

Applicant and facility	Dated filed	Docket No.	FEDERAL REGISTER notice of application
Appleton Papers Inc., Camp Hill, Pa	June 23, 1983	83-CERT-223	48 FR 33031, July 20, 1983.
United States Steel Corp., Pittsburgh, Pa	do	83-CERT-224	Do.
Metropolitan Edison Co., Northampton County, Pa., Adams County, Pa., Cumberland County, Pa., Berks County, Pa.	do	83-CERT-225	Do.
Cincinnati Milacron Inc., Cincinnati, Ohio	do	83-CERT-226	Do.
Stauffer Chemical Co., San Jose, Calif	June 24, 1983	83-CERT-227	Do.
Shillito Rikes, Cincinnati, Ohio	do	83-CERT-229	Do.
General Electric Corp., Coshocton, Ohio	do	83-CERT-230	Do.
Allegheny Ludlum Steel Corp., New Castle, Ind	June 27, 1983	83-CERT-231	Do.
CareUnit Hospital of Cincinnati, Cincinnati, Ohio	do	83-CERT-232	Do.
Pet Inc., Coldwater, Ohio	do	83-CERT-233	Do.

The ERA has carefully reviewed the above applications for certification in accordance with 10 CFR Part 595 and the policy considerations expressed in the Final Rulemaking Regarding Procedures for Certification of the Use of Natural Gas To Displace Fuel Oil (44 FR 47920, August 16, 1979). The ERA has determined that the applications satisfy the criteria

enumerated in 10 CFR Part 595 and, therefore, has granted the certifications and transmitted those certifications to the Federal Energy Regulatory Commission.

Issued in Washington, D.C., on August 3, 1983.

Robert L. Davies,

Deputy Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 83-21832 Filed 8-9-83; 8:45 am]

BILLING CODE 6450-01-M

[ERA Docket No. 83-CERT-151]

Natural Gas; Certification To Displace Fuel Oil; B & R Mills, Inc.

The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) has received the following application for certification of an eligible use of natural gas to displace fuel oil pursuant to 10 CFR Part 595 (44 FR 47920, August 16, 1979). Notice of the application, along with pertinent information contained in the application, was published in the **Federal Register** and an opportunity for public comment was provided for a period of ten calendar days from the date of publication. No comments were received. More detailed information is contained in the application on file and available for inspection at the ERA Fuels Conversion Division Docket Room, RG-42, Room GA-093, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, from 8:00 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays.

Applicant and facility	Date filed	Docket No.	Federal Register notice of application
B & R Mills, Inc., Perrysburg, Ohio	May 27, 1983	83-CERT-151	48 FR 33737, July 25, 1983.

The ERA has carefully reviewed the above application for certification in accordance with 10 CFR Part 595 and the policy considerations expressed in the Final Rulemaking Regarding Procedures for Certification of the Use of Natural Gas to Displace Fuel Oil (44 FR 47920, August 16, 1979). The ERA has determined that the application satisfies the criteria enumerated in 10 CFR Part 595 and, therefore, has granted the certification and transmitted the certification to the Federal Energy Regulatory Commission.

Issued in Washington, D.C., on August 5, 1983.

Robert L. Davies,

Deputy Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 83-21834 Filed 8-9-83; 8:45 am]

BILLING CODE 6450-01-M

[ERA Docket Nos. 83-CERT-267, et al.]

Natural Gas; Applications for Certification To Displace Fuel Oil; Donnelley Printing Co., et al.

The Economic Regulatory Administration (ERA) of the Department of Energy has received the following applications for certification of an eligible use of natural gas to displace fuel oil pursuant to 10 CFR Part 595 (44 FR 47920, August 16, 1979). End-users who have the capability to use natural gas in place of fuel oil at any of their facilities can arrange for direct purchases and transportation of the gas to those facilities under the Federal Energy Regulatory Commission's (FERC) fuel oil displacement program. The ERA certification is required by the FERC as a precondition to interstate transportation of fuel oil displacement gas in accordance with the procedures in 18 CFR Part 284, Subpart F.

Pertinent information regarding these applications is listed below, while more detailed information is contained in each application on file and available for inspection at the ERA Fuels Conversion Division Docket Room, RG-42, Room GA-093, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, from 8:00 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays.

1. 83-CERT-267.

Applicant: Donnelley Printing Company, Lancaster, Pa.

Date Filed: July 18, 1983.

Facility Location: Lancaster, Pa.

Gas Volume: 60,225 Mcf per year.

Oil Displacement: 401,500 gallons of No. 6 fuel oil (0.1% sulfur).

Eligible Seller: Exxon U.S.A, Houston, Tex.

Transporter: Columbia Gas Transmission Corp., Charleston, W. Va., UGI Corp., Reading, Pa.

2. 83-CERT-268

Applicant: General Electric Co., Lexington, Ky.

Date Filed: July 20, 1983.

Facility Location: Lexington, Ky.

Gas Volume: 400,000 Mcf per year.

Oil Displacement: 70,000 barrels of No. 6 fuel oil (0.5% sulfur).

Eligible Seller: City of Somerset, Kentucky, Gas Service, Somerset, Ky.

Transporter: Columbia Gas Transmission Corp., Charleston, W. Va., Columbia Gas of Kentucky, Columbus, Ohio.

3. 83-CERT-269.

Applicant: Mar-Zane, Inc., Zanesville, Ohio.

Date Filed: July 20, 1983.

Facility Location: Haydenville, Ohio.

Gas Volume: 15,840 Mcf per year.

Oil Displacement: 105,780 gallons of No. 6 fuel oil (0.1% sulfur).

Eligible Seller: S & S Oil Company, Zanesville, Ohio.

Transporter: Columbia Gas Transmission, Charleston, W. Va., Columbia Gas of Ohio, Inc., Columbus, Ohio.

To provide the public with as much opportunity to participate in this proceeding as is practicable under the circumstances, we are inviting any person wishing to comment concerning any of these applications to submit comments in writing to the Economic Regulatory Administration, Office of Fuels Programs, Fuels Conversion Division, RG-42, Room GA-093, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, Attention: Richard A. Ransom, within ten calendar days of the date of publication of this notice in the **Federal Register**. The docket number of the case should be printed on the outside of the envelope.

An opportunity to make an oral presentation of data, views, and arguments either against or in support of any of the above applications may be requested by any interested person in writing within the ten-day comment period. The request should state the person's interest and, if appropriate, why the person is a proper representative of a group or class of persons that has such an interest. The request should include a summary of the

proposed oral presentation and a statement as to why an oral presentation is necessary.

If ERA determines that an oral presentation is necessary in a particular case, further notice will be given to the applicant and any person filing comments in that case and will be published in the **Federal Register.**

Issued in Washington, D.C., on August 2, 1983.

Robert L. Davies,

Deputy Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 83-21835 Filed 8-9-83; 8:45 am]

BILLING CODE 6450-1-M

[ERA Docket No. 83-CERT-182]

Natural Gas; Recertification To Displace Fuel Oil; Public Service Electric and Gas Co.

On June 9, 1983, Public Service Electric and Gas Co., Newark, N.J., filed with the Administrator of the Economic Regulatory Administration (ERA), pursuant to 10 CFR Part 595, an application for recertification of an eligible use of up to 7.0 billion cubic feet of natural gas per year to displace approximately 1,057,000 barrels of No. 6 fuel oil (0.3 percent sulfur) and approximately 28,000 barrels of No. 2 fuel oil (0.2 percent sulfur) or kerosene (0.1 percent sulfur) per year at eight of its electric generating stations located in N.J.: Bergen in Ridgefield, Essex in Newark, Hudson in Jersey City, Kearny in Kearny, Linden in Linden, Sewaren is Sewaren, Edison in Edison, and Mercer in Trenton. The eligible seller of the natural gas is National Gas and Oil Corp., Newark, Ohio. The gas will be transported by Texas Eastern Transmission Corp., Houston, Tex., Tennessee Gas Pipeline Co., Houston, Tex., and Transcontinental Gas Pipe Line Corp., Houston, Tex. Notice of that application was published in the **Federal Register** (48 FR 33031, July 20, 1983) and an opportunity for public comment was provided for a period of ten (10) calendar days from the date of publication. No comments were received.

On July 15, 1982, Public Service received a recertification (ERA Docket 82-CERT-012) of an eligible use of natural gas purchased from Equitable Gas Co., Pittsburgh, Pa., for a period of one year, effective July 25, 1982, and expiring on July 24, 1983, for use in its electric generating stations in N.J.

The ERA has carefully reviewed Public Service's application in accordance with 10 CFR Part 595 and the policy considerations expressed in the Final Rulemaking Regarding Procedures for Certification of the Use of Natural Gas to Displace Fuel Oil (44 FR 47920, August 16, 1979). The ERA has determined that Public Service's application satisfies the criteria enumerated in 10 CFR Part 595 and, therefore, has granted the recertification, effective July 25, 1983, and transmitted that recertification to the Federal Energy Regulatory Commission. More detailed information, including a copy of the application, transmittal letter, and the actual recertification is available for public inspection at the ERA Fuels Conversion Division Docket Room, RG-42, Room GA-093, Forrestal Building, 1000 Independence Avenue SW., Washington, D.C. 20585, from 8:00 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C., on August 2, 1983.

Robert L. Davies,

Deputy Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 83-21833 Filed 8-9-83; 8:45 am]

BILLING CODE 6450-01-M

[ERA Docket Nos. 83-CERT-249 and 252]

Natural Gas; Certifications To Displace Fuel Oil; The Stackpole Corp. and Ross Aluminum Foundries

The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) has received the following applications for certification of an eligible use of natural gas to displace fuel oil pursuant to 10 CFR Part 595 (44 FR 47920, August 16, 1979). Notice of these applications, along with pertinent information contained in the applications, was published in the **Federal Register** and an opportunity for public comment was provided for a period of ten calendar days from the date of publication. No comments were received. More detailed information is contained in each application on file and available for inspection at the ERA Fuels Conversion Division Docket Room, RG-42, Room GA-093, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, from 8:00 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays.

Applicant and facility	Date filed	Docket No.	FEDERAL REGISTER notice of application
The Stackpole Corp.; St. Marys, Pa.	July 5, 1983	83-CERT-249	48 FR 33738, July 25, 1983.
Ross Aluminum Foundries, Sidney, Ohio	July 6, 1983	83-CERT-252	Do.

The ERA has carefully reviewed the above applications for certification in accordance with 10 CFR Part 595 and the policy considerations expressed in the Final Rulemaking Regarding Procedures for Certification of the Use of Natural Gas to Displace Fuel Oil (44 FR 47920, August 16, 1979). The ERA has determined that the applications satisfy the criteria enumerated in 10 CFR Part 595 and, therefore, has granted the certifications and transmitted those certifications to the Federal Energy Regulatory Commission.

Issued in Washington, D.C., on August 5, 1983.

Robert L. Davies,

Deputy Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 83-21831 Filed 8-9-83; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. TA83-2-20-002]

Algonquin Gas Transmission Co.; Rate Change Pursuant to Purchase Gas Cost Adjustment Provision

August 5, 1983.

Take notice that Algonquin Gas Transmission Company ("Algonquin Gas") on July 29, 1983, tendered for filing Second Revised Sheet No. 201, Alternate Second Revised Sheet No. 201, Second Alternate Second Revised Sheet No. 201 and First Revised Sheet No. 231 to its FERC Gas Tariff, Second Revised Volume No. 1.

Algonquin Gas states that Second Revised Sheet No. 201 and First Revised Sheet No. 231 are being filed pursuant to Algonquin Gas' Purchased Gas Cost Adjustment Provision as set forth in Section 17 of the General Terms and Conditions of its FERC Gas Tariff, Second Revised Volume No. 1. The Rates as shown on Sheet No. 201 reflect the following: (i) an adjustment to amortize the June 30, 1983 balance in Algonquin Gas' Unrecovered Purchased Gas Cost Account (Account 191) and (ii) an adjustment to reflect lower purchased gas costs to be charged by its supplier, Texas Eastern Transmission Corporation ("Texas Eastern"), to Algonquin Gas proposed to be effective August 1, 1983, under Texas Eastern's Sixty-Sixth Revised Sheet No. 14D. Sheet No. 231 reflects Projected Incremental Pricing Surcharges for the period September, 1983 through February, 1984. Algonquin Gas further states that Alternate Second Revised Sheet No. 201 and Second Alternate Second Revised Sheet No. 201 are being filed to track Texas Eastern's Alternate Sixty-Sixth Revised Sheet No. 14D and Second Alternate Sixty-Sixth Revised Sheet No. 14D.

Algonquin Gas requests that the Commission accept the tariff sheets effective September 1, 1983, synchronizing its rates with underlying tariff sheets of Texas Eastern.

Algonquin Gas notes that a copy of this filing is being served upon each affected party and interested State commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, 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 August 19, 1983. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission are availabe for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-21793 Filed 8-9-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER83-639-000]

American Electric Power Service Corp.; Notice of Filing

August 4, 1983.

The filing Company submits the following:

Take notice that on July 22, 1983, the American Electric Power Service Corporation (AEP) tendered for filing on behalf of its affiliate Columbus and Southern Ohio Electric Company (CSOE), Supplemental Schedule I dated June 15, 1983 to the Agreement dated May 1, 1983 (1983 Agreement) between the City of Westerville, Ohio (Westerville) and CSOE. CSOE's Rate Schedule FERC No. 32.

AEP states that Supplemental Schedule I defines the Interconnection Point that will be utilized in the transmission of power and energy from a third party utility to AEP for ultimate delivery to Westerville.

AEP requests an effective date of August 1, 1983, and therefore requests waiver of the Commission's notice requirements.

Copies of the filing were served upon the Public Utilities Commission of Ohio and the City of Westerville, Ohio.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR §§ 385.211, 385.214). All such motions or protests should be filed on or before August 19, 1983. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-21808 Filed 8-9-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER78-489-000]

Arkansas Power & Light Co.; Refund Report

August 4, 1983.

Take notice that on July 1, 1983, Arkansas Power & Light Company ("AP&L"), submitted for filing a refund report showing the calculation of refunds and interest to the Cities of Campbell and Thayer, Missouri, Missouri Utilities Company and Arkansas Electric Cooperative Corporation. The refunds were made pursuant to a Commission Order which approved, on an interim basis, the rate for firm power resale service in a March 23, 1979 Settlement Agreement between Arkansas-Missouri Power Company and the FERC Staff, and final disposition of the rates in Union Electric Docket No. ER77-614-000.

AP&L states that each affected customer has received a copy of the refund calculation.

Any person desiring to be heard or to protest this filing should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, on or before August 15, 1983. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-21809 Filed 8-9-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER83-642-000]

Blackstone Valley Electric Co.; Filing

August 4, 1983.

The filing Company submits the following:

Take notice that on July 26, 1983, Blackstone Valley Electric Company (Blackstone) tendered for filing an agreement between Narragansett Electric Company (Narragansett) and Blackstone for rates to be charged Narragansett for its use of a 345 KV to 115 KV, 300 MVA transformer when it comes on line on August 1, 1983. The transformer and associated equipment

are installed initially for Narragansett's benefit.

Blackstone requests an effective date of August 1, 1983, and therefore requests waiver of the Commission's notice requirements.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR §§ 385.211, 385.214). All such motions or protests should be filed on or before August 19, 1983. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-21810 Filed 8-9-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP83-116-000]

Colorado Interstate Gas Co., Complainant v. MIGC, Inc., Respondent; Complaint and Request of Colorado Interstate Gas Company for Order To Show Cause

August 4, 1983.

Take notice that on July 28, 1983, Colorado Interstate Gas Company (CIG), pursuant to Rules 206 and 209 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure (18 CFR 385.206, 385.209) filed a complaint against MIGC, Inc. (MIGC). CIG requests that the Commission institute a proceeding under Sections 5 and 7 of the Natural Gas Act (15 U.S.C. §§ 717d, 717f) and following an investigation and a hearing make the following determinations:

a. That MIGC is in violation of its tariff and certificate requirements and obligations by delivering to CIG for sale gas which MIGC obtains from sources other than casinghead wells, gas wells and gas processing plants in the Powder River Basin of Wyoming and Montana; and

b. That MIGC should be ordered to immediately cease such unlawful deliveries of gas to CIG and should be required to make appropriate restitution to CIG and the customers it serves.

If after hearing and investigation the Commission determines that MIGC is entitled under its existing tariff and certificate authority to make sales of gas to CIG from sources other than casinghead wells, gas wells and gas processing plants in the Powder River Basin of Wyoming and Montana or if the Commission otherwise determines that such deliveries and sales of gas to CIG can continue and CIG must purchase the same gas under existing authorities, then CIG requests that the following determinations be made by the Commission:

a. That the existing jurisdictional rates charged by MIGC, Inc., are unjust and unreasonable since they are based on levels of sales by MIGC to CIG substantially below current and continuing levels;

b. That just and reasonable jurisdictional rates should be placed in effect by MIGC, Inc.; and

c. That MIGC should be ordered to show cause why the public convenience and necessity is served by a continuation of the subject sale to CIG.

Any person desiring to be heard or to protest said complaint should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before September 3, 1983. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this complaint are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-21811 Filed 8-9-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP83-413-000]

Columbia Gas Transmission Corp.; Application

August 4, 1983.

Take notice that on July 13, 1983, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314, filed in Docket No. CP-83-413-000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing increased contract demands under revised service agreements with Central Hudson Gas and Electric Corporation (Central Hudson) and Commonwealth Gas Pipeline Corporation (Commonwealth), existing wholesale customers of Columbia, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Columbia proposed to enter into revised service agreements with Central Hudson, effectuating an increase in its contract demand under Rate Schedule CDS of 3,000 dt equivalent of natural gas per day, from 16,400 to 19,400 in Zone 7, effective November 1, 1983, and with Commonwealth, effectuating an increase in its contract demand under Rate Schedule CDS of 6,600 dt equivalent of natural gas per day from 229,000 to 235,600 in Zone 2, effective December 1, 1983.

It is stated that the requested service level changes would result in increased total daily entitlements (TDE's) for the two customers totaling 9,600 dt equivalent of gas per day, which quantity represents approximately 1/10 of 1 percent of Columbia's estimated requirements for the 1983-84 peak day. Columbia states that no facility construction is required to provide the requested increased TDE's.

Any person desiring to be heard or to make any protest with reference to said application should on or before August 25, 1983, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction, conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion

for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Columbia to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-21812 Filed 8-9-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP76-190-001]

Columbia Gulf Transmission Company et al.; Petition To Amend

August 4, 1983.

Take notice that on June 20, 1983, Columbia Gulf Transmission Company (Columbia Gulf), P.O. Box 683, Houston, Texas 77001, Columbia Gas Transmission Corporation (Columbia Gas), 1700 McCorkle Avenue, S.E., Charleston, West Virginia 25314, and Texas Eastern Transmission Corporation (TETCO), P.O. Box 2521, Houston, Texas 77252, filed in Docket No. CP76-190-001 a petition to amend the order issued July 28, 1976,[1] in Docket No. CP76-190-000 pursuant to Section 7(c) of the Natural Gas Act so as to authorize an exchange and redelivery of an additional source of natural gas from the Lake Raccourci Field, LaFourche Parish, Louisiana, among Columbia Gulf, Columbia Gas and TETCO, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

By order issued July 28, 1976, Columbia Gulf, Columbia Gas and TETCO were authorized to exchange up to 1,000 Mcf of natural gas per day.

It is indicated that Columbia Gas has available to it certain quantities of natural gas from Exxon Company, U.S.A.'s share of production from the recompleted State Lease 3816 Well #1 in the Lake Raccourci Field. Columbia Gas, Columbia Gulf and TETCO now request amendment of the July 28, 1976, order so as to include this gas in the exchange of gas authorized in this docket. It is stated that TETCO would deliver to Columbia Gulf, for the account of Columbia Gas, a thermally equivalent quantity of gas at the outlet side of Sea Robin Pipeline Company's existing measuring station at or near the terminus of Sea Robin's offshore pipeline near Erath, Vermilion Parish, Louisiana. No additional facilities would be required.

[1] This proceeding was commenced before the FPC. By joint regulation of October 1, 1977 (10 CFR 1000.1), it was transferred to the Commission.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before August 25, 1983, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-21813 Filed 8-9-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER83-643-000]

Connecticut Light and Power Co.; Filing

August 4, 1983.

The filing Company submits the following:

Take notice that on July 27, 1983, the Connecticut Light and Power Company (CL&P) tendered for filing a proposed rate schedule change with respect to a system exchange agreement dated November 23, 1982 (Amendment) between (1) CL&P and Western Massachusetts Electric Company (WMECO), (together, the NU Companies) and (2) Public Service Company of New Hampshire (PSNH).

CL&P states that the Amendment provides for changes to a system exchange agreement between the same parties dated as of September 11, 1981 (Agreement). The requested changes include (1) modification to the maximum hourly capacity charge rate pursuant to Section 8 of the Agreement, (2) changes to recognize the merger of the Hartford Electric Light Company into CL&P as of July 1, 1982, (3) addition of other PSNH units to the list of possible exchange units, and (4) inclusion of a payment provision to PSNH for any energy delivered to the NU Companies from the exchange units.

CL&P further states that under the proposed Amendment, the maximum hourly capacity charge rate is an hourly cost-of-service rate equal to the estimated hourly capacity costs of the generating units of the NU Companies that would normally supply exchange power to PSNH (less a credit to recognize the value of exchange capacity from the PSNH Units) and is determined in accordance with Appendix I of the Amendment. The capacity charge for each hour of an exchange is determined as the product of (i) the appropriate negotiated hourly capacity charge rate ($/kW, and (ii) the total kilowatts of capacity which PSNH is entitled to receive in such hour pursuant to the Amendment.

Under the Amendment, the energy charge to be paid by the NU Companies (if any) is determined as the product of (i) the NEPEX Replacement Fuel price, (ii) the full load average heat rate, (iii) the Net Energy Output, and (iv) the NU Companies' Entitlement Percentage divided by 100.

CL&P requests an effective date of November 23, 1982, and therefore requests waiver of the Commission's notice requirements.

Copies of the filing have been served upon WMECO and PSNH.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before August 19, 1983. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-21814 Filed 8-9-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER83-651-000]

Connecticut Light and Power Co.; Filing

August 5, 1983.

The filing Company submits the following:

Take notice that on July 29, 1983, Connecticut Light and Power Company (CL&P) tendered for filing full requirements time-of-day rates for provision of electric service to Bozrah Light & Power Company (Bozrah). The Company tendered for filing a Rate F-1 to replace its W-1 partial requirements as the tariff applicable to Bozrah for the

period January 1, 1983 (when Bozrah became a full requirements customer) to June 30, 1983. The Company has also tendered for filing a Rate F–2 under which it proposes to provide Bozrah with full requirements service as of July 1, 1983.

CL&P states that the F–1 rate schedule amendment results in an increase in charges for Bozrah of $19,127 in Period II (1982 test year revenues). The F–2 rate schedule results in a decrease in charges for Bozrah of $117,032 for Period II (1983).

CL&P requests waiver of the Commission's notice requirements to permit this filing and the effective dates as requested.

Copies of this filing were served upon Bozrah, and the Department of Public Utility Control of the State of Connecticut.

Any person desiring to be heard or to protest filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before August 22, 1983. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83–21794 Filed 8–9–83; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER83–644–000]

Connecticut Light and Power Co.; Filing

August 5, 1983.

The filing Company submits the following:

Take notice that on July 28, 1983, Connecticut Light and Power Company (CL&P) tendered for filing a proposed rate schedule with respect to a Transmission Agreement dated May 23, 1983 between (1) CL&P and Western Massachusetts Electric Company (WMECO, and together with CL&P, the NU Companies) and (2) City of Holyoke, Massachusetts, Gas and Electric Department (HG&E).

CL&P states that the Transmission Agreement provides for transmission service to HG&E for the wheeling of HG&E's purchase from the Massachusetts Municipal Wholesale Electric Company (MMWEC) of an entitlement obtained by MMWEC in New England Power Company's (NEPCO) Salem Harbor Unit No. 4 during the period commencing May 23, 1983 and terminating June 26, 1983.

The transmission charge rate is a weekly cost-of-service rate equal to one-fifty-second of the annual average cost of transmission service on the electric transmission system of the NU Companies and is determined in accordance with Appendix A and Exhibits I, II and III thereto, of the Transmission Agreement. The weekly transmission charge is determined by the product of: (i) the weekly transmission charge rate ($/kW-week), and (ii) the number of kilowatts that HG&E is entitled to receive during each such week. The weekly transmission charge is reduced by up to 50% to give due recognition for related transmission payments made by HG&E to NEPCO.

CL&P requests an effective date of May 23, 1983, and therefore requests waiver of the Commission's notice requirements.

Copies of the filing have been mailed to WMECO and HG&E.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before August 22, 1983. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83–21795 Filed 8–9–83; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. TA83–2–22–000 (PGA83–2) (IPR83–2) and (AP83–2)]

Consolidated Gas Supply Corp.; Proposed Changes in FERC Gas Tariff

August 5, 1983.

Take notice that Consolidated Gas Supply Corporation (Consolidated) on August 1, 1983, filed revised tariff sheets pursuant to Sections 12 (PGA Clause), 12A (Incremental Pricing Surcharges), and 13 (Research, Development and Demonstration Cost Adjustment) of the General Terms and Conditions of its tariff, and Article VIII (Advance Payment Tracker) of the Stipulation and Agreement approved by letter order dated March 2, 1983, in Docket No. RP82–115 (Stipulation and Agreement). The revisions, shown on Thirty-Fourth Revised Sheet No. 16 and Ninth Revised Sheet No. 72–C provide for Consolidated's semi-annual PGA to be effective September 1, 1983. Consolidated also proposes to collect NGPA rates for "old" pipeline production (company-owned production from wells drilled prior to January 1, 1973, on leases acquired prior to October 8, 1969) both retroactively and prospectively, based on the Supreme Court's decision in *Public Service Commission of the State of New York* vs. *Mid-Louisiana Gas Company* issued June 28, 1983, and Article V of the Stipulation and Agreement which allows collection of NGPA rates for old pipeline production upon the issuance of a favorable Supreme Court ruling.

Consolidated has included in its filing:

(a) Rate decreases from pipeline suppliers in the amount of $67.1 million;

(b) Rate changes from producer suppliers in the amount of $79 million;

(c) A surcharge of 33.06 cents per dekatherm to recoup amounts accumulated in account 191, Unrecovered Purchased Gas Costs which includes, in addition to the standard entries, and amount to recoup LNG conversion costs in accordance with a Stipulation and Agreement filed July 11, 1983, in Docket Nos. RP77–140, *et al.;* a carry-over balance from a special Order No. 93 surcharge which expired on February 28, 1983; and a balance from a special surcharge to collect NGPA rates for "old" pipeline production produced prior to January 1983 except for the eighteen months covered by Docket No. RP80–61 (which period is subject to Commission orders issued February 4, 1983, and April 6, 1983, and a Fourth Circuit Appeal, No. 83–1499);

(d) A rate change of 0.08 cents per dekatherm to reflect a reduction in advance payment balances from those reflected in the cost of service attached to the Stipulation and Agreement.

Consolidated has included as part of its PGA a report relative to Order No. 93 payments and collections required by orders August 31, 1982, and November 24, 1982, in Docket Nos. TA82–2–22–000, *et al.*

Copies of the filing were served upon Consolidated's jurisdictional customers as well as interested state commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington D.C. 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211). All such petitions or protests should be filed on or before August 19, 1983. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-21796 Filed 8-9-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER83-653-0000]

Consumers Power Co.; Filing

August 5, 1983.

The filing Company submits the following:

Take notice that on July 29, 1983, Consumers Power Company (Consumers) tendered for filing Supplemental Agreement No. 3 to its contract for Wholesale for Resale Electric Service with the City of Bay City, Michigan. The aforementioned contract was dated and became effective on February 7, 1980. It was accepted for filing by letter of November 17, 1980 in FERC Docket No. ER80-765.

Supplemental Agreement No. 3 establishes a new point of delivery at Bay City, described as Frankenlust Substation, and prescribes the conditions for line extension to the Frankenlust Substation.

Copies of the filing were served on Bay City and the Michigan Public Service Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before August 22, 1983. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-21797 Filed 8-9-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER82-751-003]

Delmarva Power & Light Co.; Refund Report

August 4, 1983.

Take notice that on July 25, 1983, Delmarva Power & Light Company submitted for filing its "Refund Compliance Report" regarding Docket Nos. ER78-414-000 and ER80-363-000, pursuant to the Letter Orders of May 31, 1983 and June 30, 1983 in Docket No. ER82-751-003.

Delmarva states that the refunds were made on July 20, 1983 to the affected customers.

Any person desiring to be heard or to protest this filing should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, on or before August 15, 1983. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-21815 Filed 8-9-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ES83-56-000]

Detroit Edison Co.; Application

August 4, 1983.

Take notice that on July 22, 1983, The Detroit Edison Company filed an Application pursuant to Section 204 of the Federal Power Act, seeking authorization to issue from time to time, on or before September 30, 1985, in an aggregate principal amount not to exceed $1.0 billion at any one time outstanding, short-term debt securities and promissory notes bearing final maturities not to exceed two years.

Any person desiring to be heard or to make any protest with reference to said Application should, on or before August 18, 1983, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions or protests in accordance with the requirements of the Commission's Rules of Parctice and Procedure (18 CFR 385.211 or 385.214). The Application is on file and available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-21816 Filed 8-9-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP83-412-000]

Eastern Shore Natural Gas Co.; Notice of Request Under Blanket Authorization

August 4, 1983.

Take notice that on July 13, 1983, Eastern Shore Natural Gas Company (Eastern Shore), Post Office Box 615, Dover, Delaware 19903, filed in Docket No. CP83-412-000 a request pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) that Eastern Shore proposes to construct two sales taps for the Delaware Division of Chesapeake Utilities Corporation (Delaware Division) and to add one new delivery point each for three of Eastern Shore's customers, Delaware Division, the Citizens Division of Chesapeake Utilities Corporation (Citizens Division), and Delmarva Power the Light Company (Delmarva) under the authorization issued in Docket No. CP83-40-000 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 to public inspection.

Eastern Shore proposes to construct and operate two sales taps for Delaware Division. It is explained that the first tap would be located on Eastern Shore's existing main line approximately 24 miles south of Dover, Delaware, and would permit Delaware Division to deliver approximately 6,500 dt equivalent of gas per year to Nanticoke Homes, Inc. The second tap would be located off of Eastern Shore's existing main line approximately 37 miles south of Dover, Delaware, and would permit Delaware Division to deliver approximately 14,900 dt equivalent of gas to Seafood Manor House, it is submitted. Eastern Shore is also proposing to add one new delivery point each for Delaware Division, Citizens Division and Delmarva. Eastern Shore states that the Delmarva delivery point would be located approximately 25 miles south of Hockessin, Delaware, at Boyd's Corner, and would allow approximately 25,000 dt equivalent of gas per year to be delivered to Van Wingerden International for use in its greenhouse facilities. The Delaware and Citizens Division delivery points would be constructed as emergency facilities and would be placed into service only

when an emergency situation results in the shutdown of either customer's main city gate stations, it is submitted.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-21817 Filed 8-9-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP74-163-000]

Equitable Gas Co.; Petition To Amend

August 4, 1983.

Take notice that on July 18, 1983, Equitable Gas Company (Petitioner), 420 Boulevard of the Allies, Pittsburgh, Pennsylvania 15219, filed in Docket No. CP74-163-000, a petition to amend the order issued June 14, 1974,[1] in Docket No. CP74-163 pursuant to Section 7 of the Natural Gas Act so as to remove the 6,000,000 Mcf volumetric limitation of gas in the Shirley Storage Pool located in Tyler and Doddridge Counties, West Virginia, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

The June 14, 1974, order contained a condition that the maximum inventory of natural gas stored in Petitioner's proposed Shirley Storage Pool was not to exceed 6,000,000 Mcf at 14.73 psia and 60° F., without further authorization from the Commission. By its petition, Petitioner requests that the Commission remove the 6,000,000 Mcf volumetric limitation, since it is alleged that the Shirley Storage Pool is capable of retaining volumes of gas in excess of that amount.

Petitioner states in support of its petition that the Shirley Storage Pool is still under development, and would remain under development for at least two years, and that its estimate of the capacity of the facility at the time its application was filed was far below the reservoir's capacity. Petitioner further states that the certificate authorizing development of the Shirley Storage Pool is the only one Petitioner has involving storage facilities which contains a volumetric limitation on stored gas and that removing such limitation would be consistent with other authorizations Petitioner has received for such facilities.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before August 25, 1983, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-21818 Filed 8-9-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA83-2-24-001]

Equitable Gas Co.; Proposed Change In Rates

August 5, 1983.

Take notice that on August 1, 1983, Equitable Gas Company (Equitable) tendered for filing with the Commission Sixth Revised Sheet No. 6-F to its FERC Gas Tariff, First Revised Volume No. 1, to become effective September 1, 1983. Equitable states that the change in rates results from the application of the Purchased Gas Cost Rate Adjustment provision in Section 6 of Rate Schedule GS-1 of FERC Gas Tariff, Original Volume No. 1, approved by the Commision in Docket Nos. CP79-290, RP79-69, and RP79-49.

Equitable states that a copy of its filing has been served upon the purchaser and interested state commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before August 19, 1983. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-21799 Filed 8-9-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA83-2-24-000]

Equitable Gas Co.; Proposed Change In Rates

August 5, 1983.

Take notice that on August 1, 1983, Equitable Gas Company (Equitable) tendered for filing with the Commission Seventh Revised Sheet No. 10-G to its FERC Gas Tariff, First Revised Volume No. 1, to become effective September 1, 1983. Equitable states that the filing is in compliance with Section 154.16 and 154.38 of the Commission's Regulations and sets forth pursuant to the company's semi-annual purchased gas calculations, the effective base rate, current rate adjustment, cumulative rate adjustment, deferred cost surcharge, and the rate after current adjustment, as well as supporting computations.

Equitable states that a copy of its filing has been served upon the purchaser and interested state commissions (and upon each party on the service list of Docket No. CP80-473).

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before August 19, 1983. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file

[1] This proceeding was commenced before the FPC. By joint regulation of October 1, 1977 (10 CFR 1000.1), it was transferred to the Commission.

with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-21800 Filed 8-9-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER83-640-000]

Florida Power & Light Co.; Filing

August 5, 1983.

The filing Company submits the following:

Take notice that Florida Power & Light Company (FPL), on July 22, 1983, tendered for filing a document entitled Amendment Number Four to Agreement to Provide Specified Transmission Service Between Florida Power & Light Company and Orlando Utilities Commission (Rate Schedule FERC No. 66).

FPL states that under Amendment Number Four, FPL will transmit power and energy for Orlando Utilities Commission as is required in the implementation of its interchange agreement with Seminole Electric Cooperative, Inc.

FPL requests waiver of the Commission's regulations be granted and the proposed Amendment be made effective immediately.

Copies of the filing have been served on the Orlando Utilities Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before August 19, 1983. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-21801 Filed 8-9-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER83-645-000]

Florida Power & Light Co.; Filing

August 5, 1983.

The filing Company submits the following:

Take notice that on July 28, 1983, Florida Power & Light Company (FPL) tendered for filing a document entitled Amendment Number Seven to Agreement to Provide Specifid Transmission Between FPL and Jacksonville Electric Authority (Rate Schedule FERC No. 60).

FPL states that under Amendment Number Seven, FPL will transmit power and energy for Jacksonville Authority as is required in the implementation of its interchange agreement with Seminole Electric Cooperative, Inc.

FPL requests waiver of the Commission's regulations be granted and that the proposed Amendment be made effective immediately.

Copies of the filing were served upon Jacksonville Electric Authority.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before August 22, 1983. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-21802 Filed 8-9-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER83-566-000]

GPU Service Corp.; Filing

August 4, 1983.

The filing Company submits the following:

Take notice that on July 18, 1983, GPU Service Corporation (GPU) as agent for the Pennsylvania Electric Company (Pennsylvania) tendered for filing a Letter Agreement with the Atlantic City Electric Company (AE). This agreement modifies the original agreement between GPU and AE filed under Docket No. ER8 3-432-000. Thus, as a convenience to AE, Pennsylvania will bill the Cleveland Electric Illuminating Company (CEI) for transmission service provided, so that CEI, in turn, can prepare a consolidated bill to AE for all transmission service in Ohio and Pennsylvania. All other terms and conditions of the original Letter Agreement remain unchanged.

GPU requests an effective date of May 1, 1983, and therefore requests waiver of the Commission's notice requirements.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before August 19, 1983. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc 83-21819 Filed 8-9-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER83-629-000]

Jersey Central Power & Light Co.; Filing

August 4, 1983.

The filing Company submits the following:

Take notice that on July 18, 1983, Jersey Central Power & Light Company (Jersey Central) tendered for filing a contract to provide wheeling and supplemental power service to Allegheny Electric Cooperative, Inc. (Allegheny).

Jersey Central states that the purpose of the contract is to enable Allegheny to deliver power and energy to its member cooperative in Sussex County, New Jersey.

Jersey Central requests an effective date of June 8, 1983, and therefore requests waiver of the Commission's notice requirements.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825, North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before August 19, 1983. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file

with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-21820 Filed 8-9-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP83-119-000]

K N Energy, Inc., Compliance Filing

August 5, 1983.

Take notice that on August 1, 1983, K N Energy, Inc. (KN) tendered for filing, in compliance with the Commission's letter order dated July 20, 1983, revised tariff sheets for its Gas Cost Adjustments, as follows:

Third Revised Sheet No. 26B
Superseding Second Revised Sheet No. 26B
First Substitute Sixteenth Revised Sheet No. 4
Superseding Alternative 1A Sixteenth Revised Sheet No. 4

KN states that Third Revised Sheet No. 26B has been altered to incorporate language which would prohibit KN from estimating future rates for pipeline supplies in any optional semi-annual PGA filing. In addition, First Substitute Sixteenth Revised Sheet No. 4 incorporates a change to reflect proper sequential sheet numbering.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before August 19, 1983. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-21804 Filed 8-9-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER83-634-000]

Kansas City Power & Light Company; Filing

August 5, 1983.

The filing Company submits the following:

Take notice that on July 26, 1983, Kansas City Power & Light Company (KCPL) tendered for filing a Third Amendment to the Interchange Agreement dated May 20, 1983, between KCPL and Union Electric Company (UE). KCPL states that the Amendment provides for rates and charges for transmission service for delivery of power and energy from UE to the City of Columbia, Missouri.

KCPL further states that the rates included in the above-mentioned Amendment are KCPL's rates and charges for similar service under schedules previously accepted for filing by the Commission pursuant to Supplement No. 10 to Rate Schedule FPC No. 78, Supplement No. 9 to Rate Schedule FPC No. 77, and Supplement No. 15 to Rate Schedule No. 54.

KCPL requests an effective date of June 1, 1983, and therefore requests waiver of the Commission's notice requirements.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before August 19, 1983. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-21803 Filed 8-9-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA83-2-60-000]

Locust Ridge Gas Company; Change In Rates

August 4, 1983.

Take notice that on July 29, 1983, Locust Ridge Gas Company (Locust Ridge) submitted for filing as part of its FERC Gas Tariff, Original Volume No. 3 and Original Volume No. 1 and the following tariff sheets to be effective September 1, 1983:

Fourteenth Revised Sheet No. 1A
Seventh Revised Sheet No. 1A

Locust Ridge states the purpose of the filing is to submit, for approval by the Commission, a revision in Locust Ridge's rate to reflect proposed changes in the Purchase Gas Adjustment (PGA) component of Locust Ridge's rate for the period of September 1, 1983 thru February 28, 1984. The overall effect of the filed for adjustments to Locust Ridge's sales rate is a decrease of $0.2325 per MMBTU.

Locust Ridge requests waiver of the Commission's regulations to the extent, if any, required to put the proposed tariff sheets into effect on September 1, 1983.

A copy of this filing has been mailed to Locust Ridge's jurisdictional customers.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rule of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before August 17, 1983. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of the application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-21821 Filed 8-9-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER83-641-000]

Metropolitan Edison Company; Filing

August 5, 1983.

The filing Company submits the following:

Take notice that on July 25, 1983, the Metropolitan Edison Company (Met-Ed) tendered for filing a transmission service agreement under which Met-Ed will deliver power and energy provided by Pennsylvania Power & Light Company to the Borough of Kutztown, Pennsylvania. In addition, Met-Ed also tendered for filing a notice of termination of the wholesale electric power service currently being provided by Met-Ed to the Borough of Kutztown.

Met-Ed requests an effective date of September 11, 1983, and therefore requests waiver of the Commission's notice requirements.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211,

385.214). All such motions or protests should be filed on or before August 19, 1983. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-21805 Filed 8-9-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ST83-436]

Natural Gas Pipeline Company of America; Self-Implementing Transactions

August 5, 1983.

Take notice that the following transactions have been reported to the Commission as being implemented pursuant to Part 284 of the Commission's Regulations and Sections 311 and 312 of the Natural Gas Policy Act of 1978 (NGPA). The "Recipient" column in the following table indicates the entity receiving or purchasing the natural gas in each transaction.

The "Part 284 Subpart" column in the following table indicated the type of transaction. A "B" indicates transportation by an interstate pipeline pursuant to § 284.102 of the Commission's Regulations.

A "C" indicates transportation by an intrastate pipeline pursuant to § 284.122 of the Commission's Regulations. In those cases where Commission approval of a transportation rate is sought pursuant to § 284.123(b)(2), the table lists the proposed rate and expiration date for the 150-day period for staff action. Any person seeking to participate in the proceeding to approve a rate listed in the table should file a petition to intervene with the Secretary of the Commission.

A "D" indicates a sale by an intrastate pipeline pursuant to § 284.142 of the Commission's Regulations and Section 311(b) of the NGPA. Any interested person may file a complaint concerning such sales pursuant to § 284.147(d) of the Commission's Regulations.

A "E" indicates an assignment by an intrastate pipeline pursuant to § 284.163 of the Commission's Regulations and Section 312 of the NGPA.

An "F" indicates a fuel oil displacement transaction implemented pursuant to § 284.202 of the Commission's Regulations. Any interested persons may file a complaint concerning such transaction pursuant to § 284.205(d) of the Commission's Regulations.

A "G" indicates transportation by an interstate pipeline on behalf of another interstate pipeline pursuant to a blanket certificate issued under § 284.221 of the Commission's Regulations.

A "G (HT)" or "G (HS)" indicates transportation, sales or assignments by a Hinshaw Pipeline pursuant to a blanket certificate issued under § 284.222 of the Commission's Regulations.

Kenneth F. Plumb,

Secretary.

Docket No.[1] and transporter/seller	Recipient	Date filed	Part 284 subpart	Expiration date[2]	Transportation rate (¢/MMBtu)
ST83-436 Natural Gas Pipeline Co. of America	Texas Eastern Transmission Corp	6/1/83	G		
ST83-437 Natural Gas Pipeline Co. of America	Houston Pipe Line Co	6/1/83	B		
ST83-438 Northern Natural Gas Co	Westar Transmission Co	6/1/83	B		
ST83-439 Northern Natural Gas Co	El Paso Natural Gas Co	6/1/83	G		
ST83-440 Northern Natural Gas Co	Western Gas Interstate	6/1/83	G		
ST83-441 Producer's Gas Co	Southern Natural Gas Co	6/1/83	C		
ST83-442 Sugar Bowl Gas Corp	Florida Gas Transmission Corp	6/2/83	C		
ST83-443 Northern Natural Gas Co	Intratex Gas Co	6/3/83	B		
ST83-444 Tennessee Gas Pipeline Co	Cajun Natural Gas Co	6/2/83	B		
ST83-445 Tennessee Gas Pipeline Co	Transcontinental Gas Pipe Line Corp	6/3/83	G		
ST83-446 Tennessee Gas Pipeline Co	Transcontinental Gas Pipe Line Corp	6/3/83	G		
ST83-447 Northern Natural Gas Co	Transcontinental Gas Pipe Line Corp	6/3/83	G		
ST83-448 Tennessee Gas Pipeline Co	Cajun Natural Gas Co	6/6/83	B		
ST83-449 Texas Eastern Transmission Corp	Brooklyn Union Gas Co	6/6/83	B		
ST83-450 Florida Gas Transmission Co	Golden Triangle Gas Distribution Co	6/3/83	B		
ST83-451 United Gas Pipe Line Co	Entex, Inc	6/6/83	B		
ST83-452 United Gas Pipe Line Co	LGS Intrastate, Inc	6/6/83	B		
ST83-453 Transcontinental Gas Pipe Line Corp	Eastern Shore Natural Gas Co	6/6/83	G		
ST83-454 Transcontinental Gas Pipe Line Corp	Eastern Shore Natural Gas Co	6/6/83	G		
ST83-455 Transcontinental Gas Pipe Line Corp	Natural Gas Pipeline Co. of America	6/6/83	G		
ST83-456 Transcontinental Gas Pipe Line Corp	Consolidated Gas Supply Corp	6/6/83	G		
ST83-457 Transcontinental Gas Pipe Line Corp	Louisiana Gas System, Inc	6/6/83	B		
ST83-458 Michigan Wisconsin Pipe Line Co	Michigan Gas Utilities Co	6/6/83	B		
ST83-459 Michigan Wisconsin Pipe Line Co	Ohio Valley Gas Corp	6/6/83	B		
ST83-460 Michigan Wisconsin Pipe Line Co	North Central Public Service Co	6/6/83	B		
ST83-461 Michigan Wisconsin Pipe Line Co	Ohio Gas Co	6/6/83	B		
ST83-462 Michigan Wisconsin Pipe Line Co	Wisconsin Power and Light Co	6/6/83	B		
ST83-463 Michigan Wisconsin Pipe Line Co	Wisconsin Public Service Co	6/6/83	B		
ST83-464 Michigan Wisconsin Pipe Line Co	City Gas Co	6/6/83	B		
ST83-465 Michigan Wisconsin Pipe Line Co	Lincoln Natural Gas Co	6/6/83	B		
ST83-466 Michigan Wisconsin Pipe Line Co	Fountaintown Gas Co	6/6/83	B		
ST83-467 Michigan Wisconsin Pipe Line Co	Michigan Power Co	6/6/83	B		
ST83-468 Michigan Wisconsin Pipe Line Co	Paris Henry County Pub. Util. Dist	6/6/83	B		
ST83-469 Northern Natural Gas Co	Golden Triangle Gas Distribution Co	6/6/83	B		
ST83-470 Columbia Gulf Transmission Co	Texas Eastern Transmission Corp	6/7/83	G		
ST83-471 El Paso Natural Gas Co	Northern Natural Gas Co	6/8/83	G		
ST83-472 Tennessee Gas Pipeline Co	Cajun Natural Gas Co	6/9/83	B		
ST83-473 Michigan Wisconsin Pipe Line Co	Iowa Southern Utilities Co	6/6/83	B		
ST83-474 Michigan Wisconsin Pipe Line Co	Wisconsin Natural Gas Co	6/6/83	B		
ST83-475 Michigan Wisconsin Pipe Line Co	Wisconsin Gas Co	6/6/83	B		
ST83-476 Michigan Wisconsin Pipe Line Co	Wisconsin Fuel and Light Co	6/6/83	B		
ST83-477 American Pipeline Co	Transcontinental Gas Pipe Line Corp	6/10/83	D		
ST83-478 Tennessee Gas Pipeline Co	Cajun Natural Gas Co	6/14/83	B		
ST83-479 El Paso Natural Gas Co	Western Gas Interstate Co	6/14/83	G		
ST83-480 El Paso Natural Gas Co	Intratex Gas Co	6/14/83	B		
ST83-481 Producer's Gas Co	Cajun Natural Gas Co	6/14/83	D		
ST83-482 Natural Gas Pipeline Co. of America	Texas Eastern Transmission Corp	6/16/83	G		
ST83-483 Texas Gas Transmission Corp	Michigan Wisconsin Pipe Line Co	6/16/83	G		
ST83-484 National Fuel Gas Supply Corp	Great Lakes Carbon Corp	6/20/83	F		
ST83-485 El Paso Natural Gas Co	Intratex Gas Co	6/21/83	B		

Docket No.[1] and transporter/seller	Recipient	Date filed	Part 284 subpart	Expiration date[2]	Transportation rate (¢/MMBtu)
ST83-486 Columbia Gulf Transmission Co	Transcontinental Gas Pipe Line Corp	6/21/83	G		
ST83-487 Columbia Gulf Transmission Co	Transcontinental Gas Pipe Line Corp	6/21/83	G		
ST83-488 Northern Natural Gas Co	Intrastar Gas Co	6/20/83	B		
ST83-489 Northern Natural Gas Co	Golden Triangle Distribution Co	6/22/83	B		
ST83-490 Natural Gas Pipeline Co. of America	Texas Gas Transmission Corp	6/23/83	G		
ST83-491 United Gas Pipe Line Co	Natural Gas Pipeline Co. of America	6/23/83	G		
ST83-492 Tennessee Gas Pipeline Co	Creole Gas Pipeline Co	6/23/83	B		
ST83-493 Tennessee Gas Pipeline Co	Creole Gas Pipeline Co	6/23/83	B		
ST83-494 Panhandle Eastern Pipe Line Co	Peoples Natural Gas Co	6/24/83	B		
ST83-495 Trunkline Gas Co	Cajun Natural Gas Co	6/27/83	B		
ST83-496 Tennessee Gas Pipeline Co	Creole Gas Pipeline Co	6/27/83	B		
ST83-497 Sabine Pipe Line Co	United Texas Transmission Co	6/27/83	B		
ST83-498 Southern Natural Gas Co	Tennessee Gas Pipeline Co	6/27/83	G		
ST83-499 Transcontinental Gas Pipe Line Corp	Esperanza Transmission Co	6/27/83	B		
ST83-500 Oklahoma Natural Gas Co	PNG Energy	6/28/83	F		
ST83-501 National Fuel Gas Supply Corp	TAM Ceramics, Inc	6/29/83	F		
ST83-502 Houston Pipe Line Co	Southern Natural Gas Co	6/23/83	C		
ST83-503 Transcontinental Gas Pipe Line Corp	Creole Gas Pipeline Corp	6/30/83	B		
ST83-504 Transcontinental Gas Pipe Line Corp	Washington Gas Light Co	6/30/83	G		
ST83-505 Transcontinental Gas Pipe Line Corp.	Louisiana Gas System, Inc	6/27/83	B		
ST83-506 Delhi Gas Pipeline Corp	United Gas Pipe Line Co	6/30/83	C		

[1] The noticing of these filings does not constitute a determination of whether the filings comply with the Commission's regulations.
[2] The intrastate pipeline has sought Commission approval of its transportation rate pursuant to Section 284.123(B)(2) of the Commission's regulations (18 CFR 284.123(B)(2)). Such rates are deemed fair and equitable if the Commission does not take action by the date indicated.

[FR Doc. 83-21806 Filed 8-9-83; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. ER83-648-000]

New England Power Company; Filing

August 5, 1983.

The filing Company submits the following:

Take notice that on July 29, 1983, New England Power Company (NEP) tendered for filing a proposed change in its Service Agreement for Primary Service for Resale with the Narragansett Electric Company (Narragansett). The proposed change would increase the fixed credits allowed Narragansett on its purchased power billing by NEP in the amount of $1,517,400 annually based on the 12 month period ending December 31, 1984. Although the filing has an effective date of October 1, 1983, NEP requested a three month suspension.

NEP also filed an interim G & T credit, which on the basis of a 1984 test year would increase the amount of the fixed credit by approximately $940,600. The full G & T credit increase includes, and is not in addition to, the interim credit increase. NEP requested that, if the full credit is suspended for five months, the suspension applicable to the interim credit be limited to three months.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426 in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before August 22, 1983. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-21807 Filed 8-9-83; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. ER83-649-000]

New England Power Company; Filing

August 5, 1983.

The filing Company submits the following:

Take notice that on July 29, 1983, New England Power Company (NEP) tendered for filing amendments to its FERC Electric Tariff, Original Volume Number 3, that seek to increase rates for providing non-firm Non-PTF transmission services from a settlement to a cost of service level. NEP states that the proposed amendments would increase revenues from $757,098 to $1,368,880 based on 1984 estimated units. Although the filing has an effective date of October 1, 1983, NEP requested a three month suspension.

NEP also filed an interim rate increase for Non-PTF services and requested that, if the full wheeling rate increase is suspended for five months the suspension applicable to the interim rate is limited to three months.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 384.214). All such motions or protests should be filed on or before August 22, 1983. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-21783 Filed 8-9-83; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. ER83-650-000]

New England Power Company; Filing

August 5, 1983.

The filing Company submits the following:

Take notice that on July 29, 1983, New England Power Company (NEP) tendered for filing a proposed change in its Service Agreement for Primary Service for Resale with Massachusetts Electric Company (Massachusetts). The proposed change would increase the facilities credits allowed Massachusetts on its purchased power billing by NEP in the amount of $39,973 annually based on the 12 month period ending December 31, 1984. Although the filing has an effective date of October 1, 1983, NEP requested a three month suspension.

NEP also filed an interim credit, which on the basis of a 1984 test year would increase the amount of the credit by approximately $8,752. The full credit increase includes, and is not in addition to, the interim credit increase. NEP

requested that, if the full credit is suspended for five months, the suspension applicable to the interim credit be limited to three months.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before August 22, 1983. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-21784 Filed 8-9-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER83-647-000]

New England Power Company; Filing

August 5, 1983.

The filing Company submits the following:

Take notice that on July 29, 1983, New England Power Company (NEP) tendered for filing revised tariff sheets constituting a new rate W-6 for its Primary Service for Resale. NEP states that its W-6 revised tariff sheets will increase jurisdictional revenues by approximately $74,000,000 on the basis of a 1984 test year. Although the filing has an effective date of October 1, 1983, NEP requested a three month suspension. If suspended for three months as requested, NEP will begin to bill under the W-6 rate of January 1, 1984.

NEP also filed Rate W-6(I), which on the basis of a 1984 test year would increase jurisdictional revenues approximately $51,100,000. The W-6 increase includes and is not in addition to the W-6(I) increase. NEP requested that, if the full W-6 rate is suspended for five months, the suspension applicable to W-6(I) be limited to three months.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rule 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 August 22, 1983. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the 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.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-21785 Filed 8-9-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER83-637-000]

Niagara Mohawk Power Corporation; Filing

August 5, 1983.

The filing Company submits the following:

Take notice that Niagara Mohawk Power Corporation (Niagara), on July 20, 1983, tendered for filing as a rate schedule an agreement between Niagara and the Connecticut Municipal Electric Energy Cooperative, dated July 1, 1983.

Niagara states that the agreement provides for the sale of surplus energy as scheduled by Connecticut Municipal Electric Energy Cooperative.

Niagara requests an effective date of June 1, 1983, and therefore requests waiver of the Commission's notice requirements.

Copies of the filing were served upon the Connecticut Municipal Electric Energy Cooperative and the Public Service Commission of the State of New York.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before August 19, 1983. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the 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.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-21786 Filed 8-9-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER83-636-000]

Niagara Mohawk Power Corporation; Filing

August 5, 1983.

The filing Company submits the following:

Take notice that Niagara Mohawk Power Corporation (Niagara), on July 20, 1983, tendered for filing as a rate schedule, an agreement between Niagara and Orange and Rockland Utilities, Inc. (Orange and Rockland) dated July 1, 1983.

Niagara states that it presently has on file an agreement with Orange and Rockland dated February 14, 1975, last amended by Letter dated August 9, 1982. This agreement is designated as Niagara Mohawk Power Corporation Rate Schedule FERC No. 69. This new agreement is being transmitted as a supplement to the existing agreement and supersedes Supplement No. 4.

Niagara further states that this supplement revises the transmission rate for transmitting FitzPatrick power and energy from the Power Authority of the State of New York to Orange and Rockland as provided for in the terms of the original agreement.

Niagara requests an effective date of September 1, 1983, and therefore requests waiver of the Commission's notice requirements.

Copies of this filing were served upon Orange and Rockland Utilities, Inc. and the Public Commission of the State of New York.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before August 19, 1983. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file

with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-21787 Filed 8-9-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER83-652-000]

Niagara Mohawk Power Corporation; Filing

August 5, 1982.

The filing Company submits the following:

Take notice that Niagara Mohawk Power Corporation (Niagara) on July 29, 1983, tendered for filing proposed rate schedules between Niagara and the Power Authority of the State of New York (PASNY).

Niagara presently has on file three agreements with PASNY dated March 1, 1957, February 10, 1961 and July 28, 1975 as well as an agreement with the Village of Lake Placid dated July 11, 1979. The agreements were amended by a February 18, 1981 agreement and further amended by a settlement agreement dated August 26, 1982. The three agreements with PASNY provide for the transmission of PASNY power and energy to PASNY's municipal, cooperative and industrial customers. The agreement with Lake Placid provides for the construction of transmission facilities as well as the transmission of PASNY's power and energy to Lake Placid.

The proposed rate schedules revise the transmission rates for transmitting power and energy for PASNY. An effective date of November 1, 1983 is proposed.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rule 211 or 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 August 22, 1983. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the 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.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-21788 Filed 8-9-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP83-345-001]

Northwest Central Pipeline Corporation; Amendment to Application

August 4, 1983.

Take notice that on July 6, 1983, Northwest Central Pipeline Corporation (Applicant), P.O. Box 25128, Oklahoma City, Oklahoma 73125, filed in Docket No. CP83-345-001 an amendment to its pending request filed in Docket No. CP83-345-000 pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) so as to reflect additional information requested by staff, all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

In Docket No. CP83-345-000, Applicant proposes to construct and operate a new delivery point for the sale of gas to The Gas Service Company (Gas Service) for resale in a rural area in Rice County, Kansas, and to abandon and reclaim measuring facilities and the transportation and sale of gas through these facilities to three direct sale customers, under the authorization issued in Applicant's blanket certificate issued in Docket No. CP82-479-000.

By the subject amendment, Applicant withdraws its request to abandon service to the three direct sale customers. Applicant indicates that sales to these customers commenced in 1962-1964 and at that time the sales were turned over to Gas Service, the local distributor. Applicant still proposes to reclaim its measuring and appurtenant facilities now being used to serve these three customers and states that Gas Service would install its own meters in this area. Applicant states that no service to any customer would be terminated by its proposal.

Applicant states that its request for an additional town border delivery point for service to the City of Lyons, Kansas, is not a request to sell additional volumes to Gas Service, but is a request for an additional delivery point in order that Gas Service could better serve its customers.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-21862 Filed 8-9-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP82-56-007]

Northwest Pipeline Corporation; Change in FERC Gas Tariff

August 5, 1983.

Take notice that on August 1, 1983, Northwest Pipeline Corporation ("Northwest") tendered for filing and acceptance as part of its FERC Gas Tariffs, First Revised Volume No. 1 and Original Volume No. 2, the following tariff sheets:

	Proposed effective date
Volume No. 1 Tariff:	
Substitute Tenth Revised Sheet No. 10	May 3, 1983.
Substitute Seventh Revised Sheet No. 10-A.	Apr. 1, 1983.
First Revised Sheet No. 116	Oct. 1, 1982.
First Revised Sheet No. 117	Do.
Third Substitute Seventh Revised Sheet No. 10.	Do.
Substitute Eighth Revised Sheet No. 10.	Dec. 1, 1982.
Substitute First Amended Eighth Revised Sheet No. 10.	Apr. 1, 1983.
Substitute Second Amended Eighth Revised Sheet No. 10.	Apr. 11, 1983.
Second Substitute Ninth Revised Sheet No. 10.	May 1, 1983.
Substitute Fifth Revised Sheet No. 10-A.	Oct. 1, 1982.
Substitute Sixth Revised Sheet No. 10-A.	Dec. 1, 1982.
Volume No. 2 Tariff:	
Substitute Seventh Revised Sheet No. 2.	Apr. 1, 1983.
Substitute Fourth Revised Sheet No. 2-A.	June 3, 1983.
Substitute Third Revised Sheet No. 2-B.	Apr. 1, 1983.
First Revised Sheet No. 992	Oct. 1, 1982.
Substitute Sixth Revised Sheet No. 2	Do.
Second Substitute Second Revised Sheet No. 2-A.	Do.
Substitute Third Revised Sheet No. 2-A.	Do.
Substitute Second Revised Sheet No. 2-B.	Do.

The tendered tariff sheets are substitutes for Northwest's currently effective (and previously superseded) tariff sheets and are revised to incorporate (and restate back through October 1, 1982) the rates and terms provided for in Appendix C of the Stipulation and Agreement in Settlement of Docket No. RP82-56-000 which was approved by Commission order dated June 17, 1983.

Northwest requested waiver of Commission regulations in order to permit effective dates as shown above.

A copy of this filing has been served on all of Northwest's jurisdictional sales customers, transportation and gathering service customers and otherwise all parties of interest in Docket No. RP82-56-000 and affected state commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N. E., Washington, D.C. 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests should be filed on or before August 19, 1983. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-21789 Filed 8-9-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER83-638-000]

Southern California Edison Company; Filing

August 4, 1983.

The filing Company submits the following:

Take notice that on July 27, 1983, Southern California Edison Company (Edison) tendered for filing an agreement, entitled "Western Systems Coordinating Council Loop Flow Agreement", as a Participant in and on behalf of other Participants in the Western Systems Coordinating Council.

Edison states that the Agreements propose to compensate a Participating Receiver and/or Seller which has curtailed an energy schedule or foregone opportunities due to Loop Flow in accordance with the Western Systems Coordinating Council Loop Flow Operating and Procedure and Claim Criteria Principles.

Edison requests an effective date of September 1, 1983, and therefore requests waiver of the Commission's notice requirements.

Any person desiring to be heard or to protest said filing should file a motion to intevene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before August 19, 1983. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-21823 Filed 8-9-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER83-646-000]

Union Electric Company; Filing

August 5, 1983.

The filing Company submits the following:

Take notice that on July 29, 1983, Union Electric Company (Union) tendered for filing proposed changes in its FERC Electric Rate Schedules Nos. W-3, 49 88, 103, 104 and 105. The proposed changes would increase revenues from jurisdictional sales and service by $17,837,000 based on the 12 month period ending December 31, 1983. Union is also proposing to change the determinants of its fuel adjustment factor from an historic to a forecasted basis.

Union states that its proposed increase in rates is due to the increased costs of construction, capital, wages, property and payroll taxes and other similar increases in costs. It also is due to the completion of construction of new facilities as well as the recovery of the costs relating to the construction and subsequent cancellation of Callaway Unit II.

Union requests an effective date of September 27, 1983.

Copies of the filing were served upon the public utility's jurisdictional customers, the Missouri Public Service Commission and the Iowa State Commerce Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before August 22, 1983. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-21790 Filed 8-9-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP83-406-000]

United Gas Pipe Line Company; Application

August 4, 1983.

Take notice that on July 8, 1983, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77001, filed in Docket No. CP83-406-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing it to increase the maximum daily quantities (MDQ) of 36 of its single delivery point city gate customers, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

United states that based upon a survey of its 93 single delivery point city gate customers for additional service, it proposes to increase the MDQ's of 36 such customers in the aggregate amount of 13,392 Mcf per day. (See appendix hereto.) United indicates that it has surplus supplies available to serve the proposed requirements and that the requested MDQ increases would not result in a net increase in demand on its system but rather would replace a small portion of the attrition of market that United has experienced. Thus, United asserts that granting of its request is in the public convenience and necessity.

It is asserted that since the onset of the natural gas supply shortage that persisted throughout the 1970's United has not sought authorization to make new sales or to increase the certificated firm sales volumes for delivery to any of its customers. However, United alleges that its current situation is materially different from that which existed during the years of curtailment. United states that is has not been required to curtail at all since February 1982 and that its supplies of gas substantially exceed its customers' current demands.

Any person desiring to be heard or to make any protest with reference to said application should on or before August 25, 1983, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's rules

of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for United to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

Appendix

UNITED GAS PIPE LINE CO.

[Single delivery point city gate proposed MDQ increases]

State and city gate customer	Present MDQ	Increase Mcf	Resulting new MDQ
LA Abita Springs	507	343	850
TX Alto	1,068	107	1,175
TX Appleby	759	141	900
LA Baldwin	870	200	1,070
MS Bay Springs	1,216	122	1,338
MS Beaumont	1,298	142	1,440
TX Bullard	526	445	971
FL Century	779	263	1,042
MS Chickasawhay	5,477	548	6,025
TX Chireno	2,827	283	3,110
AL Conecuh-Monroe	4,925	493	5,418
LA Denham Springs	5,877	588	6,465
LA Duplessis	430	45	475
LA Franklinton	1,721	279	2,000
LA Hornbeck	672	691	1,363
LA Iota	825	83	908
TX Joaquin	665	66	731
LA Kaplan	3,122	312	3,434
LA Livingston Gas & Utility	1,001	499	1,500
LA Town of Livingston	581	58	639
MS Moss Point	5,317	532	5,849
TX New Summerfield	1,062	1,346	2,408
LA Oberlin	1,036	104	1,140
TX Recklaw	1,286	421	1,707
LA Reserve Public Utilities	3,353	435	3,788
LA St. Amant	1,056	106	1,162
LA Scott	751	180	931

UNITED GAS PIPE LINE CO.—Continued

[Single delivery point city gate proposed MDQ increases]

State and city gate customer	Present MDQ	Increase Mcf	Resulting new MDQ
LA Sorrento	542	84	626
TX South Rusk County	502	132	634
MS Union Gas (Lucedale)	1,095	110	1,205
MS Union Gas (Port Gibson)	2,676	1,319	3,995
LA Walker	2,324	1,641	3,965
MS Walthall Natural Gas	1,317	704	2,021
LA Town of Washington	886	164	1,050
MS Waveland	1,113	111	1,224
LA Winn Parish	218	295	513
Total	59,680	13,392	73,072

[FR Doc. 83-21824 Filed 8-9-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP83-118-000]

United Gas Pipe Line Company; Proposed Changes in FERC Gas Tariff

August 5, 1983.

Take notice that United Gas Pipe Line Company (United), on July 29, 1983, tendered for filing the following proposed tariff sheets for including in its FERC Gas Tariff, First Revised Volume No. 1:

Twenty-Second Revised Sheet No. 21
Eighth Revised Sheet No. 22
Fifteenth Revised Sheet No. 23

United states that: (1) The purpose of such filing is to revise the minimum commodity bill provision applicable to pipeline service under its Rate Schedule PL-N, (2) the terms of the filing are identical to those agreed to by the parties in United Gas Pipe Line Company Docket No. RP82-16 and reflected in the settlement agreement filed in that docket. United has requested that the revised tariff sheets be made effective retroactive to January 1, 1983.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before Aug. 19, 1983. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-21791 Filed 8-9-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ER83-427-000 and ER83-428-000]

Utah Power & Light Company; Compliance

August 4, 1983.

Take notice that on July 25, 1983, Utah Power & Light Company submitted for filing its revised cost of service and revised Phase II rates. Included in the filing was a list of the various statements and exhibits filed under Docket Nos. ER83-427-000 and ER83-428-000.

Any person desiring to be heard or to protest this filing should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, on or before August 17, 1983. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-21825 Filed 8-9-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RA83-12-000]

Winston Refining Company; Filing of Petition for Review Under 42 U.S.C. 7194

August 4, 1983.

Take notice that Winston Refining Company on August 1, 1983, filed a Petition for Review under 42 U.S.C. 7194(b) from an order of the Secretary of Energy (Secretary).

Copies of the petition for review have been served on the Secretary and all participants in prior proceedings before the Secretary.

Any person who participated in the prior proceedings before the Secretary may be a participant in the proceeding before the Commission without filing a motion to intervene. However, any such person wishing to be a participant must file a notice of participation on or before August 19, 1983, with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C.

20426. Any other person who was denied the opportunity to participate in the prior proceedings before the Secretary or who is aggrieved or adversely affected by the contested order, and who wishes to be a participant in the Commission proceeding, must file a motion to intervene on or before August 19, 1983, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.1005(c)).

A notice of participation or motion to intervene filed with the Commission must also be served on the parties of record in this proceeding and on the Secretary of Energy through the Office of General Counsel, the Assistant General Counsel for Regulatory Litigation, Department of Energy, Room 6H-025, 1000 Independence Avenue, S.W., Washington, D.C. 20585.

Copies of the petition for review are on file with the Commission and are available for public inspection at Room 1000, 825 North Capitol St., NE., Washington, D.C. 20426.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-21827 Filed 8-9-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF83-347-000]

Container Corporation of America—Vernon Mill; Application for Commission Certification of Qualifying Status of a Cogeneration Facility; Correction

August 5, 1983.

In Docket No. QF83-347-000 appearing in the **Federal Register** issue of Wednesday, July 27, 1983, on page 34100, make the following correction: on page 34100, in the middle column, the second full paragraph.

The topping-cycle cogeneration facility will be located at the Applicant's Vernon Mill in Los Angeles, California. The facility will consist of a gas turbine generator and a waste heat recovery boiler. The steam produced by the waste heat recovery boiler will be used for mill production processes. The primary energy source for the facility will be utility grade natural gas. The net electrical power production capacity of the facility will be 32,200 kilowatts.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-21798 Filed 8-9-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EF83-4011-000]

U.S. Secretary of Energy—Southwestern Power Administration; Order Confirming and Approving Rates for a Limited Period

Issued: August 1, 1983.

On April 27, 1983, the Assistant Secretary of Energy for Conservation and Renewable Energy filed a request for confirmation and approval of certain Southwestern Power Administration (SWPA) system rate schedules.[1] The proposed rates are designed to increase SWPA's annual revenues by 38 percent to a level of $90.2 million. The increase would raise the average cost of wholesale firm power from 16.3 mills per kWh to 23.1 mills per kWh, and wholesale peaking power from 15.4 mills per kWh to 27.2 mills per kWh. The Assistant Secretary has not implemented the proposed rates on an interim basis, but requests that they be finally confirmed for the period beginning October 1, 1983, or as early as the Commission provides, and continuing through September 30, 1986.

According to the Assistant Secretary, under current rates, SWPA will be unable to recover its investment and operating costs associated with production and transmission of electric energy as is required by Section 5 of the Flood Control Act of 1944, 16 U.S.C. 825s, 58 Stat. 887, 890.[2] The Assistant Secretary states, however, that the repayment studies underlying the proposed rates show that the increased rates will satisfy the statutory requirements.

The Assistant Secretary has also requested that the Commission extend its prior confirmation and approval of the existing rate applicable to Tex-La Electric Cooperative (Tex-La) under Section 2 of Contract No. 14-02-001-864 for the period October 1, 1983, through March 31, 1984.[3]

Notice of the SWPA filing was published in the **Federal Register** with comments due on or before May 31, 1983. Timely protests and motions to intervene were filed by Kansas Electric Power Cooperative (KEPCO), Northeast Texas Electric Cooperative (Northeast Texas), Tex-La, and the Committee for Power for the Southwest (Committee).[4] A notice of intervention was timely filed by the Kansas State Corporation Commission. SWPA filed answers to these pleadings on June 13 and 15, 1983.

Tex-La notes that the last change in its rates was made as of April 1, 1979, and that, according to the terms of its contract with SWPA, its rates cannot be changed more than once every five years. Tex-La requests that we resolve at this time the question of whether the firm power rate approved in this docket governs the rate Tex-La must pay after April 1, 1984.

Tex-La claims that the operation and maintenance (O&M) component of SWPA's proposed rates is excessive due to a high estimate of inflation. Tex-La further claims that SWPA's proposed method of recovering the costs of purchased power (through a purchased power adjustment mechanism) is unreasonable, although Tex-La provides no support for its contention. Northeast Texas also raises these two issues while the Committee questions only the level of SWPA's O&M expense. The Committee claims that SWPA's O&M expense is excessive because it reflects an annual escalation rate of more than 10 percent which greatly exceeds the current rate of inflation. The Committee also requests that a hearing be held concerning SWPA's rates. KEPCO supports the Committee, and also separately protests the proposed rates.

In response, SWPA states that if an adjustment to Tex-La's rates is necessary as of April 1, 1984, such an adjustment will incorporate the same costs as are reflected in the filing in this docket. SWPA also states that the level of O&M expense in its rates is reasonable because the expense projection reflects cost increases due to factors in addition to inflation. Finally,

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[1] SWPA is responsible for marketing electricity from various reservoir projects operated by the United States Army Corps of Engineers. SWPA's customers are located in Arkansas, Kansas, Louisiana, Missouri, Oklahoma, and Texas.

The Commission's authority to confirm and approve SWPA's rates arises under Section 5 of the Flood Control Act; Sections 301(b) and 302(a) of the Department of Energy (DOE) Organization Act, Pub. L. No. 95-91, August 4, 1977, 91 Stat. 565, 42 U.S.C. 7151-52; and DOE Delegation Order No. 0204-33, 43 FR 60636 (December 28, 1978).

[2] Section 5 of the Flood Control Act provides in part:

Rate schedules shall be drawn having regard to the recovery (upon the basis of the application of such rate schedules to the capacity of the electric facilities of the projects) of the cost of producing and transmitting such electric energy, including the amortization of the capital investment allocated to power over a reasonable period of years.

The section also provides that such energy shall be sold "in such manner as to encourage the most wide spread use thereof at the lowest possible rates to consumers consistent with sound business principles * * *"

[3] The Commission has conditionally confirmed and approved SWPA's current rates through September 30, 1983, 22 FERC ¶ 61,232 (1983). However, under the terms of SWPA's contract with Tex-La, rates can only be adjusted at five-year intervals. The currently effective rates for Tex-La will not be subject to adjustment until April 1, 1984.

[4] The Committee is a service organization whose members consist of about 240 rural electric cooperatives and municipal electric systems in the Southwest.

SWPA supports its purchased power cost proposal as reasonable, noting that it represents a modification of an earlier proposal and is intended to recognize objections raised by SWPA's customers during the public participation process.[5] These objections concerned the impact on SWPA's customers arising from large fluctuations in SWPA's purchased power costs during high and low water years.[6]

Discussion

Under Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214), the timely notices of intervention and motions to intervene serve to make the previously listed persons parties to this proceeding.

As noted, the rates submitted by SWPA are subject to Section 5 of the Flood Control Act of 1944. SWPA's rates must, therefore, be designed to recover the costs of generation and the transmission of energy, and to amortize the investment of the United States in the reservoir projects within a reasonable period of time. The rates must also encourage the widespread use of SWPA power at the lowest possible rates to consumers consistent with sound business principles.

The Commission's review in this case is based on the supporting studies and record of public participation submitted by the Assistant Secretary. The supporting documents reveal that the proposed rates would be sufficient to recover the costs as shown in SWPA's repayment studies. However, as indicated below, an historic analysis of SWPA's repayment record demonstrates that repayment of the Federal investment has lagged behind a reasonable amortization schedule.[7] In fact, in 18 of the last 38 years, SWPA's revenues were not sufficient to recover annual expenses and interest, let alone to cover payments against principal.

Beginning in 1970, SWPA has taken a number of steps to improve its financial position. SWPA has adopted a policy of allowing all firm (load factor) power sales contracts to expire and replacing them with peaking power contracts. As a result, SWPA is obligated to supply only 1200 kWh per kW in a "dry" year which sharply reduces the necessity—and expense—to purchase power from other utilities in low water years. SWPA has also more accurately assigned fixed and variable costs, increasing the capacity component of its rates and thereby assuring a more consistent recovery of costs even in dry years.

In order to continue this effort to improve its financial position, SWPA now proposes to recover its costs of purchased power by means of a purchased power adjustment mechanism. According to SWPA, this proposal is necessary because, during 1978–82, actual purchased power costs were about $14 million higher than anticipated, and contributed to a repayment shortfall of about $26 million. This shortfall is due to large annual fluctuations in rainfall which purportedly make it difficult for SWPA to project its purchased power expense on a short-term basis and to recover these costs in base rates. Indeed, SWPA suggests that fluctuations in annual rainfall are a certainty in the Southwest.

Under SWPA's current purchased power proposal, purchased power rates based on historical hydrological data are included in the applicable rate schedules. These rates are intended to recover, fairly evenly over time, SWPA's purchased power costs. In addition, two accounts would be established to provide for variations between revenues collected and actual expenses. One account would be a deferred credit account; the other would be a deferred cost account. If actual expenses are less than the revenues attributable to the purchased power rates, the excess would be credited to the deferred credit account. If actual expenses are greater than the revenues from the purchased power rates, the excess would be recorded in the deferred cost account.

SWPA states that it will be necessary to carefully monitor the two accounts to ensure that revenues collected through the purchased power rates will, over time, equal actual expenses. If the deferred cost balance is high, such as may be the case over an extended period of below-average rainfall, the purchased power rates would be increased when SWPA's rates are revised to make up for the revenue shortfall. If, on the other hand, the deferred credit balance is high, the purchased power rates would be decreased.

Analysis of SWPA's proposal indicates that it is an effort to recognize a number of interests. First, it reflects SWPA's continuing efforts to improve its financial position and to comply with Section 5 of the Flood Control Act. In this way, SWPA should be better able to recover its purchased power costs and to make repayment of the Federal investment over a reasonable period. If scheduled repayments were not made, the responsibility for repayment would be shifted from current customers to future customers.

Second, SWPA's purchased power proposal reflects an effort to recognize the concerns raised by SWPA's customers, including Tex-La and Northeast, during the public participation phase of the rate development process. Initially, SWPA had proposed that its purchased power costs be passed through to its customers as incurred on a three-month rolling average basis. However, SWPA's customers stated that this proposal would shift the cash flow burdens arising from fluctuations in rainfall from a large entity (SWPA), able to balance high purchased power costs in low-water years against higher revenues in high-water years, to smaller entities (SWPA customers) with no such capability.[8] In response to the concerns of its customers, SWPA has stated that it would be willing to bear the burden of fluctuations in purchased power costs provided an appropriate accounting method could be established.[9] As a result, SWPA submitted its current proposal to the Commission.

Our review of SWPA's purchased power proposal indicates that it is reasonable, that it adequately addresses the customers' stated concerns, and that it should be approved for the limited period (described below) that the proposed SWPA rates will be in effect. We note in this regard that all of SWPA's generation is from hydroelectric facilities which depend upon a relatively unstable water supply. For this reason, the level of purchased power expenses may be unpredictably variable. Moreover, SWPA has a statutory obligation to *ensure* repayment of Federal investments and we believe that the effort to do so in this case should be supported.

Nonetheless, in order to assist the Commission in determining whether SWPA's proposal should be approved for continued use after the limited

[5] SWPA's customers participated in the rate development process under the public participation procedures provided at 10 CFR Part 903, Subpart A.

[6] SWPA purchases large amounts of power and energy for its customers from other utilities during low water years. In high water years, SWPA's purchased power costs are much lower.

[7] Analysis of the repayment schedules indicates that the Federal investment assigned to power repayment through the end of the 1981 fiscal year was approximately $685 million, and that repayment of about $40 million toward that investment had been made. However, by evaluating the repayment history based on a straight-line amortization method, we find that the level of repayment would have been about $244 million. Under a compound interest amortization method, the repayment level thus far would have been about $166 million.

[8] *See* Record of Public Forum, Comments, and Responses, Comments of Tex-La and Northeast Texas dated January 3, 1983.

[9] *See* Order Approving Power Rates for Submission, 48 FR 19926, 19928–29 (May 3, 1983)

approval period, SWPA shall provide in its next rate filing the monthly balances of its deferred credit and cost accounts, together with a statement describing the effects of its purchased power adjustment mechanism on itself and on its customers. SWPA shall also include the balances of *both* accounts in stating its revenue requirements in its next rate case.

We now turn to the objections raised by SWPA's customers concerning SWPA's estimate of its O&M expense. As SWPA states in its responsive pleadings, its O&M cost estimates reflect not only inflation but other cost increase factors as well. In addition, comparison of the O&M estimates contained in SWPA's previous rate filing in Docket No. EF79-4011 with actual costs as reported in the current filing indicates that the prior estimates were overstated by only a small percentage. Further, given SWPA's continuing lag in repayment of the Federal investment, we would not be inclined to reject the rates based on mis-estimates of O&M expenses unless the overstatement by SWPA had been shown to be substantial.

We recently explained our concerns with respect to SWPA's arrearage in repayment of the Federal investment in Docket No. EF83-4021-000, 23 FERC ¶61,403 (June 22, 1983) (involving SWPA's Sam Rayburn Dam Project). As discussed there, we believe that prompt correction of SWPA's amortization practices (together with the efforts apparent in this filing to more accurately recover current operating expenses) can ameliorate prior deficits in repayment obligations. The instant filing represents a major step in the right direction and we can therefore conclude that the submittal is generally consistent with the statutory objectives. However, as we did in the prior docket, we shall limit our approval of SWPA's rates to one year and advise the SWPA Administrator to pursue additional avenues for catching-up payments to the Federal Treasury while mitigating any adverse effect on its customers. We further advise SWPA that in its next rate filing, annual interest on additions should be computed using the current interest rate applicable in each year, as required by DOE Order No. RA 6120.2 (September 20, 1979), rather than the project interest rates which are reflected in SWPA's current repayment study. Inasmuch as interest rates have risen, SWPA's current method consistently understates revenue requirements.

The Commission will deny the Committee's request for a hearing. We believe that the Committee has had an opportunity, reasonable under the circumstances here, to present its view and to participate in the development of SWPA's rates under the procedures of 10 CFR Part 903, Subpart A. As noted, we believe that the concerns expressed with regard to recovery of purchased power costs have been reasonably addressed and we would not be inclined to modify our decision to approve the rates even if we assumed the validity of the objections to SWPA's stated O&M expenses.

SWPA's request for an extension of the Commission's prior confirmation and approval of the current rate applicable to Tex-La will be granted. In response to Tex-La's apparent concern, we note that in order for SWPA to adjust its rates to Tex-La for the period after March 31, 1984, SWPA will be required to make a new rate filing since this filing does not propose to raise Tex-La's rates. Accordingly, the rates proposed in this docket will not automatically apply to Tex-La effective as of April 1, 1984.

The Commission orders:

(A) SWPA's revised rate schedules submitted in this docket are confirmed and approved for a one-year period effective as of the date of this order. In addition, the proposed accounting treatment with respect to purchased power costs is approved, *provided that* any accrued credits or debits shall be reconciled and reflected in SWPA's next system rate filing.

(B) The Commission's prior confirmation and approval of the existing rate to Tex-La Electric Cooperative, Inc., under Section 2 of Contract No. 14-02-001-864, is extended for the period October 1, 1983, through April 1, 1984.

(C) The Secretary shall promptly publish this order in the **Federal Register.**

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-21826 Filed 8-9-83; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Issuance of Decisions and Orders; Week of June 27 Through July 1, 1983

During the week of June 27 through July 1, 1983 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.

Appeals

Arnold Kramish, 7/1/83, HFA-0154

Arnold Kramish filed an Appeal from a partial denial by the Assistant Manger for Administration of the Richland Operations Office of a Freedom of Information Act (FOIA) and Privacy Act request. The appellant had sought the release of certain documents containing medical data about him. In considering the Appeal, the DOE determined that appellant had failed to present evidence that the DOE had not released all of the documents containing the data sought. Nevertheless, a second search was conducted, which failed to discover any additional relevant documents. Accordingly, the Appeal was denied.

Sun Company, Inc., and Sun Exploration and Production Company, 6/30/83, HFA-0159

Sun Company, Inc. and Sun Exploration and Production Company filed an Appeal from a partial denial by a Deputy Director of the Office of Hearings and Appeals (OHA) of a Request for Information which the firms had submitted under the Freedom of Information Act (FOIA). Appellant sought the release of certain documents relating to the transfer of cases within the OHA and sought a copy of the OHA's operations and procedures manual. In considering the Appeal, the DOE determined that appellant failed to present evidence that OHA had not released all documents concerning case transfers that existed. The DOE also noted that the requested manual is available through the OHA Public Docket Room and thus need not be provided in response to an FOIA request. Accordingly, the Appeal was denied.

Request for Exception

Winston Refining Company, 6/29/83, BEE-1284

Winston Refining Company filed an Application for Exception from the provisions of 10 CFR 211.67 in which the firm sought the issuance of additional entitlements for the period January through October 1980 to reduce the firm's post-entitlement cost of crude oil to the level of other domestic refiners. The DOE found that Winston's post-entitlement crude oil costs were significantly higher than those of other domestic refiners and that the disparity was largely attributable to the failure of the Entitlements Program to provide Winston with the financial equivalent of equitable access to old crude oil. In accordance with the precedent established in *Asamera Oil (U.S.), Inc.*, 10 DOE ¶ 81,031 (1983), the DOE granted Winston $778,197 in relief, an amount which compensated the firm for its disproportionately low access to price-controlled crude oil for the period January through October 1980.

Motions for Discovery

James Menzi, d.b.a. Atkins Brothers Union 76, 6/30/83, HRD-0136, HRH-0136

James Menzi d.b.a. Atkins Brothers Union 76 filed a Motion for Discovery and a Motion for Evidentiary Hearing in connection with his Statement of Objections to a Proposed

Remedial Order which was issued to him by the Western District Office of Enforcement. In his Motions, Menzi contended that the Due Process Clause of the Fifth Amendment entitled him to an evidentiary hearing and to all of the discovery which he requested because the PRO contained language stating that he might be subject to criminal liability. The DOE found that this contention was erroneous in that the PRO did not seek to impose any penal sanctions but instead sought disgorgement of alleged overcharges. Consequently, the DOE examined Menzi's Motions in light of the standards set forth in the DOE procedural regulations at 10 C.F.R. 205.198 and 205.199. After consideration of each of Minzi's requests, the DOE found that he had failed to satisfy the criteria for approval of his motions, primarily because he had failed to set forth alternative findings of fact or place any of the findings in the PRO into dispute by submitting contrary evidence. In addition, Menzi did not show that his discovery requests were for information that was relevant and material to the issues raised by the PRO. Accordingly, Menzi's Motions were both denied.

Little America Refining Company, Inc., 6/27/83, HED–0099

Little America Refining Company, Inc. (Larco) filed a Motion for Discovery concerning its contention in pending exception review cases that the DOE did not act in an even-handed manner in its 1979 Decision and Order to phase out Larco from receiving *Delta* relief. Larco requested access to financial data of small refiners who were *Delta* relief recipients, and were allegedly in a situation similar to that of Larco. Larco contended that the data would demonstrate that many of those *Delta* relief recipients would have been disqualified from receiving *Delta* relief had the DOE applied to them the same rule as it applied to Larco with equal force.

In this Decision and Order, the DOE stated that the decision to disqualify Larco from *Delta* relief was based upon analyses of Larco's specific factual circumstances, rather than any general rule that could be applied to small refiners with equal force. Thus, "even-handedness" is not an issue in the pending exception review cases. Since Larco failed to make a compelling showing of bias or abuse of discretion in the DOE's decision to disqualify Larco from *Delta* relief, the DOE characterized Larco's discovery request as a "fishing-expedition" which would unduly delay the pending proceedings. The DOE therefore denied Larco's Motion for Discovery.

Interlocutory Order

Office of Special Counsel, 6/30/83, HRZ–0153

The Office of Special Counsel filed a motion to strike a rebuttal brief filed by Texaco, Inc., arguing that the rebuttal exceeded the scope of the leave previously granted Texaco to file that brief. At a hearing on June 29, 1983, the Office of Hearings and Appeals rejected that argument and denied the motion.

Refund Applications

OKC Corporation/Chemical Express Carriers, Inc.; Arkansas Power & Light Co.; Mississippi Power and Light Co.; New Orleans Public Service, Inc.; Louisiana Power & Light; Growmark, Inc.; Defense Logistics Agency, 7/01/83, RF13–1; RF13–5; RF13–31; RF13–32; RF13–33; RF13–12; RF13–22

Chemical Express Carriers, Inc., Growmark, Inc., the Defense Logistics Agency, and System Fuels, Inc. (on behalf of Arkansas Power & Light Co., Mississippi Power & LIght Co., New Orleans Public Service, and Louisiana Power and Light) filed Applications for Refund pursuant to the Decision and Order issued on March 25, 1982, *Office of Enforcement: In the Matter of OKC Corp.*, 9 DOE ¶ 82,551 (1982), which instituted procedures for thedistribution of $4.75 million obtained by the DOE through a Consent Order with OKC Corporation. In considering the applications, the DOE determined that each of the claimants should receive a refund, and that the claimants need not make a demonstration of injury because of their status as end-users of OKC products or because the nature of their business operations requires that refunds be passed through to their customers or members. The level of each refund was computed using a volumetric formula. The refunds granted in this decision total $541,622 plus accrued interest.

Sid Richardson Carbon and Gasoline Company and Richardson Products Company/Alpine Butane Company, Inc., et al., 7/01/83, RF26–1, et al.

The DOE issued a Decision and Order concerning Applications for Refund filed by four firms which purchased natural gas liquids (NGLPs) from Sid Richardson Carbon and Gasoline Company and Richardson Products Company (Sid Richardson) during the consent order period, September 1973 through June 1979. All of these firms elected to apply for a refund based on average purchases of 60,000 gallons per month or 720,000 gallons annually per covered product, the threshold(s) established in *Officer of Enforcement*, 10 DOE ¶ 85,056 (1983). In considering these applications, the DOE concluded that each applicant should receive a refund based on the proportion of the NGLP purchased by that applicant to the total amount of NGLPs sold by Sid Richardson during the consent order period. The refunds granted in this decision total $36,367 plus accrued interest.

Standard Oil Company (Indiana)/Commonwealth of Virginia, 7/1/83, RF21–10718; RF21–10719; RF21–11443; RF21–11444

The DOE issued a Decision and Order concerning Applications for Refund filed by the Commonwealth of Virginia as a consumer of Amoco motor gasoline and middle distillates. Virginia elected to apply for a refund based upon the presumption of injury and the formulae outlined in *Office of Special Counsel*, 10 DOE ¶ 85,048 (1982). In considering these applications, the DOE concluded that Virginia should receive a refund based upon the total volume of its Amoco motor gasoline and middle distillate purchases. The refunds granted in this proceeding total $93,352.

Standard Oil Company (Indiana)/Dallas & Mavis Forwarding Company, 7/01/83, RF21–11658

The DOE issued a Supplemental Order concerning an Application for Refund filed by Dallas & Mavis Forwarding Company (D&M), a consumer of Amoco middle distillates. D&M elected to apply for a refund based upon the presumption of injury and the formulae outlined in *Office of Special Counsel*, 10 DOE ¶ 85,048 (1982). In considering the application, the DOE concluded that D&M should receive a refund based upon the total volume of its Amoco middle distillate purchases. The refund granted in this proceeding is $43. The Supplemental Order rescinded a refund erroneously calculated and granted to D&M in *Standard Oil Co. Indiana/R. P. Genisio*, 11 DOE ¶ 85,032 (1983).

Standard Oil Company (Indiana)/Defense Logistics Agency, 6/27/83, RF21–11004; RF21–11005

The DOE issued a Decision and Order concerning an Application for Refund filed by the Defense Logistics Agency (DLA), an end-user of Amoco middle distillates, aviation gasoline and aviation jet fuel. In considering this application, the DOE concluded that the DLA should receive a refund based upon the total volume of its Amoco refined petroleum product purchases. The refund granted in this proceeding is $981,808.

Standard Oil Company (Indiana)/Heart of America Truck Plaza, et al., 6/28/83, RF21–8108 et al.

The DOE issued a Decision and Order concerning 91 Applications for Refund filed by retailers of motor gasoline. All of these firms elected to apply for a refund based upon the presumption of injury and the formulae outlined in *Office of Special Counsel*, 10 DOE ¶ 85,048 (1982). In considering these applications, the DOE concluded that each of the 91 applicants should receive a refund based upon the total volume of its Amoco motor gasoline purchases. The refunds granted in this proceeding total $86,670.

Standard Oil Company (Indiana)/State of Michigan Attorney General, 6/27/83, RF21–11660

The DOE issued a Supplemental Order concerning an Application for Refund filed by the State of Michigan Attorney General (Michigan) on behalf of 166 governmental entities who were consumers of Amoco middle distillates and motor gasoline. Michigan elected to apply for a refund based upon the presumption of injury and formulae outlined in *Office of Special Counsel*, 10 DOE ¶ 85,048 (1982). In considering the application, the DOE concluded that Michigan should receive a refund based upon the total volume of its Amoco motor gasoline and middle distillate purchases. The refund granted in this proceeding is $76,672. The Supplemental Order rescinded a refund erroneously calculated and granted to Michigan in *Standard Oil Co. (Indiana)/State of Michigan Attorney General*, 11 DOE ¶ 85,039 (1983).

Standard Oil Company (Indiana)/Tomlinson Oil Company, 7/01/83, RF21–11661

As part of the refund proceedings involving the Standard Oil Company (Indiana) (Amoco)

fund, the DOE issued a decision granting a refund to Tomlinson Oil Company of $1,921 based on the firm's purchases of 5,435,433 gallons of Amoco middle distillates. Tomlinson states that its application inadvertently included purchases of Amoco middle distillates made during the period July through December 1976. These purchases are outside of the consent order period for middle distillates which extends from March 6, 1973 through June 30, 1976. Tomlinson states that it purchased only 4,652,701 gallons of middle distillates during the consent order period. Since the firm elected to apply for a refund based on the presumption of injury methodology set forth in *Office of Special Counsel*, 10 DOE ¶ 85,048 (1982), the DOE approved a refund of $1,644 (4,652,701 x .38 x $0.0009299 = $1,644). Tomlinson was directed to remit the $277 difference between the refund originally granted to the firm and the refund granted in this proceeding to the Amoco escrow account.

Standard Oil Company (Indiana)/Westland Standard, et al., 7/01/83, RF21-831 et al.

The DOE issued a Decision and Order concerning 141 Applications for Refund filed by retailers of motor gasoline. All of these firms elected to apply for a refund based upon the presumption of injury and the formulae outlined in *Office of Special Counsel*, 10 DOE ¶ 85,048 (1982). In considering these applications, the DOE concluded that each of the 141 applicants should receive a refund based upon the total volume of its Amoco motor gasoline purchases. The refunds granted in this proceeding total $119,820.

Dismissals

The following submissions were dismissed:

Name and Case No.

Allegheny Petroleum Corp., HRO-0138
Anschutz Petroleum Marketing Corp., HRO-0109; HRD-0110; HRH-0110
Edgar Lee Ewing, Jr., RF21-11693; RF21-11694
Indiana School District #877, RF21-5510
Indiana School District #877, RF21-5511
Marquette Fuels, RF21-7659
Toro Oil, Inc., RF21-11284

The following Amoco Refund Applications were dismissed on the grounds that the firm had already received a refund directly from Amoco:

Name and Case No.

Empire Transport, Inc., RF21-5383
Monson Trucking, Inc., RF21-6582
W. S. Hatch Company, RF21-5499

Copies of the full text of these decisions and orders are available in the Public Docket Room of the Office of Hearings and Appeals, Room 1111, New Post Office Building, 12th and Pennsylvania Ave., N.W., Washington, D.C. 20461, 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.

Thomas L. Wieker,

Acting Director, Office of Hearings and Appeals.

August 4, 1983.

[FR Doc. 83-21838 Filed 8-9-83; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Decisions and Orders; Week of July 4 Through July 8, 1983

During the week of July 4 through July 8, 1983, the decisions and orders summarized below were issued with respect to applications for 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.

Interlocutory Order

Economic Regulatory Administration/State of California, 7/5/83, HRZ-0136

The Economic Regulatory Administration filed a Motion to limit the participation of the State of California in an enforcement proceeding involving West Coast Oil Company. California had filed a Statement of Objections on behalf of its citizens which addressed only the remedial aspects of the West Coast Proposed Remedial Order. In considering the ERA Motion, the DOE stated that intervention to protect the interests of consumers and the public should generally be permitted. The DOE found that California had shown sufficient interest to justify its participation in the enforcement proceeding, but determined that actual consideration of remedial issues should be deferred until an appropriate phase of the proceeding. Accordingly, the ERA Motion was denied.

Supplemental Orders

Dow Chemical, U.S.A., 7/7/83, HEX-0086

On April 10, 1981, the DOE issued an Order which determined that Dow Chemical, USA received excessive entitlements exception relief in connection with the acquisition of a permanent inventory of crude oil for a refinery located at Freeport, Texas. The firm was therefore required to purchase entitlements in the amount of $10,315,966 on the next Entitlements Notice issued by the DOE. Upon reviewing the 1981 Order, the DOE found that since that Entitlements Notice had not yet been issued, Dow was receiving undue benefits, because it retained this excessive exception relief. The DOE therefore modified the 1981 Order and required Dow to remit to an interest bearing escrow account the amount of the excessive exception relief.

La Plaza Services, 7/7/83, HRX-0085

On June 3, 1983, the DOE issued a final Remedial Order to Plaza Service Center. *Plaza Service Center*, 11 DOE ¶ 83,003 (1983). The present determination corrected a clerical error in the amount of overcharges stated that Decision.

Refund Applications

Defense Logistics Agency, 7/8/83, RF21-11789, RF21-11790

The DOE issued a supplemental Decision and Order concerning two Applications for Refund filed by the Defense Logistics Agency (DLA), a purchaser of Amoco aviation jet fuel. The DOE had previously granted the DLA a refund of $981,808. In reconsidering these applications, the DOE discovered that the type of aviation fuel purchased by DLA from Amoco was actually exempted from price controls for part of the period for which a refund was previously granted. Accordingly the DOE reduced the refund granted to DLA to $427,573.

Standard Oil Company (Indiana) / Hardwood Lumber Corporation et al., 7/6/83, RF21-2117 et al.

The DOE issued a Decision and Order concerning 44 Applications for Refund filed by consumers of Amoco motor gasoline. All of these firms elected to apply for a refund based upon the presumption of injury and the formulae outlined in *Office of Special Counsel*, 10 DOE ¶ 85,048 (1982). In considering these applications, the DOE concluded that each of the 44 applicants should receive a refund based upon the total volume of its Amoco motor gasoline purchases. The refunds granted in this proceeding total $72,960.

Standard Oil Company (Indiana) /Michigan Avenue Management, Inc. et al., 7/5/83, RF21-1062 et al.

The DOE issued a Decision and Order concerning 55 Applications for Refund filed by consumers of Amoco middle distillates. All of these firms elected to apply for a refund based upon the presumption of injury and the formulae outlined in *Office of Special Counsel*, 10 DOE ¶ 85,048 (1982). In considering these applications, the DOE concluded that each of the 55 applicants should receive a refund based upon the total volume of its Amoco middle distillate purchased less any volumes purchased during periods not covered by the Amoco Consent Order and volumes for which an Applicant had already received a direct refund from Amoco. The refunds granted in this proceeding total $500,285.

Standard Oil Company (Indiana) /Midwest Motor Express, Inc. 7/7/83, RF21-11785

The DOE issued a Supplemental Order concerning an Application for Refund filed by Midwest Motor Express, Inc. (Midwest), a consumer of Amoco middle distillates. Midwest had applied for a refund based upon the presumption of injury and the formulae outlined in *Office of Special Counsel*, 10 DOE ¶ 85,048 (1982). In considering that application, the DOE concluded in a prior Decision and Order that Midwest should receive a refund of $8,151 based upon the total volume of its Amoco middle distillate purchases. The DOE subsequently discovered that it had incorrectly calculated the purchase volumes used to calculate Midwest's refund. The Supplemental Order corrected the error and reduced the firm's refund to $565.

Standard Oil Company (Indiana)/Rodgers Oil Company et al., 7/7/83, RF21-2434 et al.

The DOE issued a Decision and Order concerning 48 Applications for Refund filed by 24 retailers and wholesalers of Amoco motor gasoline. All of these firms elected to apply for a refund based upon the presumption of injury and the formulae outlined in *Office of Special Counsel*, 10 DOE ¶ 85,048 (1982). In considering these applications, the DOE concluded that each of the 24 applicants should received a refund based upon the total volume of its Amoco motor gasoline purchases. The refunds granted in this proceeding total $68,131.

Standard Oil Company (Indiana)/State of Nebraska, 7/8/83, RF21-6288

The DOE issued a Decision and Order concerning an Application for Refund filed by the State of Nebraska, a consumer of Amoco motor gasoline. The State elected to apply for a refund based upon the presumption of injury and the formulae outlined in *Office of Special Counsel*, 10 DOE ¶ 85,048 (1982). In considering the application, the DOE concluded that the State should receive a refund based upon the total volume of its Amoco motor gasoline purchases. The refund granted in this proceeding is $20,460.

Standard Oil Company (Indiana)/State of Wisconsin, 7/5/83, RF21-8751; RF21-8752; RF21-8753

The DOE issued a Decision and Order concerning an Application for Refund filed by the State of Wisconsin, a consumer of Amoco motor gasoline and middle distillates. Wisconsin elected to apply for a refund based upon the presumption of injury and the formulae outlined in *Office of Special Counsel*, 10 DOE ¶ 85,048 (1982). In considering the application, the DOE concluded that Wisconsin should receive a refund based upon the total volume of its Amoco motor gasoline and middle distillate purchases. The refund granted in this proceeding is $2,377.

Standard Oil Company (Indiana)/White Oil Co., Inc. et al., 7/7/83, RF21-970 et al.

The DOE issued a Decision and Order concerning 26 Applications for Refund filed by wholesalers of Amoco motor gasoline and resellers of Amoco middle distillates. All of these firms elected to apply for a refund based upon the presumption of injury and the formulae outlined in *Office of Special Counsel*, 10 DOE ¶ 85,048 (1982). Although the individual middle distillate refunds were below the $15 minimum threshold, the DOE granted the applications because those applicants had also applied for refunds based on Amoco motor gasoline purchases, and thus the total refund to each of these applicants amounted to more than $15. The refunds granted in this proceeding total $17,478.

Dismissals

The following submissions were dismissed:

Name and Case No.

A. L. Barton, HR0-0127
AGRO Petro, Inc., RF21-10701
Allinson Oil Co., RF21-10143
B & C Oil Company, RF21-10646
Bormann Oil Co., RF21-10799
Brassfield's Oil Co., Inc., RF21-10124
City of Red Wing, RF21-4798
David J. Blount, RF21-5016; RF21-5017
Dawson Oil Co., Inc., RF21-10129
Ernest Jaegle, RF21-6229; RF21-6230
Fuller Petroleum Service, RF21-8827
Good Oil Co., Inc., RF21-10739
Gordon Petroleum Products, RF21-10733
Green Oil Company, RF21-8805
Gross Oil Co., RF21-10964
Guy D. Moon, RF21-10200
Hansen Oil Co., RF21-10962
Isberner Oil Co., RF21-10126
Laffen Oil, RF21-10809
Long Oil Co., RF21-10708
Merwin Oil Company, RF21-7093; RF21-7094
Miller Farm Home Oil Service, Inc., RF21-8879
Nielsen Oil Co., RF21-10823
Norman Oil Co., Inc., RF21-10742
Nyquist Oil Co., Inc., RF21-11046
Peterson Oil Co., RF21-8786
R. B. Winke Oil Co., RF21-10814
Schorg's Tank Wagon Service, RF21-10730
Schreiers Oil Div., RF21-10134
Shute Oil Co., Inc., RF21-10146
Sipes Oil Co., RF21-10721
Spring Valley Public Schools, RF21-6829
Willis Oil Co., RF21-10430
William Hernly Oil Co., RF21-10419

The following Amoco Refund Application was dismissed on the grounds that the applicant had already received a refund directly from Amoco:

Name and Case No.

Petco, Inc., Interstate, RF21-4769

Copies of the full text of these decisions and orders are available in the Public Docket Room of the Office of Hearings and Appeals, Room 1111, New Post Office Building, 12th and Pennsylvania Ave. NW., Washington, D.C. 20461, 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.

Thomas L. Wieker,

Acting Director, Office of Hearings and Appeals.

[FR Doc. 83-21837 Filed 8-9-83; 8:45 am]

BILLING CODE 6450-01-M

Cases Filed; Week of July 8 Through July 15, 1983

During the week of July 8 through July 15, 1983, the appeals and applications for exception or other 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 earlier lists 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, D.C. 20461.

Thomas L. Wieker,

Acting Director, Office of Hearings and Appeals.

August 4, 1983.

List of Cases Received by the Office of Hearings and Appeals

[Week of July 8 through July 15, 1983]

Date	Name and Location of Applicant	Case No.	Type of submission
Apr. 1, 1983	Consolidated Materials, Inc., New Orleans, LA	HRD-0149, HRD-0150.	Motions for Discovery. If granted: Discovery would be granted to Consolidated Materials, Inc. in connection with the Statement of Objections submitted by Consolidated Materials to the December 7, 1982, Proposed Remedial Order issued to the firm (Case No. HRO-0107).
July 11, 1983	Kramer Associates, Inc., Washington, D.C.	HFA-0167	Appeal of an Information Request Denial. If granted: The June 20, 1983 Freedom of Information Request Denial issued by the DOE Office of the Inspector General would be rescinded, and Kramer Associates, Inc. would receive access to information concerning the Inspector General's investigation of a DOE contract with Kramer Associates.
July 12, 1983	Ben Shimek, San Francisco, CA	HRH-0020	Request for Evidentiary Hearing. If granted: An evidentiary hearing would be convened in connection with the Statement of Objections submitted by Ben Shimek to the December 31, 1981 Proposed Remedial Orders issued to Ben Shimek.

List of Cases Received by the Office of Hearings and Appeals—Continued

[Week of July 8 through July 15, 1983]

Date	Name and Location of Applicant	Case No.	Type of submission
July 12, 1983	Jack W. Grigsby, Wasington, D.C	HCX-0067	Supplemental Order. If granted: The March 8, 1977 Decision and Order (Case No. FRA-1082) issued to Jack W. Grigsby by the Office of Hearings and Appeals would be modified in connection with the June 30, 1982 Order issued by the U.S. District Court for the Western District of Louisiana.
July 12, 1983	W. L. Pickens, Houston, TX	HRD-0147, HRH-0147.	Motions for Discovery and Evidentiary Hearing. If granted: Discovery would be granted and an evidentiary hearing would be convened in connection with the Statement of Objections submitted by W. L. Pickens to the Proposed Remedial Order issued to W. L. Pickens (Case No. HRO-0069).
July 14, 1983	Petro-Thermal Corporation, Hobbs, New Mexico	HEE-0074	Application for Exception. If granted: Petro-Thermal Corporation would receive a retroactive exception from the provisions of 10 CFR Part 212, Subpart D, regarding the crude oil produced from various wells located in Lea County, New Mexico.
July 14, 1983	Petro-Thermao Corporation, Hobbs, New Mexico	HRD-0148, HRH-0148.	Motions for Discovery and Evidentiary Hearing. If granted: Discovery would be granted and an evidentiary hearing would be convened in connection with the Statement of Objections submitted by Petro-Thermo Corporation in response to the Proposed Remedial Order issued to Petro-Thermo Corporation (Case No. HRO-0133).
July 14, 1983	Petro-Thermao Corporation, Hobbs, New Mexico	HRS-0037	Request for Stay. If granted: The enforcement proceeding involving Petro-Thermo Corporation (Case No. HRO-0133) would be stayed pending a final determination of the firm's Application for Exception (Case No. HEE-0074).

NOTICE OF OBJECTION RECEIVED

[Week of July 8 through July 15, 1983]

Date	Name and location of applicant	Case No.
July 15, 1983	U.S. Department of Interior, Washington, D.C	HEE-0051

REFUND APPLICATIONS RECEIVED

[Week of July 8 through July 15, 1983]

Date	Name of refund proceeding/name of refund applicant	Case No.
July 11, 1983	Palo Pinto/Alabama	RQ5-5.
July 11, 1983	Palo Pinto/Alabama	RQ5-4.
July 11, 1983 to July 15, 1983	Amoco Refund Applications	RF21-11897 to RF21-11907.

[FR Doc. 83-21838 Filed 8-9-83; 8:45 am]

BILLING CODE 6450-01-M

Cases Filed; Week of July 15 Through July 22, 1983

During the week of July 15 through July 22, 1983, the appeals and applications for other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

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, D.C. 20461.

August 3, 1983.

Thomas L. Wieker,

Acting Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of July 15 through July 22, 1983]

Date	Name and location of applicant	Case No.	Type of submission
July 18, 1983	Bricklin and Gendel, Seattle, Washington	HFA-0169	Appeal of an Information Request Denial. If granted: The July 11, 1983 Freedom of Information Request Denial issued by the Freedom of Information Office of the Bonneville Power Administration would be rescinded, and Bricklin and Gendler would receive access to documents relating to meetings on resolving the financial difficulties of the Washington Public Power Supply System (WPPSS) nuclear power projects #4 and #5.
July 18, 1983	Fried, Frank, Harris, Shriver & Kempelman, Washington, D.C	HFA-0168	Appeal of an Information Request Denial. If granted: The June 30, 1983 Freedom of Information Request Denial issued by the DOE Office of the Executive Secretariat would be rescinded and Fried, Frank, Harris, Shriver and Kampelman would receive access to documents concerning a draft standard contract for the storage and/or disposal of spent nuclear fuel.
July 18, 1983	Richard C. Auchterlonie, Chicago, Illinois	HFA-0170	Appeal of an Information Request Denial. If granted: Richard C. Auchterlonie would receive access to certain Department of Energy information in a timely manner.
July 20, 1983	Kirkpatrick, Lockhart, Hill, Christopher & Phillips, Washington, D.C.	HFA-0171	Appeal of an Information Request Denial. If granted: The June 16, 1983 Freedom of Information Request Denial issued by the DOE Office of Fuels Programs would be rescinded, and Kirkpatrick, Lockhart, Hill, Christopher and Phillips would receive access to certain documents relating to the Tertiary Incentive Program.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS—Continued

[Week of July 15 through July 22, 1983]

Date	Name and location of applicant	Case No.	Type of submission
July 20, 1983	Tuco, Inc., and Cabot Fuel Corporation, Houston, Texas	HRD-0151, HRH-0151	Motions for Discovery and Evidentiary Hearing. If granted: Discovery would be granted and an evidentiary hearing would be convened in connection with the Statement of Objections submitted by Tuco, Inc. and Cabot Fuel Corporation in response to the April 8, 1983 Proposed Remedial Order issued to the two firms (Case No. HRO-0151).
July 22, 1983	Johnson Oil Company, Woods Cross, Utah	HER-0066	Request for Modification/Rescission. If granted: The June 21, 1983 Decision and Order (Case No. DEE-3706) denying exception relief of Johnson Oil Company would be reconsidered in view of the financial relationship of Johnson Oil Co., Silver Eagle Refining Co., and Mr. Reland Johnson.

NOTICES OF OBJECTION RECEIVED

[Week of July 15, 1983 to July 22, 1983]

Date	Name and location of applicant	Case No.
July 21, 1983	Whitaker Oil Company, Atlanta, Georgia	HEE-0029

REFUND APPLICATIONS RECEIVED

[Week of July 15, 1983 to July 22, 1983]

Date	Name of refund proceeding/name of refund applicant	Case No.
July 22, 1983	Palo Pinto/Florida, William F. Raisch	RQ5-7
July 22, 1983	Palo Pinto/Iowa, Jay Hakes	RQ5-6
July 18, 1983 through July 21, 1983.	Amoco Refund Applications	RF21-11908 through RF21-12001.

[FR Doc. 83-21839 Filed 8-9-83; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-51475; TSH-FRL 2399-1]

Certain Chemicals; Premanufacture Notices

Correction

In FR Doc. 83-19144 beginning on page 32381 in the issue for Friday, July 15, 1983, make the following corrections:

1. On page 32381, third column, under **PMN 83-886,** in the entry for *Toxicity Data,* "male—1,343 g/kg" should have read "male—1.343 g/ky".

2. On page 32383, second column, under **PMN 83-912,** in the entry for *Toxicity Data,* "Acute dermal: < 5,000 mg/kg" should have read "Acute dermal: > 5,000 mg/kg".

BILLING CODE 1505-01M

[OPTS-59131; BH-FRL 2398-7]

Modified Rosin Calcium Salt; Premanufacture Exemption Applications

Correction

In FR Doc. 83-19145 appearing on page 32385 in the issue of Friday, July 15, 1983, make the following correction:

In the Summary, in the fifteenth line, "45 FR 7378" should have read "45 FR 74378".

BILLING CODE 1505-01-M

[AFRL 2412-2]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 3507(a)(2)(B) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.) requires the Agency to publish in the **Federal Register** a notice of proposed information collection requests that have been forwarded to the Office of Management and Budget (OMB) for review. The information collection requests listed are available to the public for review and comment.

FOR FURTHER INFORMATION CONTACT: David Bowers, Office of Standards and Regulations, Information Management Section (PM-223), U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460; telephone (202) 382-2742 or FTS 382-2742.

SUPPLEMENTARY INFORMATION:

Hazardous Waste Programs

Title: Small Quantity Generator Survey (EPA ID 1046).

Abstract: EPA is conducting a survey of small quantity generators (less than 1000 kg. per month) of hazardous waste to collect information on the number/types of these generators and their current waste management practices. The Agency will use these data as part of a two-year study and as the basis for rulemaking.

Respondents: Industries producing less then 1000 kg. of hazardous waste per month.

* * * * *

Comments on all parts of this notice should be sent to:

David Bowers (PM-223) U.S. Environmental Protection Agency, Office of Standards and Regulations, 401 M Street SW., Washington, D.C. 20460

and

Don Arbuckle, Vartkes Broussalian or Anita Ducca, Office of Management and Budget, Office of Information and Regulatory Affairs, New Executive Office Building (Room 3228), 726 Jackson Place NW., Washington, D.C. 20503.

Dated: August 4, 1983.

John Warren,

Acting Chief, Statistical Policy Staff.

[FR Doc. 83-21631 Filed 8-9-83; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59130A; TSH-FRL 2412-3]

Certain Chemicals; Approval of Test Marketing Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of TM-83-65, and TM-83-66, two applications for test marketing exemptions (TME) under section 5(h)(6) of the Toxic Substances Control Act (TSCA). The test marketing conditions are described below.

EFFECTIVE DATE: August 1, 1983.

FOR FURTHER INFORMATION CONTACT: Margaret J. Stasikowski, Acting Chief, Notice Review Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm E-204, 401 M St. SW., Washington, D.C. 20460, (202-382-3725).

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and to permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use and disposal of the substances for test marketing purposes will not present any unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities.

EPA has determined that test marketing of the new chemical substances described below, under the conditions set out in the applications, and for the time periods specified below, will not present any unreasonable risk of injury to health or the environment. Production volume, number of workers exposed to the new chemical, and the levels and duration of exposure must not exceed that specified in the applications. All other conditions described in the applications must be met. The following additional restrictions apply:

1. The applicant must maintain records of the date(s) of shipment(s) to each customer and the quantities supplied in each shipment, and must make these records available to EPA upon request.

2. A bill of lading accompanying each shipment must state that use of the substance is restricted to that approved in the TME.

TME 83-65

Date of Receipt: June 21, 1983.

Notice of Receipt: July 1, 1983 (48 FR 30436).

Applicant: Confidential.

Chemical: Modified rosin zinc salt (Generic).

Use: Stabilizer for PVC.

Production Volume: Confidential.

Number of Customers: 1.

Process Information: Confidential.

Test Marketing Period: Through January, 1984.

Commencing on: August 1, 1983.

Risk Assessment: There are overall low concerns for health and ecotoxic effects for the new TME substance. It is expected to be poorly absorbed via all routes of exposure and there is low potential for release. The Agency, therefore, finds that the test market substance will not present an unreasonable risk to health or the environment during test marketing under the conditions specified in the application.

Public Comments: None.

TME 83-66

Date of Receipt: June 22, 1983.

Notice of Receipt: July 1, 1983 (48 FR 30436).

Applicant: Confidential.

Chemical: Substituted vinly polymer (Generic).

Use: Semi-conductor manufacturing (Generic).

Production Volume: Confidential.

Exposure Information: Confidential.

Test Marketing Period: 90 days.

Commencing on: August 1, 1983.

Risk Assessment: No significant health or environmental concerns were identified for the substance. Exposure to workers and the environment is expected to be low. Therefore, the Agency finds that the test market substance will not present an unreasonable risk to health or the environment during test marketing under the conditions specified in the application.

Public Comments: None.

The Agency reserves the right to rescind approval of an exemption should any new information come to its attention which casts significant doubt on its finding that the test marketing activities will not present an unreasonable risk to health or the environment.

Dated: August 1, 1983.

Marcia E. Williams,

Acting Director Office of Toxic Substances.

[FR Doc. 83-21705 Filed 8-9-83; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL MARITIME COMMISSION

[Agreements Nos. T-2647-3, 10477 and 10168-4]

Availability of Finding of No Significant Impact

Upon completion of environmental assessments, the Federal Maritime Commission's Office of Energy and Environmental Impact has determined that the Commission's decision on Agreements Nos. T-2647-3, 10477 and 10168-4 will not constitute major Federal actions significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, and that preparation of environmental impact statements is not required. Agreement No. T-2647 is a lease arrangement between the City of Long Beach (LB) and NAMOLCO, Inc. whereby LB leased to NAMOLCO certain premises including wharf spaces required for berthing vessels and cargo handling. The purpose of Agreement No. T-2647-3 is to increase the leased area by 5,500 square feet and to accordingly adjust the rental fee. Agreement No. 10477 is between Cameroon Shipping Lines S.A. (Cameroon) and Farrell Lines, Inc. (Farrell). The subject of the Agreement is a charter by Cameroon of container capacity, on a space available basis, aboard the vessels of Farrell in the trade between Cameroon, West Africa and U.S. Atlantic ports. Agreement No. 10168-4 modifies the basic Puerto Rico/U.S. Virgin Islands-European Trade Cooperative Working agreement to expand the scope to include ports or points on the East Coast of Costa Rica, and to change the identification of one of the parties from Koninklijke Nederlansche Stoomboot Mallschappij B.V. to Nedlloyd B.V.

These Findings of No Significant Impact (FONSI) will become final within 20 days unless petitions for review are filed pursuant to 46 CFR 547.6(b).

The FONSI's and related environmental assessments are available for inspection on request from the Office of the Secretary, Room 11101, Federal Maritime Commission,

Washington, D.C. 20573, telephone (202) 523–5725.

Francis C. Hurney,

Secretary.

[FR Doc. 83–21761 Filed 8–9–83; 8:45 am]

BILLING CODE 6730–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Biometry and Epidemiology Contract Review Committee; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Biometry and Epidemiology Contract Review Committee, National Cancer Institute, National Institutes of Health, August 24, 1983, Building 31, Conference Room 2, Bethesda, Maryland 20205. This meeting will be open to the public from 9:00 a.m. to 9:30 a.m., to review administrative details. Attendance by the public will be limited to space available.

In accordance with provisions set forth in Sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and Section 10(d) of Pub. L. 92–463, the meeting will be closed to the public on August 24, from 9:30 a.m. to adjournment, for the review, discussion and evaluation of individual contract proposals. These proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the proposals, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winifred Lumsden, the Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20205 (301/496–5708) will provide summaries of the meeting and rosters of committee members, upon request.

Dr. Wilna A. Woods, Executive Secretary, Biometry and Epidemiology Contract Review Committee, National Cancer Institute, Westwood Building, Room 822, National Institutes of Health, Bethesda, Maryland 20205 (301/496–7153) will furnish substantive program information.

Dated: August 3, 1983.

Betty J. Beveridge,

Committee Management Officer, National Institutes of Health.

[FR Doc. 83–21753 Filed 8–9–83; 8:45 am]

BILLING CODE 4140–01–M

Board of Scientific Counselors, Division of Cancer Biology and Diagnosis; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, DCBD, National Cancer Institute, October 20, 1983. This meeting will be open to the public in Building 38A (Lister Hill Center), Room B1N-30B, National Institutes of Health, Bethesda, Maryland 20205, from 9:00 A.M. to adjournment. The agenda will consist of an overview of the Divisional research programs, as well as the budget plans for the Institute and Division.

Mrs. Winifred Lumsden, Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20205 (301/496–5708) will provide summaries of the meeting and rosters of committee members, upon request.

Dr. Ihor J. Masnyk, Associate Director, Extramural Research Program, Division of Cancer Biology and Diagnosis, National Cancer Institute, Building 31, Room 3A–04, National Institutes of Health, Bethesda, Maryland 20205 (301/496–4345) will furnish substantive program information.

Dated: August 3, 1983.

Betty J. Beveridge,

Committee Management Officer, National Institutes of Health.

[FR Doc. 83–21754 Filed 8–9–83; 8:45 am]

BILLING CODE 4140–01–M

Breast Cancer Task Force Committee; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Breast Cancer Task Force Committee, National Cancer Institute, September 12–14, 1983. The meeting will be open to the public in the Building 38A (Lister Hill Center) Auditorium, National Institutes of Health in Bethesda, Maryland 20205, from 8:30 a.m. to approximately 5:00 p.m. each day. This meeting will be concerned with scientific discussions on new methods for early detection and diagnosis of breast cancer and also on the screening in breast cancer and other related issues. Attendance by the public will be limited to space available.

Mrs. Winifred Lumsden, the Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20205 (301/496–5708) will provide summaries of the meeting and rosters of committee members, upon request.

Dr. Elizabeth Anderson, Executive Secretary, Breast Cancer Task Force Committee, National Cancer Institute, Blair Building, Room 3A–07, National Institutes of Health, Bethesda, Maryland 20205 (301/427–8818) will furnish substantive program information.

Dated: August 3, 1983.

Betty J. Beveridge,

Committee Management Officer.

[FR Doc. 83–21759 Filed 8–9–83; 8:45 am]

BILLING CODE 4140–01–M

Cardiology Advisory Committee; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Cardiology Advisory Committee, National Heart, Lung, and Blood Institute, September 26–27, 1983, Building 31C, Conference Room 8, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20205.

The entire meeting will be open to the public from 8:30 a.m. on September 26 to adjournment on September 27. Attendance by the public will be limited to space available. Topics for discussion will include a review of the research programs relevant to the Cardiology area and consideration of future needs and opportunities.

Ms. Terry Bellicha, Chief, Public Inquiries and Report Branch, National Heart, Lung, and Blood Institute, Room 4A21, Building 31, National Institutes of Health, Bethesda, Maryland 20205, telephone (301) 496–4236, will provided summaries of the meeting and rosters of the Committee members.

Eugene R. Passamani, M.D., Associate Director for Cardiology, Division of Heart and Vascular Diseases, National Heart, Lung, and Blood Institute, Room 320, Federal Building, Bethesda, Maryland 20205, telephone (301) 496–5421, will furnish substantive program information upon request.

(Catalog of Federal Domestic Assistance Program No. 13.837, Heart and Vascular Diseases Research, National Institutes of Health)

Dated: August 3, 1983.

Betty J. Beveridge,

National Institutes of Health Committee Management Officer.

[FR Doc. 83–21757 Filed 8–9–83; 8:45 am]

BILLING CODE 4140–01–M

Biomedical Research Support Subcommittee of the General Research Support Review Committee; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Biomedical Research Support Subcommittee of the General Research Support Review Committee, Division of Research Resources, National Institutes of Health, September 29, 1983, Building 31A, Conference Room 2, Bethesda, Maryland 20205, from 9:30 a.m. to adjournment.

The meeting will be open to the public on September 29 from 9:30 a.m. to adjournment to discuss program policies and planning for the Biomedical Research Support Grant Program and the Biomedical Research Support Shared Instrumentation Grant Porgram. Attendance by the public will be limited to space available.

Mr. James Augustine, Information Officer, Division of Research Resources, Room 5B10, Building 31, National Institutes of Health, Bethesda, Maryland 20205, (301) 496–5545, will provide summaries of the meeting and rosters of the Committee members. Dr. Marjorie A. Tingle, Executive Secretary, Biomedical Research Support Subcommittee of the General Research Support Review Committee will furnish substantive program information and will receive any comments pertaining to this announcement.

(Catalogue of Federal Domestic Assistance Program No. 13.337, Biomedical Research Support, National Institutes of Health)

Dated: August 3, 1983.

Betty J. Beveridge,

Committee Management Officer, National Institutes of Health.

[FR Doc. 83–21755 Filed 8–9–83; 8:45 am]

BILLING CODE 4140–01–M

Review of Grant Applications; Meetings

Pursuant to Pub. L. 92–463, notice is hereby given for meetings of several committees of the National Cancer Institute.

These meetings will be open to the public to discuss administrative details or other issues relating to committee business as indicated in the notice. Attendance by the public will be limited to space available.

These meetings will be closed to the public as indicated below in accordance with the provisions set forth in Sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and Section 10(d) of Pub. L. 92–463, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winifred Lumsden, Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20205 (301/496–5708) will furnish summaries of meetings and rosters of committee members upon request. Other information pertaining to the meetings can be obtained from the Executive Secretary indicated.

Name of committee: Professional Oncology Education Review Committee
Dates: September 12–13, 1983
Place: National Institutes of Health, Building 31C, Conference Room 9, 9000 Rockville Pike, Bethesda, MD 20205
Times: Open: September 12, 8:30 a.m.–10:00 a.m.
Agenda: Reports by Division Director, Branch Chief, and Executive Secretary on Committee concerns followed by open discussion and review of administrative details.
Closed: September 12, 10:00 a.m.—recess; September 13, 8:30 a.m.—adjournment
Closure reason: To review grant applications.
Executive secretary: Dr. Robert L. Manning, Westwood Building, Room 803, National Institutes of Health, Bethesda, MD 20205, Phone: 301/496–7721

(Catalog of Federal Domestic Assistance Number 13.398, Project Grants in Cancer Research Manpower, National Institutes of Health)

Name of committee: Cancer Research Manpower Review Committee
Dates: September 15–16, 1983
Place: National Institutes of Health, Building 31A, Conference Room 4, 9000 Rockville Pike, Bethesda, MD 20205
Times: Open: September 15, 8:30 a.m.–9:00 a.m.
Agenda: Review of administrative details.
Closed: September 15, 9:00 a.m.—recess; September 16, 8:30 a.m.—adjournment
Closure reason: To review grant applications.
Executive secretary: Dr. Leon J. Niemiec, Westwood Building, Room 809D, National Institutes of Health, Bethesda, MD 20205, Phone: 301/496–7978

(Catalog of Federal Domestic Assistance Number 13.398, Project Grants in Cancer Research Manpower, National Institutes of Health)

Name of committee: Cancer Control Grant Review Committee
Dates: October 17–18, 1983
Place: National Institutes of Health, Building 31C, Conference Room 8, 9000 Rockville Pike, Bethesda, MD 20205
Times: Open: October 17, 8:30 a.m.–9:00 a.m.
Agenda: Review of administrative details.
Closed: October 17, 9:00 a.m.—recess; October 18, 8:30 a.m.—adjournment
Closure reason: To review grant applications.
Executive secretary: Dr. Robert F. Browning, Westwood Building, Room 806, National Institutes of Health, Bethesda, MD 20205, Phone: 301/496–7413

(Catalog of Federal Domestic Assistance Number 13.399, Project Grants and Contracts in Cancer Control, National Institutes of Health)

Dated: August 3, 1983.

Betty J. Beveridge,

Committee Management Officer, National Institutes of Health.

[FR Doc. 83–21752 Filed 8–9–83; 8:45 am]

BILLING CODE 4140–01–M

President's Cancer Panel; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the President's Cancer Panel, October 12, 1983, at Memorial Sloan-Kettering Cancer Center, The William Paul Hoffmann Auditorium, 424 East 68th Street, New York, New York 10021.

The entire meeting will be open to the public from 9:00 a.m. to adjournment. Agenda items include reports by the Director, National Cancer Institute and the Chairman, President's Cancer Panel; and discussions to obtain information on grants supported by the National Cancer Institute from scientists of the universities in the New York area. Attendance by the public will be limited to space available.

Mrs. Winifred Lumsden, Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20205 (301/496–5708) will provide summaries of the meeting and rosters of Panel members, upon request.

Dr. Elliott Stonehill, Executive Secretary, President's Cancer Panel, National Cancer Institute, Building 31, Room 11A35, National Institutes of Health, Bethesda, Maryland 20205 (301/496–1148) will furnish substantive program information.

Dated: August 3, 1983.

Betty J. Beveridge,

Committee Management Officer, National Institutes of Health.

[FR Doc. 83–21758 Filed 8–9–83; 8:45 am]

BILLING CODE 4140–01–M

Pulmonary Diseases Advisory Committee; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Pulmonary Diseases Advisory Committee, National Heart, Lung, and Blood Institute, September 28–29, 1983, National Institutes of Health, 9000 Rockville Pike, Building 31, Conference Room 7, Bethesda, Maryland, 20205.

The entire meeting, from 8:30 a.m. on September 28 to adjournment on September 29, will be open to the public. The Committee will discuss the current status of the Division of Lung Diseases' programs and Committee plans for fiscal year 1985. Attendance by the public will be limited to the space available.

Ms. Terry Bellicha, Chief, Public Inquiry Reports Branch, National Heart, Lung, and Blood Institute, Building 31, Room 4A–21, National Institutes of Health, Bethesda, Maryland 20205, phone (301) 496–4236, will provide summaries of the meeting and rosters of the Committee members.

Dr. Suzanne S. Hurd, Acting Executive Secretary of the Committee, Westwood Building, Room 6A16, National Institutes of Health, Bethesda, Maryland 20205, phone (301) 496–7208, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.838, Lung Diseases Research, National Institutes of Health)

Dated: August 3, 1983.

Betty J. Beveridge,

Committee Management Officer.

[FR Doc. 83–21756 Filed 8–9–83; 8:45 am]

BILLING CODE 4140–01–M

National Advisory Child Health and Human Development Council; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Advisory Child Health and Human Development Council, September 26–27, 1983, in Building 31, Conference Room 6, National Insitutes of Health, Bethesda, Maryland.

This meeting will be open to the public on September 26 from 9:00 a.m. until 5:00 p.m. The agenda includes a report by the NICHD Director, Council subcommittee reports, and a presentation by the Epidemiology and Biometery Research Program. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in Sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and Section 10(d) of Pub. L. 92–463, the meeting will be closed to the public on September 27 from 9:00 a.m. to adjournment for the review, discussion, and evaluation of individual grant applications. The applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, disclosure of which would consititute a clearly unwarranted invasion of personal privacy.

Mrs. Marjorie Neff, Council Secretary, NICHD, Landow Building, Room 6C08, National Institutes of Health, Bethesda, Maryland 20205, Area Code 301, 496–1485, will provide a summary of the meeting and a roster of Council members as well as substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.864, Population Research, and 13.865, Research for Mothers and Children, National Institutes of Health)

Dated: August 3, 1983.

Betty J. Beveridge,

Committee Management Officer, National Institutes of Health.

[FR Doc. 83–21723 Filed 8–9–83; 8:45 am]

BILLING CODE 4140–01–M

National Cancer Advisory Board Subcommittee Meeting of the Cancer Control and the Community

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Cancer Advisory Board Cancer Control and the Community Subcommittee Meeting, September 2, 1983, Sheraton International at O'Hare, Chicago, Illinois 60018. The entire meeting will be open to the public from 9:00 a.m. to adjournment, September 2, 1983, to discuss the Protocol Data Query System (PDQ). Attendance by the public will be limited to space available.

Mrs. Winifred Lumsden, the Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20205 (301/496–5708) will provide summaries of meetings and rosters of committee members upon request.

Dr. Mary E. Sears, Assistant to Dr. Peter Greenwald, Executive Secretary, National Cancer Institute, National Institutes of Health, Blair Building, Room 614, Bethesda, Maryland 20205 (301/427–8630) will furnish substantive program information.

Dated: August 3, 1983.

Betty J. Beveridge,

Committee Management Officer, National Institutes of Health.

[FR Doc. 83–21722 Filed 8–9–83; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Advisory Council; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Heart, Lung, and Blood Advisory Council, National Heart, Lung, and Blood Institute, September 22–23, 1983, National Institutes of Health, 9000 Rockville Pike, Building 31, Conference Room 10, Bethesda, Maryland 20205.

This meeting will be open to the public from 9:00 a.m. to approximately 5:00 p.m. on September 22 and from 8:30 a.m. to apporximately 1:00 p.m. on September 23 for the discussion of program policies and issues. Attendance by the public is limited to space available.

In accordance with the provisions set forth in Sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code, and Section 10(d) of Pub. L. 92–463, the meeting of the Council will be closed to the public on September 23 from approximately 1:00 p.m. until adjournment for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Terry Bellicha, Chief, Public Inquiries and Reports Branch, National Heart, Lung, and Blood Institute, Building 31, Room 4A21, National Institiutes of Health, Bethesda, Maryland 20205, (301) 496–4236, will provide summaries of the meeting and rosters of the Council members.

Ms. Anne M. Heasty, Executive Secretary of the Council, Westwood Building, Room 7A–15, (301) 496–7548, will provide substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.837, Heart and Vascular Diseases Research; 13.838, Lung Diseases Research; and 13.839, Blood Diseases and Resources Research, National Insititutes of Health)

Dated: August 3, 1983.

Betty J. Beveridge,

National Institutes of Health, Committee Management Officer.

[FR Doc. 83–21724 Filed 8–9–83; 8:45 am]

BILLING CODE 4140–01–M

National Advisory Environmental Health Sciences Council; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Advisory Environmental Health Sciences Council, September 19–20, at the National Institute of Environmental Health Sciences, Building 101 Conference Room, Research Triangle Park, North Carolina.

This meeting will be open to the public on September 19, from 9 a.m. to approximately 12 noon for the report of the Director, NIEHS, and for discussion

of the NIEHS budget, program policies and issues, recent legislation, and other items of interest. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in Sections 552b(c)(4) and 552b(c)(6), Title 5 U.S. Code and Section 10(d) Pub. L. 92–463, the meeting will be closed to the public on September 19, from approximately 1:00 p.m. to adjournment on September 20, 1983, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the application, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Winona P. Herrell, Committee Management Officer, NIEHS, Building 31, Room 2B55, National Institutes of Health, Bethesda, Maryland 20205, (301) 496–3511, will provide summaries of the meeting and rosters of council members.

Dr. Wilford L. Nusser, Associate Director for Extramural Programs, National Institute of Environmental Health Sciences, P.O. Box 12233, Research Triangle Park, North Carolina 27709, (919) 541–7723, FTS 629–7723, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.112, Characterization of Environmental Health Hazards; 13.113, Bilogical Response to Environmental Health Hazards; 13.114, Applied Toxicological Research and Testing; 13.115, Biometry and Risk Estimation; 13.894, Resource and Manpower Development, National Institutes of Health)

Dated: August 3, 1983.

Betty J. Beveridge,

Committee Management Officer, National Institutes of Health.

[FR Doc. 83-21725 Filed 8-9-83; 8:45 am]

BILLING CODE 4140-01-M

Division of Research Grants; Meetings

Pursuant to Pub. L. 92–463, notice is hereby given of the meetings of the following study sections for September 1983, and the individuals from whom summaries of meetings and rosters of committee members may be obtained.

These meetings will be open to the public to discuss administrative details relating to study section business for approximately one hour at the beginning of the first session of the first day of the meeting. Attendance by the public will be limited to space available. These meetings will be closed thereafter in accordance with the provisions set forth in Sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and Section 10(d) of Pub. L. 92–463, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patenable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Grants Inquiries Office, Division of Research Grants, Westwood Building, National Institutes of Health, Bethesda, Maryland 20205, telephone 301–496–7441 will furnish summaries of the meetings and rosters of committee members. Substantive program information may be obtained from each executive secretary whose name, room number, and telephone number are listed below each study section. Since it is necessary to schedule study section meetings months in advance, it is suggested that anyone planning to attend a meeting contact the executive secretary to confirm the exact date, time and location. All times are A.M. unless otherwise specified.

Study section	September 1983 meetings	Time	Location
Behavioral and Neurosciences—1, Dr. Bertie Woolf, Rm. A23, Tel. 301–496–7266	Sept. 29–30	8:30	Holiday Inn, Georgetown, DC.
Behavioral and Neurosciences—2, Dr. Bertie Woolf, Rm. A25, Tel. 301–496–7266	Sept. 16	8:30	Holiday Inn, Bethesda, MD.
Behavioral and Neurosciences—3, Dr. Bertie Woolf, Rm. A23, Tel. 301–496–7266	Sept. 23	8:30	Holiday Inn, Bethesda, MD.
Behavioral and Neurosciences—4, Dr. Bertie Woolf, Rm. A23, Tel. 301–496–7266	Sept. 16	8:30	Holiday Inn, Bethesda, MD.
Behavioral and Neurosciences—5, Dr. Bertie Woolf, Rm. A25, Tel. 301–496–7266	Sept. 23	8:30	Holiday Inn, Bethesda, MD.
Biomedical Sciences—1, Ms. Joan D. Fredericks, Rm. A10, Tel. 301–496–1067	Sept. 19–20	8:30	Holiday Inn, Georgetown, DC.
Biomedical Sciences—2, Dr. Charles Baker, Rm. A10, Tel. 301–496–7150	Sept. 19–20	8:00	Ramada Inn, Bethesda, MD.
Biomedical Sciences—3, Ms. Joan D. Fredericks, Rm. A10, Tel. 301–496–1067	Sept. 26–27	8:30	Wellington Hotel, Washington, DC.
Biomedical Sciences—4, Dr. Charles Baker, Rm. A10, Tel. 301–496–7150	Sept. 13–14	8:00	Ramada Inn, Bethesda, MD.
Clinical Sciences—1, Dr. Lynwood Jones, Rm. A19, Tel. 301–496–7510	Sept. 26–27	8:30	Holiday Inn, Georgetown, DC.
Clinical Sciences—2, Dr. Bernice Lipkin, Rm. A19, Tel. 301–496–7477	Sept. 19–20	8:30	Highland Hotel, Washington, DC.
Clinical Sciences—3, Dr. Lynwood Jones, Rm. A19, Tel. 301–496–7510	Sept. 15–16	8:30	Holiday Inn, Georgetown, DC.
Clinical Sciences—4, Dr. Bernice Lipkin, Rm. A19, Tel. 301–496–7477	Sept. 29–30	8:30	Wellington Hotel, Washington, DC.

(Catalog of Federal Domestic Assistance Programs Nos. 13.306, 13.333, 13.337, 13.393–13.396, 13.837–13.844, 13.846–13.878, 13.892, 13.893, National Institutes of Health, HHS)

Dated: August 3, 1983.

Betty J. Beveridge,

Committee Management Officer, National Institutes of Health.

[FR Doc. 83-21726 Filed 8-9-83; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. D–83–702]

Delegation of Concurrent Authority to the General Deputy Assistant Secretary for Policy Development and Research

AGENCY: Office of the Secretary, HUD.

ACTION: Delegation of concurrent authority.

SUMMARY: The Secretary of Housing and Urban Development is delegating to the General Deputy Assistant Secretary for Policy Development and Research all authority vested in the position of Assistant Secretary for Policy Development and Research.

EFFECTIVE DATE: August 10, 1983.

FOR FURTHER INFORMATION CONTACT: David D. White, Assistant General Counsel for Administrative Law, Room 10254, Department of Housing and Urban Development, 451 7th Street, SW., Washington, D.C. 20410. Telephone (202) 755–7137 (this is not a toll-free number).

Delegation

The General Deputy Assistant Secretary for Policy Development and Research is hereby delegated,

concurrently with the Assistant Secretary for Policy Development and Research, all authority currently delegated to the Assistant Secretary for Policy Development and Research.

Authority: Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: August 4, 1983.

John J. Knapp,

Acting Secretary.

[FR Doc. 83-21744 Filed 8-9-83; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF THE INTERIOR

Guidelines for Transactions Between Nonprofit Conservation Organizations and Federal Agencies

AGENCY: Office of the Secretary, Interior.

ACTION: Revision of final guidelines—further opportunity to comment.

SUMMARY: The Assistant Secretary for Fish and Wildlife and Parks adopted final guidelines for transactions between nonprofit conservation organizations and Federal agencies that utilize the Land and Water Conservation Fund (LWCF). These guidelines provide broad instructions to the four Federal agencies in their use of nonprofit conservation organizations to assist in securing the natural, cultural, wildlife and recreation values in greatest need of protection. A further revision of these guidelines has now been adopted and further opportunity for comment is being provided.

The guidelines will apply to the National Park Service, Fish and Wildlife Service, and the Bureau of Land Management in the Department of the Interior and the Forest Service in the Department of Agriculture.

EFFECTIVE DATE: Comments due by September 9, 1983. Unless modified pursuant to notice in the **Federal Register**, these guidelines as hereby revised will be effective September 25, 1983.

FOR FURTHER INFORMATION CONTACT: William Hartwig, Acting Chairman, LWCF Policy Group, Room 3145, Department of the Interior, Washington, D.C. 20240, 343-4945.

SUPPLEMENTARY INFORMATION: The public was initially invited to comment on the proposed guidelines, that appeared in the **Federal Register**, January 28, 1983 (Vol. 48, No. 20, pages 4055-6). The final guidelines appeared in the **Federal Register**, April 22, 1983 (Vol. 48, No. 79, pages 17406-7) for 30 days of review and comment. This comment period was extended for 30 additional days to June 23, 1983, by notification in the **Federal Register**, June 2, 1983 (Vol. 48, No. 107, page 24795) and is hereafter extended for 30 days of review and comment.

While not determinative, response to the draft guidelines was 31 in favor and 1 opposed. The final guidelines received 38 additional favorable comments and 50 opposed for a total of 69 in favor and 51 opposed.

These letters of opposition focused on two features of the guidelines, the letter of intent and full disclosure. Their general feeling was that these two requirements would limit the nonprofit's ability to conduct business in the free market. There were also two concerns expressed by the Department of Agriculture. First, that notions of due process and equal protection required the application of these guidelines to all corporations, individuals and entities transacting business in the manner addressed herein. Second, that these guidelines may be inconsistent with the requirements of Pub. L. 91-646, the Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970 (84 Stat. 1894).

It has never been the intention of these guidelines to limit the effectiveness of the nonprofit organization nor their freedom to acquire land in the market place. The purpose of these guidelines is to clarify the relationships between individual nonprofit organizations and LWCF Act agencies in those cases where a nonprofit seeks prior assurance from an agency of its intentions to acquire specific lands or an agency requests the assistance of a nonprofit in accomplishing the agency's land acquisition program. Obviously, these guidelines are not intended to preclude purely private actions. Any private party can buy land within the boundaries of Federal areas without Federal permission or acquiescence. A letter of intent is only required in situations where the agency seeks the assistance of the nonprofit or the nonprofit seeks prior assurance from an agency. Language has, accordingly, been added to the guidelines to clarify the applicability of the letter of intent.

The guidelines have also been modified to address the concerns regarding the full disclosure feature. The government does not wish to compromise the confidentiality that exists between the nonprofit and the landowner by the full disclosure of all negotiation actions or financial arrangements. Full disclosure is only required in cases where the nonprofit does not possess fee title to the desired property prior to receipt of a firm commitment to purchase the property in question from the nonprofit by a Federal agency. In these cases it is reasonable for the public to know the option price, the sale price and the appraisal data prior to the time that a decision to purchase is made by the Federal agency because the majority of financial risks arising from the transaction are being borne by the Federal agency, not the nonprofit.

Finally, these guidelines have also been modified to address the Department of Agriculture's concern that they apply equally to all similarly situated entities. The reference to nonprofit conservation organizations has been expanded to refer to all who seek to purchase lands within the boundaries of authorized areas in contemplation of resale to a Federal agency and that request prior assurances or a binding Federal commitment of subsequent Federal acquisition. Agriculture's additional concern about the relationship of these guidelines to the requirements of Pub. L. 91-646 does not appear to be substantial. Specialized assurances by those acquiring land for ultimate sale to the United States can clearly be conditioned upon agreement with the requirements of these guidelines if appropriate.

Office of Management and Budget and the General Accounting Office have urged that guidelines be developed. The General Accounting Office's concerns have been expressed in recent reports including *Overview of Federal Land Acquisition and Management Practices* (CED 81-135), which noted that 4.5 percent of the land acquired by the National Park Service, the Fish and Wildlife Service, and the Forest Service during the period 1965-1979 was acquired through the use of nonprofit conservation organizations, and recommended that the Department develop a written policy for dealing with these groups. Such a policy, the report stated, should provide guidance on "when to use nonprofits, what the working relationship should be, and what unique land acquisition procedures might be appropriate."

Congress, as recently as the Explanatory Statement of the Recommendations of the Senate Committee on Appropriations on the Department of the Interior and Related Agencies Appropriation Bill, 1983 (H.R. 7356), indicated its support and interest in improving the "* * * cooperation between the land acquiring agencies and the nonprofit organizations that are capable of performing a valuable service in helping acquire properties * * *". It

has always been the intent of the guidelines to create an understanding of the benefits and operating procedures of the nonprofit organizations and the Federal agencies and to foster greater cooperation.

This concern has led to several changes to the present rule and opportunity for further public comment. In addition, it has also raised questions concerning the affirmative opportunities available to the Department to assist the nonprofit community with regard to key natural resource areas not intended for Federal acquisition or management. This concern was recently expressed by the Department of the Interior to the Chairman, Committee on Merchant Marine and Fisheries, pursuant to a letter of June 22, 1983, with regard to the Department's views on H.R. 2809 as reported, the "National Fish and Wildlife Foundation Establishment Act," as follows:

> In our view, the not-for-profit conservation community does an outstanding job of protecting many important natural resources. We believe that a more productive course of action than H.R. 2809 would be to consider ways in which these organizations can be strengthened. We should encourage private initiative, not displace it. Those not-for-profit organizations that are willing to work for natural resource conservation on the ground are essential. They, rather than a new legislatively created foundation, deserve Administration and Congressional support.

Accordingly, the Department also intends to consider what affirmative steps it might undertake to assist the nonprofit communities efforts to protect identified natural resource areas of national importance at the local level on a permanent basis. While the previous nonprofit guidelines have emphasized the role of the nonprofit in relationship to ultimate Federal acquisition and management, we believe that this long-term protection role of the nonprofits may be the more important issue. The ability of the nonprofits to acquire, protect and manage nationally important natural resource areas over the long term—without direct Federal participation in terms of acquisition and management—is a fundamental issue for the future. Public comment is specifically encouraged on this point.

An example will illustrate the issue. Passage of the Coastal Barrier Resources Act emphasizes and alternative role for the Federal Government for the protection of areas of national importance. A traditional approach to the need for the protection of undeveloped coastal barrier resources could have involved both Federal acquisition and Federal management. But this expensive and preemptive approach was not adopted. The Coastal Barrier Resources Act alternative has two key components. (1) The precise identification of undeveloped coastal barriers; (2) reduction of the Federal Government's role, not expansion, by the elimination of countervailing Federal subsidies that encouraged development rather than protection.

While not ensuring protection of undeveloped coastal barriers, the steps should assist others, including the nonprofits, to establish protection of these key areas of national importance. There are two further questions, however. What additional steps can and should the Federal Government take to *assist* State, local, nonprofit, and private conservation efforts to protect these areas? And, what other areas of national importance, such as wetlands, merit this type of approach?

From the perspective of these nonprofit guidelines, we are concerned primarily with the first issue. Taking an already identified resource as an example, we wish to consider what other actions might be undertaken at the Federal level that would support protection of such an area of national importance, and assist the nonprofit land trust community, but that would not preempt private initiative nor contemplate any form of Federal acquisition or management.

The Department of the Interior has determined that this document is not a major rule under E.O. 12291 and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 et seq.

These guidelines do not in themselves constitute a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act of 1969 (NEPA). NEPA concerns will be addressed at the individual unit levels on a case-by-case basis.

Nonprofit conservation organizations, like other private landowners, make their own decisions regarding the purchase and sale of real property. However, when dealing with resources to be purchased by the Federal agencies using the Land and Water Conservation Fund, some basic principles should be followed.

The Assistant Secretary for Fish and Wildlife and Parks makes notice of the following guidelines.

Guidelines for Transactions Between Nonprofit Conservation Organizations and Other Entities and Federal Agencies

Introduction

Because of the lengthy time requirements in the budgeting and appropriation process, Federal agencies are frequently unable to acquire land in response to imminent threats to critical resources or to buy needed resources under favorable terms. With the ability to act quickly in the private market and maintain flexible working relationships with landowners, nonprofit conservation organizations or other corporations, individuals, or entities (hereinafter "other entities") can assist and support the Federal land acquisition program. However, the role of nonprofit organizations and other entities in acquiring land or interests in land for ultimate Federal acquisition should be clearly and carefully defined in each transaction considering the basic principles listed below.

Basic Principles

Nonprofit conservation organizations and other entities are not in any manner agents of the Federal Government unless specifically designated by mutual consent of the parties. They are typically private independent groups who freely negotiate real estate actions anywhere and anytime they desire and at their own risk. However, in dealing with the Government agencies, because of statutory, budgetary and policy considerations, the objectives of the Federal agencies must be paramount to those of the nonprofit conservation organizations and other entities.

Lands or interests in lands proposed for acquisition through a nonprofit organization or other entity should be in accord with priorities outlined by the agency.

Lands or interests in land acquired from nonprofit organizations or other entities must be within the boundaries of authorized areas, consistent with existing acquisition authorities, and limited to tracts that the agency has determined need to be acquired.

In each case where a nonprofit organization or other entity seeks prior assurance from an agency or an agency requests the assistance of a nonprofit organization the proposal of the agency should be outlined in a letter of intent to the nonprofit organization or other entity. The letter should provide the nonprofit organization or other entity with a minimum of: (1) Land or interest in land needed; (2) the estimated value; (3) the projected time frame as to when the agency intends to acquire the

property from the nonprofit organization or other entity; and (4) a statement indicating that should the agency be unable or decline for policy reasons to purchase the land within the projected time frame, disposition of the land or interests in land by the nonprofit organization or other entity is without liability to the government.

In cases where a nonprofit conservation organization or other entity or a Federal agency has requested and received a letter of intent and the nonprofit conservation organization or other entity has secured an option to buy and does not or will not own title prior to a binding Federal commitment to purchase, the option price, the sale price to the Federal agency and appraisal data must be disclosed before a decision to purchase is made by the Federal agency.

Dated: August 3, 1983.

G. Ray Arnett,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 83-21710 Filed 8-9-83; 8:45 am]

BILLING CODE 4310-10-M

Bureau of Indian Affairs

Mille Lacs Reservation in Minnesota; Plan for the Use of the Twenty (20) Percent Program Portion of the Judgment Funds Awarded to the Mille Lacs Reservation group of the Mississippi and Lake Superior Chippewa Indians in Dockets 18-C and 18-T Before the Indian Claims Commission

July 29, 1983.

This notice is published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary for Indian Affairs by 209 DM 8.

A plan for the use of certain judgment funds of the Mille Lacs Reservation group of the Mississippi and Lake Superior Chippewa Indians, pursuant to the provisions of the Act of October 19, 1973, 87 Stat. 466, as amended, became effective on February 1, 1979. Under the plan, twenty (20) percent of the group's share of the judgment funds awarded in Dockets 18-C and 18-T was set aside for the program aspect of the plan to be developed at a later date. Plan for the use of the program funds of the Mille Lacs Reservation group was submitted to the Congress by a letter dated April 6, 1983, and was received (as recorded in the Congressional Record) by the House of Representatives on April 14, 1983, and by the Senate on April 15, 1983. The plan became effective on May 14, 1983, as provided by Section 5 of the 1973 Act, as amended, since a joint resolution disapproving it was not enacted.

The plan reads as follows:

"The program aspect of the plan of the Mille Lacs Reservation group, pursuant to the Act of October 19, 1973, 87 Stat. 466, which became effective February 1, 1979, provides that the twenty (20) percent program portion of the group's share of the judgment funds awarded to the Mississippi and Lake Superior Chippewa Bands in Dockets Nos. 18-C and 18-T shall be programmed as follows:

"The twenty percent (20%) program portion of the funds, including interest and investment income accrued, of the groups named in section 5 of this plan shall be deposited in separate accounts and shall be invested by the Secretary under 25 U.S.C. 162a until such time as a further plan for the use of the program funds is approved by the Secretary. The Secretary shall approve no plan for the use of the program funds of the respective groups until at least thirty days after the plan has been submitted to the Congress. The Reservation Business Committees of the Minnesota Chippewa Tribe and their respective band members represented on the reservations shall develop program plans, which may include a joint investment and use program of the funds for the bands represented on a reservation."

In accordance with Resolution No. 13-82, adopted January 6, 1982, by the Mille Lacs Reservation Business Committee, the twenty percent program funds shall be utilized in a Reservation Business Capitalization Program, with such funds apportioned among three specific programs as equally as possible, which are: (1) Capital investment to assist reservation owned enterprises in expansion development; (2) Loan fund to assist the existing tribally owned businesses on a day to day basis; (3) Loan guarantee funds to support tribally owned businesses, conventional loan packages and bonding program. There shall be established three separate program accounts for these purposes, and until such time the funds are needed in the implementation of the program plans, the funds shall continue to be invested by the Secretary of the Interior pursuant to 25 U.S.C. 162a. The Mille Lacs Reservation Business Committee shall be required to develop specific program plans for the use of the funds and tribal budgets, which shall be subject to approval by the Secretary.

Should funds set aside in any of the program accounts be determined to be in excess of needs of the respective group, appropriate adjustments from one program account to another shall be made in the annual tribal budget, with the approval of the Secretary.

General Provision. None of the funds made available under this plan shall be subject to Federal, State or local income taxes or be considered as income or resources in determining either eligibility for or the amount of assistance under the Social Security Act or any Federal or federally assisted programs."

John W. Fritz,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 83-21763 Filed 8-9-83; 8:45 am]

BILLING CODE 4310-02-M

Bureau of Land Management

[Oregon 35951-A]

Oregon; Conveyance

Notice is hereby given that, pursuant to Section 203 of the Act of October 21, 1976 (90 Stat. 2743, 2750; 43 U.S.C. 1701, 1713), the following described public land in Gilliam County, was purchased by competitive sale and conveyed to the party shown:

Mr. Allard, Bartlett, Box 251, Hurley, NM 88043

Willamette Meridian, Oregon

T. 1 S., R. 21 E.,
Sec. 10, NE¼NE¼.

The purpose of this Notice is to inform the public and interested State and local governmental officials of the issuance of the conveyance document to Mr. Barlett.

Dated: August 3, 1983.

Harold A. Berends,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 83-21746 Filed 8-9-83; 8:45 am]

BILLING CODE 4310-84-M

[Oregon 24850 (Wa)A; 24850 (Wa)B]

Washington; Conveyance

Notice is hereby given that, pursuant to Section 203 of the Act of October 21, 1976 (90 Stat. 2743, 2750; 43 U.S.C. 1701, 1713), the following described public land in Yakima County, was purchased by competitive sale and conveyed to the parties shown:

Mr. Orville L. Luther, Route 1, box 110-A, Granger, WA 98932

Willamette Meridian, Washington

Parcel 1

T. 10 N., R. 22 E.,
Sec. 32, N½NW¼.

Mr. Steven A. Newhouse, Route 1, Box 59 A, Outlook, WA 98938

Willamette Meridian, Washington

Parcels 2 and 3

T. 10 N., R. 22 E.,
Sec. 32. S½NW¼, SW¼NE¼, NW¼SE¼.

The purpose of this Notice is to inform the public and interested State and local governmental officials of the issuance of the conveyance document to Mr. Luther and Mr. Newhouse.

Dated: August 3, 1983.

Harold A. Berends,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 83-21747 Filed 8-9-83; 8:45 am]

BILLING CODE 4310-84-M

[W-81670]

Conveyance and Sale of Public Land in Big Horn County, Wyoming

August 2, 1983.

Notice is hereby given that pursuant to Section 203 of the Act of October 21, 1976; 43 U.S.C. 1713 (1976), Phillip M. and Violet G. Christopherson have purchased and received a patent for the following described public land in Big Horn County, Wyoming.

Sixth Principal Meridian

T. 51 N., R. 96 W.
Sec. 24, lots 23 and 36.
Containing 33.30 acres.

James L. Edlefsen,

Chief, Branch of Land Resources.

[FR Doc. 83-21751 Filed 8-9-83; 8:45 am]

BILLING CODE 4310-84-M

[W-78366]

Modified Notice of Realty Action; Exchange of Public Lands in Park County for Private Lands in Big Horn and Park Counties; Wyoming

August 1, 1980.

This Modified Notice of Realty Action represents an alteration of a Notice of Realty Action which appeared in Vol. 48, No. 39, page 8142 of the **Federal Register** on Friday, February 25, 1983. This modification is necessary to document the final action and to notify all interested parties of such.

The final valuation of the offered and selected lands necessitated the following changes:

1. 80 acres was deleted from the offered lands, changing a portion of the legal description from

T. 49 N., R. 98 W.,
Sec. 11, N½NE¼, NW¼.

to

T. 49 N., R. 98 W.,
Sec. 11, N½N½.

This change resulted in a total of 2576.59 acres of offered land and 2066.44 acres of selected land. The remainder of the legal descriptions of the lands involved in this exchange was listed in the original Notice of Realty Action.

2. The final value of the lands to be exchanged are approximately equal, being $205,000 for the public land and $205.400 for the private land. An equalization payment of $400.00 has been deposited with the Federal government, pending completion of the exchange.

Item 4 of the original Notice of Realty Action provided for reservation to the United States of a right of ingress and egress to certain public lands. This reservation constituted a floating easement which was inadequate for inclusion as a patent reservation. Therefore, this access reservation is deleted from the Notice of Realty Action. An appropriate easement will be negotiated with Mr. Glenn E. Nielson, the exchange proponent, in a separate action.

A waiver of the two-year notification provided to the grazing lessee, as per 43 CFR 4110.42, has been signed by Mr. Robert Schultz, whose grazing allotment will be reduced by 47 AUMs after the exchange is finalized.

No formal protests were filed as a result of this action.

This realty action is the final determination of the Department of the Interior.

Chester E. Conard,

District Manager..

[FR Doc. 83-21749 Filed 8-9-83; 8:45 am]

BILLING CODE 4310-84-M

[W-81467]

Realty Action Proposed Noncompetitive Sale of Public Lands in Johnson County, Wyoming

The following described lands have been examined and identified as suitable for disposal by direct sale under Section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750; 43 U.S.C. 1713) at no less than fair market value:

Sixth Principal Meridian

T. 50 N., R. 82 W.,
Parcel B.
The area described contains 1.28 acres.

The land is proposed for disposal by direct sale to Daryl Spiering who is currently authorized to occupy the land by a Land Use Authorization. Prior to the issuance of the Land Use Authorization, the Spiering family lived on the land for approximately 16 years. The value of the improvements Mr. Spiering has placed on the land is approximately $10,500.00 excluding his house which is partially on the subject land. He is co-owner of the adjoining private land. The authorized officer has determined public interest would be best served by the proposed direct sale in order to recognize and protect Mr. Spiering's equities and the unintentional nature of the occupancy.

The owner of the adjacent private lands and the local government officials are in support of the sale. The subject-lands are not essential to any Bureau program and are not suitable for management by another federal agency.

The land will not be offered for sale until 60 days after the date of this notice.

The proposed sale will be subject to the following:

1. Reservation of right-of-way for ditches and canals to the United States pursuant to 43 U.S.C. 945;

2. All valid existing rights and reservations of record.

Detailed information concerning the proposed sale, including a diagram of Parcel B, T. 50 N., R. 82 W., is available for review at the Bureau of Land Management, Buffalo Resource Area, 300 Spruce Street, Buffalo, Wyoming 82834.

For a period of 45 days from the date of this notice, interested parties may submit comments to the Casper District Manager, Casper District Office, Bureau of Land Management, 951 Rancho Road, 82601. Any adverse comments will be evaluated by the district manager who may vacate or modify this realty action. In absence of any action by the district manager, this realty action will become a final determination of the Department of the Interior.

Paul W. Arrasmith,

District Manager.

[FR Doc. 83-21748 Filed 8-9-83; 8:45 am]

BILLING CODE 4310-84-M

Fish and Wildlife Service

Endangered and Threatened Species Permit Applications; Receipt

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT 2-10863
The Peregrine Fund, Ithaca, NY

The applicant requests a permit to import up to 4 Philippine eagles (*Pithecophaga jefferyi*) from the Philippines for enhancement of propagation. This will be a cooperative

breeding project with the Philippine government:

PRT 2-9850
Dr. Joseph P. Ward, Tyndall Air Force Base, FL

The applicant requests a permit to import (harass) and salvage green sea turtles (*Chelonia mydas*), hawksbill sea turtle (*Eretmochelys imbricata*), Kemp's Ridley sea turtle (*Lepidochelys kempii*) and leatherback sea turtle (*Dermochelys coriacea*) on U.S. Air Force bases in Florida for enhancement of survival and scientific research:

PRT 2-10879
Miami Metrozoo, Miami, FL

The applicant requests a permit to purchase in foreign commerce and import 1 male and 3 female orangutans (*Pongo pygmaeus abelii*) from Dierenpark Wassensaar Zoo, Netherlands, for enhancement of propagation or survival of the species:

PRT 2-10833
Miami Metrozoo, Miami, FL

The applicant requests a permit to purchase in foreign commerce and import 1 male captive-born male black rhinoceros (*Diceros bicornis*) from Aritake Chojuten, Co., Ltd., Tokyo, Japan, for enhancement of propagation or survival of the species.

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 am to 4:15 pm) in Room 601, 1000 North Glebe Rd., Arlington, Virginia, or by writing to the Director, U.S. Fish and Wildlife Service, WPO, P.O. Box 3654, Arlington, VA 22203.

Interested persons may comment on these applications within 30 days of the date of this publication by submitting written data, views, or arguments to the above address. Please refer to the file number when submitting comments.

Dated: August 5, 1983.

R. K. Robinson,

Chief, Branch of Permits, Federal Wildlife Permit Office.

[FR Doc. 83-21845 Filed 8-9-83; 8:45 am]

BILLING CODE 4310-55-M

Minerals Management Service

Monthly Meeting of the Advisory Committee on Minerals Accountability

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of monthly meeting.

SUMMARY: The purpose of the Advisory Committee on Minerals Accountability is to develop over a 1-year period an expanded policy of cooperation with States and Indian Tribes in the royalty management area and to develop a detailed plan for carrying out Federal/State/Indian cooperation on a comprehensive basis.

The purpose of the advisory Committee meeting will be to discuss several matters of business that the Committee members wish to review. They include but are not limited to the final draft of the Federal Oil and Gas Product Value Guidelines and Regulations, the first draft of the Indian Oil and Gas Valuation Guidelines, and the first draft of the Transportation and Manufacturing Guidelines being proposed by the Royalty Management Program. In addition, there will be presentations made by the State of Alaska and the Cooke Inlet Regional Corporation to discuss specific Alaska royalty management issues.

Notice of the next monthly meeting will be published 15 days before the meeting is to take place.

DATES: Wednesday, August 24, and Thursday, August 25, 9:00 a.m.

ADDRESS: Portland Hilton, 921 S.W. Sixth Avenue, Portland, Oregon.

FOR FURTHER INFORMATION CONTACT: John Sullivan, Department of the Interior, 18th & C Streets, NW., Room 4216, Washington, D.C. 20240, telephone: (202) 343-3526.

SUPPLEMENTARY INFORMATION: The Advisory Committee was created by the Secretary of the Interior on November 15, 1982 (Order No. 3071).

The Committee will have one or more Executive Sessions at this meeting.

Dated: August 5, 1983.

John T. Sullivan, Jr.,

Assistant to the Director, Minerals Management Service.

[FR Doc. 83-21709 Filed 8-9-83; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

Floyd E. Cate; Intention To Negotiate Concession Contract

Pursuant to the provisons of Section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), public notice is hereby given that sixty (60) days after the date of publication of this notice, the Department of the Interior, through the Regional Director, Southeast Region, National Park Service, proposes to negotiate a concession contract with Floyd E. Cate authorizing him to continue the operation of Cades Cove campground and convenience store within the Great Smoky Mountains National Park for a period of five years from January 1, 1984, through December 31, 1988.

This contract renewal has been determined to be categorically excluded from the procedural provisions of the National Environmental Policy Act and no environmental document will be prepared.

The foregoing concessioner has performed his obligations to the satisfaction of the Secretary under an existing contract which expires by limitation of time on December 31, 1983, and, therefore, pursuant to the Act of October 9, 1965, as cited above, is entitled to be given preference in the negotiation of a new contract. This provision, in effect, grants Floyd E. Cate, the opportunity to meet the terms and conditions of any other proposal submitted in response to this Notice which the Secretary may consider better than the proposal submitted by Floyd E. Cate. If Floyd E. Cate amends its proposal and the amended proposal is substantially equal to the better offer, then the proposed new contract will be neogotiated with Floyd E. Cate.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioner, must be postmarked or hand delivered on or before the sixtieth (60th) day following publication of this notice to be considered and evaluated.

Interested parties should contact the Regional Director, Southeast Region, National Park Service, 75 Spring Street SW., Atlanta, Georgia 30303, for information as to the requirements of the proposed contract.

Dated: July 27, 1983.

Robert M. Baker,

Regional Director, Southeast Region.

[FR Doc. 83-21843 Filed 8-9-83; 8:45 am]

BILLING CODE 4310-70-M

International Leisure Hosts, Inc.; Intention To Negotiate Concession Contract

Pursuant to the provisions of Section 5 of the Act of October 9, 1965, 79 Stat. 969; 16 U.S.C. Section 20, public notice is hereby given that sixty (60) days after the date of publication of this notice, the Department of the Interior, through the Regional Director, Rocky Mountain Region, National Park Service, proposes to negotiate a concession contract with International Leisure Hosts, Inc., authorizing it to continue to provide lodging, food, retail merchandising and gasoline facilities and services for the public at John D. Rockfeller Memorial Parkway, Wyoming, for a period of

twenty (20) years from January 1, 1984, through December 31, 2003.

This proposed contract requires a construction and improvement program. The construction and improvement program required was previously addressed in the Environmental Review for Assessment of Alternatives, approved November 6, 1979, that was prepared in conjunction with the General Management Plan for John D. Rockefeller, Jr. Memorial Parkway.

The foregoing concessioner has performed its obligations to the satisfaction of the Secretary under an existing U.S. Forest Service Special Use Permit which expires by limitation of time on December 31, 1989, and therefore, pursuant to the Act of October 9, 1965, as cited above, is entitled to be given preference in the negotiation of a new contract. This provision in effect, grants International Leisure Hosts, Inc., the opportunity to meet the terms and conditions of any other proposal submitted in response to this Notice which the Secretary may consider better than the proposal submitted by International Leisure Hosts, Inc. If International Leisure Hosts, Inc. amends its proposal and the amended proposal is substantially equal to the better proposal, then the proposed new contract will be negotiated with International Leisure Hosts, Inc.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioner, must be postmarked or hand delivered on or before the sixtieth (60th) day following publication of this notice to be considered and evaluated.

Interested parties should contact the Regional Director, Rocky Mountain Regional Office, 655 Parfet Street, Denver, Colorado 80225, for information as to the requirements of the proposed contract.

Dated: May 4, 1983.

Harold P. Danz,

Acting Regional Director, Rocky Mountain Region.

[FR Doc. 83-21844 Filed 8-9-83; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Advisory Committee on Voluntary Foreign Aid (ACVFA); Meeting

Pursuant to the Federal Advisory Committee Act, notice is hereby given of a meeting sponsored by the Advisory Committee on Voluntary Foreign Aid (ACVFA) which will be held September 15, 1983 (from 8:30 a.m. to 5:00 p.m.) and September 16, 1983 (from 8:30 a.m. to 12:00 noon) in the National Academy of Sciences (NAS) Building, 2101 Constitution Avenue, N.W., Washington, D.C. Entrance, *ONLY:* "C" Streets, between 21st and 22nd Street, N.W., Washington, D.C.

September 15: The morning of September 15, a plenary session will be held on the subject: "AID/PVO Relations—Working Toward the Partnership." The afternoon (from 2:30 p.m. to 5:00 p.m.) will be devoted to three subcommittee meetings: Food for Peace, Development Education, and PVO Policy.

September 16: Subcommittees PVO/University Relations, Corporate/PVO Relations and Women in Development will convene from 8:30 a.m. until 10:30 a.m. At 10:45 a.m. a plenary session to hear reports from subcommittee meetings and to take up committee business will convene until noon.

The meeting will be open to the public. Any interested person may attend, request to appear before, or file statements with the Advisory Committee, in accordance with procedures established by the Committee. Written statements should be filed prior to the meeting and should be available in twenty (20) copies.

There will be AID representatives at the meeting. Those desiring further information may contact Lillian Halter (703) 235-3336, or by mail: c/o The Advisory Committee on Voluntary Foreign Aid, Room 227, SA-8, Agency for International Development, Washington, D.C. 20523.

Dated: July 27, 1983.

Julia Chang Bloch,

Assistant Administrator, Bureau for Food for Peace, and Voluntary Assistance.

[FR Doc. 83-21735 Filed 8-9-83; 8:45 am]

BILLING CODE 5116-01-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-141]

Certain Copper-Clad Stainless Steel Cookware; Initial Determination Terminating Respondent on the Basis of Settlement Agreement

AGENCY: International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding officer in the above-captioned investigation terminating the following respondent on the basis of a settlement agreement: Dajere Inc.

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon the parties on August 5, 1983.

Copies of the initial determination, the settlement agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202-523-0161.

Written comments: Interested persons may file written comments with the Commission concerning termination of the aforementioned respondent. The original and 14 copies of all such comments must be filed with the Secretary to the Commission, 701 E Street, NW., Washington, D.C. 20436, no later than 10 days after publication of this notice in the **Federal Register.** Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, telephone 202-523-0176.

By order of the Commission.

Kenneth R. Mason,

Secretary

Issued: August 5, 1983.

[FR Doc. 83-21852 Filed 8-9-83; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-125]

Certain Grooved Wooden Handled Kitchen Utensils and Gadgets; Prehearing Conference and Hearing

Notice is hereby given that a prehearing conference will be held in this case at 9:00 on August 25, 1983, in

the Waterfront Center, Room 201, 1010 Wisconsin Avenue, NW., Washington, D.C. The hearing will commence immediately thereafter.

The purpose of the prehearing conference is to review the trial memoranda submitted by the parties, to stipulate exhibits into the record, and to discuss any questions raised by the parties relating to the hearing.

The Secretary shall publish this notice in the **Federal Register.**

Issued: August 4, 1983.

Janet D. Saxon,

Administrative Law Judge.

[FR Doc. 83-21849 Filed 8-9-83; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-157]

Certain Office Desk Accessories and Related Products; Investigation

AGENCY: International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint and supplement thereto were filed with the U.S. International Trade Commission on July 6 and July 7, 1983, respectively, pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337), on behalf of Eldon Industries, Inc., 2704 W. El Segundo Boulevard, Hawthorne, California 90250. A motion for temporary relief and the memorandum of points and authorities in support thereof were filed on July 8, 1983 and July 9, 1983, respectively. The complaint alleges unfair methods of competition and unfair acts in the importation of certain office desk accessories and related products into the United States, or in their sale, by reason of alleged: (1) Infringement of U.S. Letters Patent Des. Nos. 220,014; 256,809; 268,119; 265,916; and 227,811; (2) infringement of U.S. Trademark Reg. Nos. 919,178; 948,123; 1,215,792; 1,189,973; and 1,238,331; (3) false designation of origin or source; and (4) passing off. The complaint further alleges that the effect or tendency of the unfair methods of competition and unfair acts is to destroy or substantially injure an industry, efficiently and economically operated, in the United States.

The complainant requests that the Commission institute an investigation and, conduct temporary relief proceedings, issue a temporary exclusion order prohibiting importation of the articles in question into the United States, except under bond, and a temporary cease and disist order. After a full investigation, the complainant requests that the Commission issue a permanent exclusion order and permanent cease and desist orders.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930 and in § 210.12 of the Commission's Rules of Practice and Procedure (19 CFR 210.12).

Scope of investigation: Having considered the complaint, the U.S. International Trade Commission, on August 2, 1983, ordered that:

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, an investigation by instituted to determine whether there is a violation of subsection (a) of section 337 in the unlawful importation of certain office desk accessories and related products into the United States, or in their sale, by reason of (1) infringement of U.S. Letters Patent Des. Nos. 220,014; 256,809; 268,119; 265,916; and 227,811; (2) infringement of U.S. Trademark Reg. Nos. 919,178; 948,123; 1,215,792; 1,189,973; and 1,238,331; (3) false designation of source; and (4) passing off, the effect or tendency of which is to destroy or substantially injure an industry, efficiently and economically operated, in the United States;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is:

Eldon Industries, Inc., 2701 W. El Segundo Blvd., Hawthorne, Calif. 90250

(b) The respondents are the following companies, alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Mael, Inc., 1966 W. Maine Street, Owosso, Mich. 48867

Burkett's Office Supplies, Inc., 6011 Folsom Boulevard, Sacremento, Calif. 95819

Husun's Industrial, Inc., P.O. Box 47-210, Taipei, Taiwan

Kensonic Industrial, Inc., P.O. Box 47-210, Taipei, Taiwan

Motto Industrial, Inc., P.O. Box 47-210, Taipei, Taiwan

Sun Office Products, Inc., P.O. Box 47-210, Taipei, Taiwan

Jam Sun, P.O. Box 47-210, Taipei, Taiwan

Ablegreen Company, Ltd., III Floor, No., 229 Chin Chou Street, Taipei, Taiwan 104

(c) Deborah S. Strauss, Unfair Import Investigations Division, U.S. International Trade Commission, 701 E Street, NW., Room 125, Washington, D.C. 20436, shall be the Commission investigative attorney, a party to this investigation; and

(3) For the investigation so instituted, Donald K. Duvall, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding officer. Pursuant to section 210.24(e) of the Commission's Rules of Practice and Procedure (19 C.F.R. 210.24(e) the presiding officer shall determine as expeditiously as possible whether or not temporary relief proceedings should be instituted.

Responses must be submitted by the named respondents in accordance with § 210.21 of the Commission's Rules of Practice and Procedure (19 CFR 210.21). Pursuant to §§ 201.16(d) and 210.21(a) of the rules, such responses will be considered by the Commission if received not later than 20 days after the date of service of the complaint. Responses to the motion for temporary relief may be submitted by the named respondents in accordance with § 210.24(e)(3) of the Commission's rules. Any such responses must be filed within 20 days after service of the motion. Extensions of time for submitting responses to the complaint and/or the motion for temporary relief will not be granted unless good cause therefor is shown.

Failure of a responsdent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the presiding officer and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings.

The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Room 156, Washington, D.C. 20436, telephone 202/523-0471.

FOR FURTHER INFORMATION CONTACT: Deborah S. Strauss, Esq., Unfair Import Investigation Division, U.S. International Trade Commission, telephone 202/523-0440.

By order of the Commission.

Issued: August 4, 1983.

Kennety R. Mason,

Secretary.

[FR Doc. 83-21851 Filed 8-9-83; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731-TA-102 (Final)]

Certain Radio Paging and Alerting Receiving Devices from Japan

Determination

On the basis of the record [1] developed in the subject investigation, the Commission determines,[2] pursuant to section 735(b)(1) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)(1)), that an industry in the United States is materially injured by reason of imports of high-capacity tone-only pagers which have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

On the basis of the record developed in the subject investigation, the Commission determines, pursuant to section 735(b)(1) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)(1)), that an industry in the United States is not materially injured or threatened with material injury by reason of imports of high-capacity tone and display pagers which have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

Background

The Commission instituted this investigation effective February 1, 1983, following a preliminary determination by the Department of Commerce that imports of high-capacity pager from Japan are being sold in the United States at LTFV.

Notice of the institution of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, D.C., and by publishing the notice in the **Federal Register** on February 24, 1983 (48 FR 7827). The hearing was held in Washington, D.C., on June 21, 1983, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its report on the investigation to the Secretary of Commerce on August 1, 1983. A public version of the Commission's report, certain Radio Paging and Alerting Receiving Devices from Japan (Investigation No. 731-TA-102 (Final), USITC Publication 1410, August 1983), contains the views of the Commissioners and information developed during the investigation. Copies may be obtained by contacting the Office of the Secretary, 701 E Street NW., Washington, D.C. 20436, telephone (202) 523-5178.

By order of the Commission.

Issued: August 1, 1983.

Kenneth R. Mason,

Secretary.

[FR Doc. 83-21850 Filed 8-9-83; 8:45 am]

BILLING CODE 7020-02-M

[1] The record is defined in § 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(i)).

[2] Commissioner Stern determines that an industry in the United States is materially injured by reason of imports of high-capacity pagers from Japan which have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

INTERSTATE COMMERCE COMMISSION

[Volume No. 34]

Motor Carriers; Applications, Alternate Route Deviations, and Intrastate Applications

The following application(s) for motor common carrier authority to operate in intrastate commerce seek concurrent motor carrier authorization in interstate or foreign commerce within the limits of the intrastate authority sought, pursuant to Section 10931 (formerly Section 206(a)(6)) of the Interstate Commerce Act. These applications are governed by 49 CFR Part 1161 of the Commission's Rules of Practice which provide, among other things, that protests and requests for information concerning the time and place of State Commission hearings or other proceedings, any subsequent changes therein, and any other related matters shall be directed to the State Commission with which the application is filed and shall *not* be addressed to or filed with the Interstate Commerce Commission.

By the Commission.

Agatha L. Mergenovich,

Secretary.

Motor Carrier Intrastate Applications

New York Docket No. T-10259, filed July 12, 1983. Applicant: PAT ANDERSON and RITA SPINELLI, d.b.a. EXPRESS DELIVERY, 11 Starwood Drive, Cheektowaga, NY 14227. Certificate of Public Convenience and Necessity sought to operate a freight service, as follows: Transportation of: General commodities in packages not to exceed 100 pounds and shipments not to exceed 200 pounds: Between all points in the Counties of Erie, Niagara Cattaraugus, and Genesee. Intrastate, interstate and foreign commerce authority sought. Hearing: date, time and place not yet fixed. Request for procedural information should be addressed to the New York State Department of Transportation, 1220 Washington Avenue, State Campus, Albany, NY 12232, and should not be directed to the Interstate Commerce Commission.

New York Docket No. T-10260, filed July 19, 1983. Applicant: ALAN L. LEFEBVRE, d.b.a. NATIONAL MESSENGER SERVICE, P.O. Box 514, Bohemia, NY 11716. Certificate of Public Convenience and Necessity sought to operate a freight service, as follows: Transportation of: General commodities in messenger service packages not to exceed 100 pounds and shipments not to exceed 200 pounds: Between the Counties of Nassau, Suffolk and Westchester and the city of New York. Intrastate, interstate and foreign commerce authority sought. Hearing: date, time and place not yet fixed. Request for procedural information should be addressed to the New York State Department of Transportation, 1220 Washington Avenue, State Campus, Albany, NY 12232, and should not be directed to the Interstate Commerce Commission.

[FR Doc. 83-21765 Filed 8-9-83; 8:45 am]

BILLING CODE 7035-01-M

Motor Carriers; Permanent Authority Decisions; Restriction Removals; Decision-Notice

The following restriction removal applications are governed by 49 CFR Part 1165. Part 1165 was published in the **Federal Register** of December 31, 1980, at 45 FR 86747 and redesignated at 47 FR 49590, November 1, 1982.

Persons wishing to file a comment to an application must follow the rules under 49 CFR 1165.12. A copy of any application can be obtained from any applicant upon request and payment to applicant of $10.00.

Amendments to the restriction removal applications are not allowed. Some of the applications may have been modified prior to publication to conform to the special provisions applicable to restriction removal.

Findings

We find, preliminarily, that each applicant has demonstrated that its requested removal of restrictions or broadening of unduly narrow authority is consistent with the criteria set forth in 49 U.S.C. 10922(h).

In the absence of comments filed within 25 days of publication of this decision-notice, appropriate reformed authority will be issued to each applicant. Prior to beginning operations under the newly issued authority, compliance must be made with the normal statutory and regulatory

requirements for common and contract carriers.

By the Commission,
Agatha L. Mergenovich,
Secretary

For the following, please direct status calls to Team 5 at 202–275–7289.

Volume No. OP5–393

Decided: August 2, 1983.

By the Commission, Review Board Members Joyce, Williams and Dowell.

MC 119099 (Sub-44)X, filed July 19, 1983. Applicant: BJORKLUND TRUCKING, INC., 1st Ave. N.E. and 8th St., Buffalo, MN 55313. Representative: Val M. Higgins, 1600 TCF Tower, 121 South 8th St., Minneapolis, MN 55402. Sub Nos. 4, 6, 7, 9, 10, 11, 15, 16, 18, 21, 23F, 25F, 26F 27F, 30F, and 32F certificates: (1) Broaden (a) plastic burial vault liners to "rubber and plastic products" (Subs 4, 6, and 7); (b) burial vault adhesives, burial vault handles and plastic burial vaults to "chemicals and related products, metal products, and rubber and plastic products" (Sub 9); (c) plastic burial vaults and plastic burial vault liners to "rubber and plastic products" (Sub 10); (d) steel wire and steel rod to "metal products" (Sub 15); (e) offal and beef trim to "food and related products" (Sub 16); (f) dried milk products to "food and related products" (Sub 18); (g)(i) steel wire and steel rod and (ii) wooden pallets and blocking to (i) metal products and (ii) lumber and wood products" (Sub 21); (h) iron and steel articles to "metal products" (Sub 23F); (i) lumber and wood chips to "lumber and wood products" (Sub 26F); (j) lumber to "lumber and wood products" (Sub 27F); (k) dried milk products to "food and related products" (Sub 30F); and (l) salt and salt products to "chemicals and related products and food and related products" (Sub 32F); (2) change one-way to radial authority in all Subs; (3) broaden to county-wide authority: St. Paul, MN and Little Hocking, OH, to Hennepin, Ramsey, Anoka, Washington, Dakota, Scott, and Carver Counties, MN, St. Croix and Pierce Counties, WI, and Washington County, OH (Subs 4, 6, and 7); Palatine and Addison, IL, St. Paul, MN, and Little Hocking, OH, to Cook and Du Page Counties, IL, Hennepin, Ramsey, Anoka, Washington, Dakota, Scott, and Carver Counties, MN, St. Croix, and Pierce Counties, WI, and Washington County, OH (Sub 9); Broadview, IL to Cook County, IL (Sub 10); Howard Lake, MN to Wright County, MN (Sub 18); Cicero, IL to Cook County, IL (Sub 21); Joliet and Sterling, IL to Will, Whiteside, and Lee Counties, IL, and Minneapolis, MN to Hennepin, Ramsey, Anoka, Washington, Dakota, Scott, and Carver Counties, MN, and St. Croix and Pierce Counties, WI (Sub 23F); Chicago Heights, IL and Shakopee, MN to Cook and Will Counties, IL, Lake County, IN, and Scott County, MN (Sub 25F); Princeton, Onamia, Maple Grove, and Hinckley, MN to Mille Lacs, Sherburne, Isanti, Hennepin, and Pine Counties, MN (Sub 26F); Willmar, MN to Kandiyohi County, MN (Sub 27F); Howard Lake, MN to Wright County, MN (Sub 30F); and Sioux City, IA to Woodbury and Plymouth Counties, IA, Dakota County, NE, and Union County, SD (Sub 32F); and (4) remove the following restrictions: (a) plantsite restrictions (Subs 9, 11, 15, 21, 23F, 25F, and 32F), (b) "in containers" restriction (Sub 9), (c) "originating at" restriction (Sub 10), (d) restrictions against iron and steel, commodities in bulk, and those requiring special equipment (Sub 11), (e) size and weight restriction (Sub 15), (f) "originating at and destined to" restrictions (Subs 15 and 18), (g) special equipment restrictions (Sub 21), (h) bulk restriction (Sub 16), and "destined to" restrictions (Sub 23F).

Volume No. OP5–394

Decided: August 2, 1983.

By the Commission, Review Board Members Krock, Williams and Dowell.

MC 141768 (Sub-2)X, filed July 25, 1983. Applicant: WESTERN ASPHALT (1972), LTD., P.O. Box 3195, Sherwood Park, Alberta, Canada T8A 2A6. Representative: Thomas M. O'Brien, 180 N. Michigan Ave., Suite 1700, Chicago, IL 60601, (312) 263–1600. Lead certificate: (1) Broaden to "petroleum, natural gas, and their products" from "asphalt and asphalt products," and (2) remove the "bulk" restriction.

[FR Doc. 83-21704 Filed 8-9-83; 8:45 am]
BILLING CODE 7035-01-M

Motor Carriers; Permanent Authority Decisions; Decision-Notice

Motor Common and Contract Carriers of Property (fitness-only); Motor Common Carriers of Passengers (fitness-only); Motor Contract Carriers of Passengers; Property Brokers (other than household goods). The following applications for motor common or contract carriage of property and for a broker of property (other than household goods) are governed by Subpart A of Part 1160 of the Commission's General Rules of Practice. See 49 CFR Part 1160, Subpart A, published in the **Federal Register** on November 1, 1982, at 47 FR 49583, which redesignated the regulations at 49 CFR 1100.251, published in the **Federal Register** on December 31, 1980. For compliance procedures, see 49 CFR 1160.19. Persons wishing to oppose an application must follow the rules under 49 CFR Part 1160, Subpart B.

The following applications for motor common or contract carriage of passengers filed on or after November 19, 1982, are governed by Subpart D of the Commission's Rules of Practice. See 49 CFR Part 1160, Subpart D, published in the **Federal Register** on November 24, 1982, at 49 FR 53271. For compliance procedures, see 49 CFR 1160.86. Persons wishing to oppose an application must follow the rules under 49 CFR Part 1160, Subpart E.

These applications may be protested *only* on the grounds that applicant is not fit, willing, and able to provide the transportation service or to comply with the appropriate status and Commission regulations.

Applicant's representative is required to mail a copy of an application, including all supporting evidence, within three days of a request and upon payment to applicant's representative of $10.00

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.g., unresolved common control, fitness, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated that it is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. This presumption shall not be deemed to exist where the application is opposed. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient opposition in the form of verified statements filed on or before 45 days from date of publication (or, if the application later becomes unopposed), appropriate authorizing documents will be issued to applicants with regulated operations (except those with duly noted problems) and will remain in full effect only as long as the applicant maintains appropriate compliance. The

unopposed applications involving new entrants will be subject to the issuance of an effective notice setting forth the compliance requirements which must be satisfied before the authority will be issued. Once this compliance is met, the authority will be issued.

Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

Agatha L. Mergenovich,

Secretary.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce, over irregular routes unless noted otherwise. Application for motor contract carrier authority are those where service is for a named shipper "under contract."

Please direct status inquiries about the following to Team Four at (202) 275–7669.

Volume No. OP4–507

Decided: August 3, 1983.

By the Commission, Review Board, Members: Carleton, Krock and Dowell.

MC 140716 (Sub-5), filed July 27, 1983. Applicant: THE STROH TRANSPORTATION COMPANY, 1 Stroh Dr., Detroit, MI 48226. Representative: Wilhelmina Boersma, 1600 First Federal Bldg., Detroit, MI 48226, (313) 962–6492. As a *broker of general commodities* (except household goods), between points in the U.S. (except AK and HI).

MC 164386 (Sub-1), filed July 26, 1983. Applicant: ALABAMA LIMOUSINE CORPORATION, P.O. Box 671, Weaver, AL 36277. Representative: Walter L. Adams (same address as applicant), (205) 820–5990. Transporting *passengers*, in charter and special operations, between points in AL, GA, TN, FL and LA.

Note.—Applicant seeks to provide privately-funded charter and special transportation.

MC 169506, filed July 27, 1983. Applicant: HOWARD C. CROUSE, 10760 Warner Ave., Fountain Valley, CA 92708. Representative: Jack L. Schiller, 111–56 76th Dr., Forest Hills, NY 11375, (212) 263–2078. As a broker of *general commodities* (except household goods), between points in the U.S. (except AK and HI).

Volume No. OP4–509

Decided: August 3, 1983.

By the Commission, Review Board, Members: Williams, Joyce and Carleton.

MC 167396, filed July 26, 1983. Applicant: NATHAN LEE TENNESON, d.b.a. OLD WEST ENTERPRISES, 400 Old Ophir Rd., Carson City, NV 89701. Representative: Nathan Lee Tenneson (same address as applicant), (702) 849–1117. Transporting *passengers*, in charter and special operations, between points in the U.S. (except AK and HI).

Note.—Applicant seeks to provide privately funded charter and special transportation.

Volume No. OP4–511

Decided: August 3, 1983.

By the Commission, Review Board, Members: Krock, Dowell, and Carleton.

MC 144616 (Sub-20), filed July 27, 1983. Applicant: SOUTHWESTERN CARRIERS, INC., P.O. Box 79495, Saginaw, TX 76179. Representative: Harry F. Horak, P.O. Box 294, Cherokee, TX 76832, (915) 622–4495. As a *broker of general commodities* (except household goods), between points in the U.S. (except AK and HI).

MC 148976 (Sub-6), filed July 26, 1983. Applicant: H & W TRANSFER & CARTAGE SERVICE, INC., 611 S. Main St., P. O. Box 448, Cedartown, GA 30125. Representative: Bruce E. Mitchell, Suite 520, Lenox Towers S., 3390 Peachtree Rd., NE, Atlanta, GA 30326, (404) 262–9488. Transporting, for or on behalf of the United States Government, *general commodities* (except used household goods, hazardous and secret materials, and sensitive weapons and munitions), between points in the U.S. (except HI).

MC 169486, filed July 27, 1983. Applicant: ROYAL EXPRESS, INC., 809 Wabash Ave., Chesterton, IN 46304. Representative: Carl L. Steiner, 135 S. LaSalle St., Suite 2106, Chicago, IL 60603, (312) 236–9375. Transporting, for or on behalf of the United States Government, *general commodities* .(except used household goods, hazardous or secret materials and sensitive weapons and munitions), between points in the U.S. Condition: The person or persons who appear to be engaged in common control of applicant and another regulated carrier must either file an application under 49 U.S.C. 11343(A) or that a petition has been filed under 49 U.S.C. 11343(e) seeking an exemption from the requirements of 49 U.S.C. 11343, and or submit an affidavit indicating why such approval is unnecessary to the Secretary's Office. In order to expedite issuance of any authority please submit a copy of the affidavit or proof of filing the application(s) for common control to Team 4, Room 2410.

For the following, please direct status calls to Team 5 at 202–275–7289.

Volume No. OP5–398

Decided: July 29, 1983.

By the Commission, Review Board Members Parker, Joyce and Krock.

MC 166768, filed July 14, 1983. Applicant: EAGLE TOURS, INC., 402 N. Nursery, Suite 118, Irving, TX 75061. Representative: Eugene J. Shields (same address as applicant), (214) 721–0545. Transporting *passengers*, in charter and special operations, between points in the U.S.

Note.—Applicant seeks to provide privately-funded charter and special transportation.

MC 169309, filed July 18, 1983. Applicant: VAN GUNDY'S AMPCO, INC., 1018 South Fifth Street, Grand Junction, CO 81501. Representative: Dennis Erhardt (same address as applicant), (303) 242–9500. To operate as a *broker* of *general commodities* (except household goods), between points in the U.S.

Volume No. OP5–399

Decided: August 2, 1983.

By the Commission, Review Board Members Joyce, Williams, and Dowell.

MC 169268, filed July 18, 1983. Applicant: JOSEPH DeFRANCO, d.b.a. J & R TRUCKING, 23 East Walnut St., Central Islip, NY 11722. Representative: Joseph F. Stern, 17 Bradley Dr., Shoreham, NY 11786, (516) 744–1227. To operate as a *broker* of *general commodities* (except household goods), between points in the U.S.

MC 169319, filed July 19, 1983. Applicant: R. G. FLAA AND ASSOCIATES, INC., P.O. Box 1171, 1433 N. Belmont, Arlington Heights, IL 60006. Representative: R. G. Flaa (same address as applicant), (312) 228–5570. To operate as a *broker* of *general commodities* (except household goods), between points in the U.S. (except AK and HI).

MC 169329, filed July 19, 1983. Applicant: FLOYD BAXTER, d.b.a. BAXTER TRUCKING, 1318 No. Russell, Pampa, TX 79065. Representative: Floyd Baxter (same address as applicant), (806) 669–9568. Transporting *food and other edible products and byproducts intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizers, and other soil conditioners*, by the owner of the motor vehicle in such vehicle, between points in the U.S. (except AK and HI).

Volume No. OP5–400

Decided: August 2, 1983.

By the Commission, Review Board Members Joyce, Williams, and Dowell.

MC 148539 (Sub-3), filed July 25, 1983. Applicant: LINDO'S TOURS U.S.A., INC., 1886 U.S. Hwy. 19, South, Clearwater, FL 33516. Representative: Richard M. Davis, 3225 Shimmy Lane, Tallahassee, FL 32308, (904) 386–2493. Transporting *passengers*, in charter and special operations, between points in the U.S. (except AK and HI).

Note.—Applicant seeks to provide privately-funded charter and special transportation.

MC 151328 (Sub-1), filed July 22, 1983. Applicant: THRIFTY RED CARPET COACHES, INC., 2480 South Glebe Rd., Arlington, VA 22206. Representative: Daniel B. Johnson, 4304 East-West Hwy., Bethesda, MD 20814, (301) 654–2240. Transporting *passengers*, in special and charter operations, between points in the U.S.

Note.—Applicant seeks to provide privately-funded charter and special transportation.

[FR Doc. 83–21767 Filed 8–9–83; 8:45 am]
BILLING CODE 7035–01–M

Motor Carriers; Temporary Authority Applications

The following are notices of filing of applications for temporary authority under Section 10928 of the Interstate Commerce Act and in accordance with the provisions of 49 CFR 1131.3. These rules provide that an original and two (2) copies of protests to an application may be filed with the Regional Office named in the **Federal Register** publication no later than the 15th calendar day after the date the notice of the filing of the application is published in the **Federal Register**. One copy of the protest must be served on the applicant, or its authorized representative, if any, and the protestant must certify that such service has been made. The protest must identify the operating authority upon which it is predicated, specifying the "MC" docket and "Sub" number and quoting the particular portion of authority upon which it relies. Also, the protestant shall specify the service it can and will provide and the amount and type of equipment it will make available for use in connection with the service contemplated by the TA application. The weight accorded a protest shall be governed by the completeness and pertinence of the protestant's information.

Except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

A copy of the application is on file, and can be examined at the ICC Regional Office to which protests are to be transmitted.

Note.—All applications seek authority to operate as a common carrier over irregular routes except as otherwise noted.

Motor Carriers of Property

Notice No. F–283

The following applications were filed in Region 5. Send protest to: Consumer Assistance Center, Interstate Commerce Commission, 411 West 7th Street, Suite 500, Forth Worth, TX 76102.

MC 61440 (Sub-5–21TA), filed July 27, 1983. Applicant: LEE WAY MOTOR FREIGHT, INC., P.O. Box 12750, Oklahoma City, OK 73157. Representative: Fred Rahal, Jr., Suite 305 Reunion Center, 9 East Fourth Street, Tulsa, OK 74103. Contract, irregular: *General commodities (except classes A and B explosives, household goods, and commodities in bulk)* between points in the U.S. (except AK and HI) under continuing contract(s) with Lockheed Corporation, Burbank, CA and its subsidiaries.

MC 83539 (Sub-5–6TA), filed July 27, 1983. Applicant: C & H TRANSPORTATION CO., INC., 9757 Military Parkway, Dallas, Texas 75227–9989. Representative: Thomas E. James, P.O. Box 270535, Dallas, Texas 75227–9989. Contract, Irregular: *general commodities (except Classes A & B explosives and household goods)* between points in the U.S. including AK (excluding HI) under continuing contract with Phillips Petroleum Company of Bartlesville, OK, and its wholly owned subsidiaries.

MC 146675 (Sub-5–3TA), filed July 27, 1983. Applicant: KINCAID COACH LINES, INC., 9207 Woodend Road, Edwardsville, KS 66111. Representative: Patrick K. McMonigle, 1221 Baltimore Avenue, Suite 600, Kansas City, MO 64105–1961. Common Regular: *Passengers and their baggage, and express and newspapers in the same vehicle with passengers*, (1) between Cedar Rapids, IA, and Springfield, MO, serving all intermediate points: from Cedar Rapids over IA Hwy 149 to the junction of U.S. Hwy 63, then over U.S. Hwy 63 to the junction of U.S. Hwy 54, then over U.S. Hwy 54 to the junction of MO Hwy 5, then over MO Hwy 5 to the junction of Interstate Hwy 44, then over Interstate Hwy 44 to Springfield, and return over the same route; and (2) between Cedar Rapids, IA, and Iowa City, IA, serving all intermediate points: (a) from Cedar Rapids over Interstate Hwy 380 to the junction of Interstate Hwy 80, then over Interstate Hwy 80 to Iowa City; (b) from Cedar Rapids over U.S. Hwy 218 to the junction of U.S. Hwy 30, then over U.S. Hwy 30 to the junction of IA Hwy 1, then over IA Hwy 1 to Iowa City; (c) from Cedar Rapids over U.S. Hwy 218 to Iowa City; and (d) from Cedar Rapids over IA Hwy 149 to the junction of Interstate Hwy 80, then over Interstate Hwy 80 to Iowa City, and return over the same routes in (a), (b), (c) and (d). Applicant intends to interline.

MC 167183 (Sub-5–2TA), filed July 27, 1983. Applicant: CONVOY SYSTEMS, INC., 6716 Berger, Kansas City, KS 66111, Representative: :Clyde N. Christey, 1010 Tyler, Suite 110–L, Topeka, KS 66612. *Industrial Batteries and chargers* between points in the Lombard, IL Commercial zone, on the one hand and points in the U.S. (except AK & HI) on the other hand. Supporting shipper(s): C & D Batteries, Lombard, IL.

MC 168431 (Sub-5–1TA), filed July 29, 1983. Applicant: WESTERN AUTO SUPPLY COMPANY—TRANSPORTATION DIVISION, 2107 Grand Avenue, Kansas City, MO 64106. Representative: Arthur J. Cerra, P. O. Box 19251, Kansas City, MO 64141. *General Commodities (except Commodities in Bulk, Classes A & B explosives and Household Goods)* between points in the U.S. (except AK and HI). Supporting shippers: 6.

MC 169519 (Sub-5–1TA), filed July 29, 1983. Applicant: HOWARD TABER, Route 2, Box 221A, Mountain View, MO 65548. Representative: Richard D. Howe, 600 Hubbell Building, Des Moines, IA 50309. (1) *Lumber or wood products and building materials*, between Howell and Shannon Counties, MO, on the one hand, and, on the other, points in the U.S. (except AK and HI); (2) *lumber or wood products*, between Howell and Texas Counties, MO, on the one hand, and, on the other, points in the U.S. (except AK and HI); and (3) *fertilizer*, between Howell County, MO, on the one hand, and, on the other, points in NM and OK. Supporting shippers: (1) Mountain View Lumber Co., Inc., Mountain View, MO; (2) Smith Flooring, Inc., Mountain View, MO and (3) Richards Brothers, Mountain View, MO.

The following applications were filed in Region 6. Send Protests to: Interstate Commerce Commission, Region 6 Motor Carrier Board, 211 Main St. Suite 501, San Francisco, Ca 94105.

MC 162971 (Sub-6–6TA) filed July 28, 1983. Applicant: SPIRIT

TRANSPORTATION, INC. d.b.a. D & N TRUCKING, 19472 Yuma Place, Castro Valley, CA 94546. Representative: Ronald C. Chauvel, 100 Pine St., #2550, San Francisco, CA 94111. *Contract carrier*, irregular routes: *food and kindred products*, between points in Walla Walla, WA, on the one hand, and, on the other, Fresno, Sacramento and Richmond, CA under continuing contract(s) with United Growers, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: United Grocers, 1005 S. 32nd Street, Richmond, CA, 94803.

MC 152330 (Sub-6-9TA), filed July 29, 1983. Applicant: GLACIER CARRIERS, P.O. Box 490, Columbia Falls, MT 59912. Representative: John T. Wirth, 717—17th Street, Suite 2600, Denver, CO 80202-3357. *Contract carrier*, irregular routes: *General commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with ARCO Aluminum Company of Columbia Falls, MT, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: ARCO Aluminum Company, P.O. Box 10, Columbia Falls, MT 59912.

MC 169540 (Sub-6-1TA), filed July 29, 1983. Applicant: HIGHWOOD CARRIERS LTD—274717 ALBERTA, POB 507, High River Alberta CD TOL 1DO. Representative: W. E. Seliski, 2 Commerce St. POB 8255, Missoula, MT 59807. *Bentonite and wood product pallets* between points on the U.S./CD boundary in MT on the one hand, and, on the other points in WY, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Canamara United Supply LTD, 509 505 4th Ave. SW., Calgary Alberta CD T5P OJB.

MC 169113 (Sub-6-1TA), filed August 1, 1983. Applicant: SUKHJIT S. GREWAL d.b.a. GREWAL TRUCKING, 2501 Entrada Way #2, Tracy, CA 95376. Representative: Sukhjit S. Grewal (same as above). *Contract carrier*, irregular routes, *Ice cream and related products* between points in CA and AZ for 270 days for Cervelli Distributors, Inc. An underlying ETA seeks 120 days authority. Supporting shipper: Cervelli Distributors, Inc., 2102 E. McDowell Rd., Phoenix, AZ 85009.

MC 169564 (Sub-6-1TA), filed August 1, 1983. Applicant: K. W. MINERALS CORPORATION, 480 National Avenue East, Winnemucca, NV 89445. Representative: K. W. Snyder (same as applicant). *Fertilizer, feed supplement, mining machinery, and general commodities*, with usual exceptions, from Winnemucca, NV to points in NV, CA, ID, OR WA, UT, WY, CO, AZ and NM for 270 days. Supporting shipper: Min-Ad, Inc., 1630 25th Ave., Greeley, CO 80631.

MC 169541 (Sub-6-1TA), filed July 29, 1983. Applicant: PAUL E. LORENZEN d.b.a. KIRBY ENTERPRISES, P.O. Box "B", Kirby, WY 82430. Representative: Paul E. Lorenzen (same as applicant). *Mercer commodities and building materials*, points in CA, MT, WY, ND, SD, KS, OK, TX, NM, UT, NE, AZ, ID, NV, CO, for 270 days. Supporting shippers: There are 8 shippers, their statements may be examined at the regional office listed above.

MC 169566 (Sub-6-1TA), filed August 1, 1983. Applicant: ROBERT C. MADDEN d.b.a. MADDEN TRUCKING, P.O. Box 582, Palisade, CO 81526. Representative: Robert W. Wright, Jr., 5711 Ammons St., Arvada, CO 80002. *Contract Carrier*, irregular routes, *Lumber and Wood Products*, between Medford, OR and points in CO and Farmington, NM, under continuing contract with Smith Lumber Co., Grand Junction, CO, for 270 days. Supporting shipper: Smith Lumber Co., 1048 Independent Ave., Suite A112, Grand Junction, CO 81505.

MC 169497 (Sub-6-1TA), filed July 29, 1983. Applicant: CAROL A. MANN, d.b.a. MANN TRUCKING, Box 892, Wolf Point, MT 59208. Representative: Clarence Mann, Box 1074, Glendive, MT 59330. *Asphalt, road-oil and all petroleum based products* used in construction of roads, excluding any products intended for use as fuel, from Yellowstone and Cascade Counties, MT on the one hand to road construction projects in ND on the other hand, for 270 days. Supporting shippers: There are seven shippers. Their statements may be examined at the Regional office listed above.

MC 169114 (Sub-6-1TA), filed July 29, 1983. Applicant: START TO FINISH HORSE TRANSPORT, P.O. Box 2463, Marysville, CA 95901. Representative: John N. Massey, 4277 Larson St., Marysville, CA 95901. *Race horses*, between points in CA, AZ, NM, NV, ID, OR, and WA for 270 days. An underlying ETA seeks 120 days Authority. Supporting Shippers: There are 5 shippers. Their statements may be examined at the regional office listed above.

MC 150485 (Sub-6-9TA), filed July 28, 1983. Applicant: WESTSPAN HAULING, INC., 8916 South Tacoma Way, Tacoma, WA 98499. Representative: Kenneth R. Mitchell, 2320A Milwaukee Way, Tacoma, WA 98421. *Mobile Homes*, between points in OR and ID on the one hand, and, on the other hand, points in WA, for 270 days. An underlying ETA seeks 120 day authority. Supporting shippers: Gregerson Homes, Inc., 23930 Highway 99 No., Edmonds, WA 98020; First Equity Homes, Inc., 29200 Pacific Highway So., Federal Way, WA 98003; USA Mobile Homes, 9816 South Tacoma Way, Tacoma, WA 98499.

MC 41098 (Sub-6-42TA), filed August 1, 1983. Applicant: GLOBAL VAN LINES, INC., One Global Way, Anaheim, CA 92803. Representative: Alan F. Wohlstetter, 1700 K St., NW., Washington, D.C. 20006. *Contract carrier*, irregular routes, *household goods* between points in the U.S. under continuing contract(s) with Eastman Kodak Company of Rochester, NY and its subsidiaries for 270 days. Supporting shipper: Eastman Kodak Company, 2400 Mt. Read Blvd., Rochester, NY 14650.

MC 41098 (Sub-6-41TA), filed August 1, 1983. Applicant: GLOBAL VAN LINES, INC., One Global Way, Anaheim, CA 92803. Representative: Alan F. Wohlstetter, 1700 K St., NW., Washington, DC 20006. *Contract carrier*, irregular routes, *household goods* between points in the U.S. under continuing contract(s) with Digital Equipment Corporation Maynard MA for 270 days. Supporting shipper: Digital Equipment Corporation, 450 Whitney Street, Maynard, MA 01754.

MC 42487 (Sub-6-84TA), filed August 1, 1983. Applicant: CONSOLIDATED FREIGHTWAYS CORPORATION OF DELAWARE, 175 Linfield Dr., Menlo Park, CA 94025. Representative: V. R. Oldenburg, P.O.B. 3062, Portland, OR 97208. *Contract carrier*, irregulat routes: *General commodities*, (except Classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except AK and HI) for 270 days. Supporting shipper(s): Lockheed Corporation, 86 S. Cobb Drive, Mairetta, GA 30063.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 83-21786 Filed 8-9-83; 8:45 am]

BILLING CODE 7035-01-M

[Ex Parte No. MC-43]

Lease and Interchange of Vehicles By Motor Carriers

Decided: August 3, 1983.

Bestway Moving & Storage Company, Inc., MC-153332, and Bestway North American Company, an agent for North American Van Lines, petition for waiver of paragraph (a)(3) of Section 1057.4 of the *Lease and Interchange of Vehicles regulations* (49 CFR Part 1057).

We Find:

Bestway Moving & Storage Company (Bestway Moving), a longtime agent of North American Van Lines (Van Lines), has established the separate Michigan corporation, Bestway North American Co. (Bestway N.A.), to replace Bestway Moving as the agent of Van Lines.

Bestway Moving and Bestway N.A. are owned by identical shareholders. Bestway Moving holds a certificate from the Commission but Bestway N.A. holds no such authority, operating solely as an agent for Van Lines.

The petition is for waiver of § 1057.4[a][3], a section of the regulations which no longer exists. It has been replaced by § 1057.12(c) which requires that written leases have a minimum duration of 30 days when the vehicle is operated by its owner. This regulation, along with the others contained in §§ 1057.11 and 1057.12, are applicable to leasing between owner-operators and regulated carriers.

The petition indicates that the petitioners desire to exchange equipment between themselves on a trip-lease basis. Bestway N.A. is not a carrier regulated by this Commission but vehicles owned by that company can be utilized by Bestway Moving under the regulations of §§ 1057.11 and 1057.12. However, Bestway N.A. cannot utilize any vehicles of Bestway Moving in performing for-hire interstate transportation, a service for which it holds no authority.

A vehicle owner, who is not an authorized carrier, may lease to an authorized carrier under the conditions of §§1057.11 and 1057.12. One of those conditions is that the lease must be for a minimum duration of 30 days during which time the lessee carrier has exclusive possession, control and use of the vehicle. Thus, Bestway N.A. cannot have any owned vehicle under lease to Bestway Moving and Van Lines for time periods which coincide. However, vehicles owned by Bestway N.A. and operated under long-term lease by either Van Lines or Bestway Moving could be exchanged between those two authorized carriers under the regulations of § 1057.22.

The practice of the Commission has been to grant waivers of leasing regulations found burdensome to authorized carriers under common control. Although the petitioners in this case are not both authorized carriers, common ownership exists. This relationship between the two parties minimizes the need for some of the protective regulations of §§ 1057.11 and 1057.12. Thus in keeping with the Commission responsibility to eliminate unnecessary regulations which prove to be burdensome, we will waive, as requested, the normally applicable 30-day minimum lease requirement for Bestway N.A. vehicles under lease to Bestway Moving.

It is Ordered:

The petition of Bestway Moving & Storage Company, Inc., MC–153332, and Bestway North American Company for waiver of paragraph 1057.12(c) of the Lease and Interchange of Vehicles (49 CFR Part 1057) regulations is granted for the leasing of Bestway North American Company vehicles to Bestway Moving & Storage Company.

By the Motor Carrier Leasing Board, Board Members J. Warren McFarland, Bernard Gaillard, and John H. O'Brien.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 83-21708 Filed 8-9-83; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30220]

Rail Carriers; Baltimore and Philadelphia Railroad Company and the Baltimore and Ohio Railroad Company—Abandonment and Discontinuance Exemption—In Wilmington, New Castle County, DE

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Exemption.

SUMMARY: The Interstate Commerce Commission exempts the physical abandonment by the Baltimore and Philadelphia Railroad Company of, and the discontinuance of service by the Baltimore and Ohio Railroad Company over, a 0.4-mile segment of line between Valuation Stations 0+00 and 21+17 in Wilmington, New Castle County, DE, from the requirements of 49 U.S.C. 10903 *et seq.* The exemption is subject to standard labor protective conditions.

DATES: This exemption shall be effective on September 9, 1983. Petitions to stay the effectiveness of this decision must be filed by August 22, 1983, and petitions for reconsideration must be filed by August 30, 1983.

ADDRESSES: Send pleadings referring to Finance Docket No. 30220 to:

(1) Office of the Secretary, Interstate Commerce Commission, Washington, DC 20423; and

(2) Petitioner's representative: Rene J. Gunning, Suite 2204, 100 North Charles St., Baltimore, MD 21201

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275–7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, contact T.S. InfoSystems, Inc., Room 2227, Interstate Commerce Commission, Washington, DC 20423, or call 289–4357 (D.C. Metropolitan area) or toll free (800) 242–5403.

Decided: August 2, 1983.

By the Commission, Chairman Taylor, Vice Chairman Sterrett, Commissioners Andre and Gradison. Vice Chairman Sterrett and Commissioner Andre would not impose a deadline on consummation of the exempted transaction.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 83-21709 Filed 8-9-83; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30208]

Rail Carriers; Western Pacific Railroad Company—Abandonment Exemption—In Tooele County, UT

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts Western Pacific Railroad Company from 49 U.S.C. 10903 *et seq.*, in connection with abandonment of 15.524 miles of rail line in Tooele County, UT, subject to employee protective conditions.

DATES: This exemption shall be effective on September 9, 1983. Petitions to stay the effectiveness of this decision must be filed by August 22, 1983, and petitions for reconsideration must be filed by August 30, 1983.

ADDRESSES: Send pleadings referring to Finance Docket No. 30208 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423; and

(2) Petitioner's representative: Eugene J. Toler, 526 Mission St., San Francisco, CA 94105

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275–7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision write to T. S. InfoSystems, Inc., Room 2227, Interstate Commerce Commission, Washington, DC 20423, or call 289–4357 (D.C. Metropolitan area) or toll free (800) 424–5403.

Decided August 2, 1983.

By the Commission, Chairman Taylor, Vice Chairman Sterrett, Commissioners Andre and Gradison. Vice Chairman Sterrett and Commissioner Andre would not impose a

deadline on consummation of the exempted transaction.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 83-21770 Filed 8-9-83; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Office of the Attorney General

Certification of the Attorney General, Washington County, Mississippi

In accordance with Section 6 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973d, I hereby certify that in my judgment the appointment of examiners is necessary to enforce the guarantees of the Fifteenth Amendment to the Constitution of the United States of America in Washington County, Mississippi. This county is included within the scope of the determination of the Attorney General and the Director of the Census made on August 6, 1965, under Section 4(b) of the Voting Rights Act of 1965 and published in the Federal Register on August 7, 1965 (30 FR 9897).

Dated: August 8, 1983.

William French Smith,

Attorney General of the United States.

[FR Doc. 83-21958 Filed 8-9-83; 8:45 am]

BILLING CODE 4410-01-M

NATIONAL SCIENCE FOUNDATION

Membership of National Science Foundation's Senior Executive Service Performance Review Board

AGENCY: National Science Foundation.

ACTION: Announcement of Membership of the National Science Foundation's Executive Service Performance Review Board.

SUMMARY: This announcement of the membership of the National Science Foundation's Senior Executive Service Performance Review Board is made in compliance with 5 U.S.C. 4314(c)(4).

ADDRESS: Comments should be addressed to Director, Division of Personnel and Management, National Science Foundation, Room 212, 1800 G Street, NW, Washington, D.C. 20550.

FOR FURTHER INFORMATION CONTACT: Mr. John Wilkinson of Ms. Patricia Bond at the above address or (202) 357-7857.

SUPPLEMENTARY INFORMATION: The membership of the National Science Foundation's Senior Executive Service Performance Review Board is as follows:

Permanent Membership

Deputy Director (Vacant), Chairperson
Thomas Ubois, Assistant Director for Administration, Acting Chairperson and Executive Secretary

Rotating Membership

Ruth L. Greenstein, Associate General Counsel for Policy (3 years)
Harvey Willard, Head, Nuclear Science Section, Division of Physics, Directorate for Mathematical and Physical Sciences (3 years)
Jack T. Sanderson, Assistant Director for Engineering (3 years)
James Fred Hays, Director, Division of Earth Sciences, Directorate for Astronomical, Atmospheric, Earth and Ocean Sciences (3 years)
Richard R. Ries, Director of Operations and Analysis, Directorate for Scientific, Technological, and International Affairs (2 years)
Frank P. Scioli, Jr., Head, Political and Policy Sciences Section, Division of Social and Economic Sciences, Directorate for Biological, Behavioral, and Social Sciences (2 years)

Dated: August 1, 1983.

Jeff Fenstermacher,

Director, Division of Personnel and Management.

[FR Doc. 83-21782 Filed 8-9-83; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-416]

Mississippi Power & Light Co., et al.; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-13, issued to Mississippi Power & Light Company, Middle South Energy, Inc., and South Mississippi Electric Power Association (the licensees), for operation of the Grand Gulf Nuclear Station, Unit 1, located in Claiborne County, Mississippi.

The amendment would provide changes to the Technical Specifications in accordance with the licensees' applications for amendment dated April 25, June 9, June 23, and July 11, 1983. These changes to the Technical Specifications involve the following sections:

(a) 4.7.6.1.3: Revises surveillance procedure for fire pump diesel batteries (April 25, 1983).

(b) 3.9.6: Change in refueling platform hoist interlock function (June 9, 1983).

(c) 4.8.2.1: Increase in the load profile for Division 2 125 volt DC batteries (June 23, 1983).

(d) Tables 3.3.2-1 and 4.3.2.1-1: Deletes automatic removal of low condenser vacuum bypass (June 23, 1983).

(e) 3.4.2.1: Revises low-low set function for relief valves (July 11, 1983).

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The proposed changes to the Technical Specifications were proposed to achieve consistency with BWR Standard Technical Specifications, with the as-built condition of the plant or with design changes currently being implemented at the plant. The proposed changes for battery surveillance: (a) Maintains a seven day surveillance for pilot cells only and requires each cell to be tested once per 92 days. This surveillance revision has been determined to provide equivalent assurance of battery performance as compared to the surveillance currently used and has been approved in the GE BWR Standard Technical Specifications. Thus, this change does not result in the significant reduction of a safety margin, involve a significant increase in the probability or consequences of an accident previously evaluated or create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed changes for refueling operations; (b) expand the Technical Specifications to include an auxiliary platform in the primary containment and a fuel handling platform in the Auxiliary Building. The changes also include additional separate and redundant interlock circuits while eliminating other refueling interlocks. The interlocks that have been removed are not associated with equipment used for handling irradiated fuel assemblies. Thus, there is no reduction in the overall safety function. The additional coverage discussed above results in a more stringent condition than that currently in the Technical Specifications. The proposed changes to the Division 2 DC load profile; (c) results from anticipated additional loads on the system. The proposed load test is more severe than the current one, thus is a more stringent condition than that presently in the Technical Specifications. The proposed

changes for the low condenser vacuum bypass; (d) will change this function from automatic to manual initiation. For the Grand Gulf accident analysis, automatic removal of this bypass function was not considered. Thus, this change does not result in the significant reduction of a safety margin, involve a significant increase in the probability or consequences of an accident previously evaluated or create the possibility of a new or different kind of accident from any accident previously evaluated. The changes to the low-low set relief logic; (e) revise the arming function so as to prevent simultaneous opening of ganged SRV's under certain transient conditions. Ganged opening of these SRV's was not considered in the containment design analysis. The change in arming logic does not change the setpoint for any SRV.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The Commission has provided guidance concerning the application of its standards set forth in 10 CFR 50.92 for no significant hazards considerations, by providing certain examples, published in the Federal Register an April 6, 1983 (48 FR 14864). One of the examples of an amendment which will likely be found to involve no significant hazards considerations involves a change that constitutes an additional limitation, restriction, or control not presently included in the Technical Specifications, for example, a more stringent surveillance requirement.

Proposed changes (b), (c) and (e) impose additional limitations, restrictions or controls not presently included in the license and fall within the Commission's example (ii), of action not likely to involve significant hazards consideration. Proposed change (a) is a change in surveillance to meet GE BWR Standard Technical Specifications and provides equivalent assurance of battery performance as compared to current surveillance requirements. Proposed change (d) will correct an identified difference in the as-built plant and has no impact on safety as it was not considered to be associated with any operational or accident analysis. Due to the nature of proposed changes (a) and (d) as discussed above, we have determined that these changes would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Comments should be addressed to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, ATTN: Docketing and Service Branch.

By September 9, 1983, the licensees may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the basis for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment requests involve no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant

hazards consideration. The final determination will consider all public and state comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, ATTN: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C., by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325–6000 (in Missouri (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to A. Schwencer: Petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Troy B. Conner, Jr., Esquire, Conner and Wetterhahn, 1747 Pennsylvania Avenue, N.W., Washington, D.C. 20006, attorney for the licensees.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the applications for amendment which are available for public inspection at the Commission's Public Document room, 1717 H Street, NW., Washington, D.C., and at the Hinds Jr. College, George M. McLendon Library, Raymond, Mississippi 39154.

Dated at Bethesda, Maryland, this 4th day of August 1983.

For the Nuclear Regulatory Commission.

A. Schwencer,

Chief, Licensing Branch No. 2, Division of Licensing.

[FR Doc. 83-21857 Filed 8-9-83; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-354]

Public Service Electric and Gas Co., and Atlantic City Electric Co., Hope Creek Generating Station; Receipt of Application for Facility Operating License, Availability of Applicant's Environmental Report, and Consideration of Issuance of Facility Operating License and Opportunity for Hearing

Notice is hereby given that the Nuclear Regulatory Commission (the Commission) has received an application for a facility operating license from Public Service Electric and Gas Company acting for itself and as agent for Atlantic City Electric Company (the applicants) for a facility operating license. Public Service Electric and Gas Company retains exclusive responsibility for the design, procurement, operation, maintenance, and all related functions with respect to the Hope Creek Generating Station, a boiling water nuclear reactor (the facility) located in Lower Alloways Creek Township, Salem County, New Jersey. The reactor is designed to operate at a steady-state power level of 3293 megawatts thermal, with an equivalent net electrical output of approximately 1067 megawatts.

Pursuant to the National Environmental Policy Act of 1969 and the regulations of the Commission in 10 CFR Part 51, the applicants filed an environmental report as part of the application. The report, which discusses environmental considerations related to the proposed operation of the facility is being made available at the Division of State and Regional Planning, Department of Community Affairs, 329 West State Street, Trenton, New Jersey 08625 and at the Wilmington Metropolitan Area Planning Coordinating Council (WILMAPCO), Suite 201, Stockton Building, University Office Plaza, Newark, Delaware 19702.

After the environmental report has been analyzed by the Commission's staff, a draft environmental statement will be prepared. Upon preparation of the draft environmental statement, the Commission will, among other things, cause to be published in the **Federal Register**, a notice of availability of the draft statement, requesting comments from interested persons on the draft statement. The notice will also contain a statement to the effect that any comments of Federal agencies and State and local officials will be made available when received. The draft environmental statement will focus only on any matters which differ from those previously discussed in the final environmental statement prepared in connection with the issuance of the construction permit. Upon consideration of comments submitted with respect to the draft environmental statement, the Commission's staff will prepare a final environmental statement, the availability of which will be published in the **Federal Register.**

The Commission will consider the issuance of a facility operating license to the applicants which would authorize the Public Service Electric and Gas Company to possess, use and operate the Hope Creek Generating Station, in accordance with the provisions of the license and the Technical Specifications appended thereto, upon: (1) The completion of a favorable safety evaluation of the application by the Commission's staff; (2) the completion of the environmental review required by the Commission's regulations in 10 CFR Part 51; (3) the receipt of a report on the applicant's application for a facility operating license by the Advisory Committee on Reactor Safeguards; and (4) a finding by the Commission that the application for the facility license, as amended, complies with the requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations in 10 CFR Chapter 1. Construction of the facility was authorized by Construction Permit No. CPPR–120, issued by the Atomic Energy Commission[1] on November 4, 1974. Construction of the facility is anticipated to be completed by January 1986.

With regard to Executive Order 11988, Floodplain Management, the Hope Creek Generating Station will have structures located on the floodplain. The subject of floodplain management will be discussed in the Commission's environmental statement referenced above.

Prior to issuance of any operating license, the Commission will inspect the facility to determine whether it has been constructed in accordance with the application, as amended, and the provisions of the construction permit. In addition, the license will not be issued until the Commission has made the

[1] Effective January 19, 1975, the Atomic Energy Commission became the Nuclear Regulatory Commission and permits in effect on that day were continued under the authority of the Nuclear Regulatory Commission.

findings reflecting its review of the application under the Act, which will be set forth in the proposed license, and has concluded that the issuance of the license will not be inimical to the common defense and security or to the health and safety of the public. Upon issuance of the license, the applicants will be required to execute an indemnity agreement as required by Section 170 of the Act and 10 CFR Part 140 of the Commission's regulations.

By September 9, 1983, the applicant may file a request for a hearing with respect to issuance of the facility operating license and any person whose interest may be affected by this proceeding may file a petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary of the Commission, or designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under that Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend his petition, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, the petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

A request for hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, D.C. 20555, ATTN: Docketing and Service Sections, or may be delivered to the Commission's Public Document Room 1717 H Street, N.W., Washington, D.C., by September 9, 1983. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Troy B. Conner, Jr., Esq., Conner & Wetterhahn, P.C., Suite 1050, 1747 Pennsylvania Avenue, NW., Washington, D.C. 20006, attorney for the applicant. Any questions or requests for additional information regarding the content of this notice should be addressed to the Chief Hearing Counsel, Office of the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or request for hearing will not be entertained absent a determination by the Commission, the presiding officer, or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details pertinent to the matters under consideration, see the application for the facility operating license, including the Final Safety Analysis Report and the Environmental Report dated June 28, 1983, which are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. and at the Salem Free Public Library, 112 West Broadway, Salem, New Jersey 08079. As they become available, the following documents may be inspected at the above locations: (1) The safety evaluation report prepared by the Commission's staff; (2) the draft enviromental statement; (3) the final environmental statement; (4) the report of the Advisory Committee on Reactor Safeguards on the application for facility operating license; (5) the proposed facility operating license, and (6) the Technical Specifications, which will be attached to the proposed facility operating license.

Copies of the proposed operating license and the ACRS report, when available, may be obtained by request to the Director, Division of Licensing, Officer of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. Copies of the Commission's staff safety evaluation report and final environmental statement, when available, may be purchased at current rates, from the National Technical Information Service, Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161.

Dated at Bethesda, Maryland this 27th day of July 1983.

For the Nuclear Regulatory Commission.

A. Schwencer,

Chief, Licensing Branch No. 2, Division of Licensing.

[FR Doc. 83-21858 Filed 8-9-83; 8:45 am]

BILLING CODE 7590-01-M

Investigations and Adjudicatory Proceedings; Statement of Policy

Recent developments in several ongoing licensing proceedings require the Commission to address how the NRC staff, the Office of Investigations (OI), and adjudicatory boards are to treat information regarding pending inspections and investigations that is material to the issues in controversy in NRC's adjudicatory proceedings. There are potential conflicts between a presiding officer's need to be informed of material developments and an investigating office's need to avoid premature disclosures that could compromise the inspection or investigation. These potential conflicts are the subject of an NRC internal task force study on developing guidelines for reconciling these conflicts in individual cases. Until that task force reports and the Commission acts on its recommendations, the Commission's policy in individual cases would be as follows:

1. Under current practice parties in adjudicatory proceedings have the general duty to inform the adjudicatory boards of matters that are material to the issues in controversy so that informed decisions can be made. Except as provided in the following paragraph, information which is the subject of

ongoing inspections or investigations should be considered for disclosure to the adjudicatory boards under the same principles that apply to other materials.

2. Consistent with paragraph 1 above, where staff or OI believes in a particular case that it is its duty to inform an adjudicatory board of information which is the subject of a pending inspection or investigation or an adjudicatory board believes that it needs more information concerning the subject of a pending inspection or investigation, but that unrestricted disclosure could compromise the inspection or investigation, the information and an explanation of the basis for the concern about disclosure to the other parties should first be presented to the board, *in camera*, without disclosure of the substance to the other parties. While the parties should not be provided with the substance of the information provided to the board, they should be notified that the staff will present information to the Board on a pending inspection or investigation. In any case where the Board feels that disclosure to other parties is required (*e.g.*, withholding information may prejudice one or more parties) under protective order or otherwise, and staff or OI is still concerned that disclosure could compromise the inspection or investigation, staff or OI should petition directly to the Commission for relief and the Board should refrain from ordering disclosure until it has received Commission guidance.

The Commission would like comments on: (1) The propriety and desirability of an *in camera* presentation to the Board with only one party present of information relating to a matter in controversy and (2) any alternatives to the scheme adopted by the Commission which the commenters believe would better serve the needs of the parties to procedural fairness, of the Boards to pertinent information, and of the Commission to protect incomplete inspections and investigations. These comments may be considered by the Commission when it reviews the conclusions and recommendations of the internal NRC task force study.

Dated at Washington, D.C. this 5th day of August 1983.

For the Commission.[1]

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 83-21835 Filed 8-9-83; 8:45 am]

BILLING CODE 7590-01-M

[1] Commissioner Gilinsky was unavailable to participate.

OFFICE OF MANAGEMENT AND BUDGET

Privacy Act of 1974; Proposed Revised Supplemental Guidance on Implementation of the Privacy Act of 1974

AGENCY: Office of Management and Budget.

ACTION: Request for comments on proposal to revise guidance on implementation of the Privacy Act of 1974.

SUMMARY: This document requests public comment on a proposal to revise certain Privacy Act implementation guidance issued to the agencies on November 21, 1975. This guidance was originally published in the **Federal Register** on December 4, 1975.

FOR FURTHER INFORMATION CONTACT: Robert N. Veeder, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3235, New Executive Office Building, Washington, D.C. 20503; telephone (202) 395-4814.

SUPPLEMENTARY INFORMATION: OMB is proposing to revise guidance on the relationship of the Freedom of Information Act and the Privacy Act of 1974. The text of this proposal is set forth below. Interested parties are invited to provide comments on or before October 1, 1983. Comments should be sent to the Office of Information and Regulatory Affairs, Washington, D.C. 20503.

Candice C. Bryant,

Deputy Associate Director for Administration.

The Office of Management and Budget proposes to revise its "Implementation of the Privacy Act of 1974 Supplementary Guidance" **Federal Register**, Volume 40, No. 234, dated December 4, 1975, 56741) as follows:

"The first and last paragraphs of section 8, 'Relationship to the Freedom of Information Act (subsection (q))' are deleted. The following is added to the end of the section 8:

The Privacy Act and the FOIA should be read together to permit an agency to deny access to records sought by the subject individual under the FOIA on the basis of exemption (b)(3) if those records are exempted from release to the individual under the Privacy Act. This interpretation is supported by the majority of courts that have reviewed the question of the relationship between the two laws. They have held that the Privacy Act is a (b)(3) statute for purposes of the FOIA. (Note that the D.C. Circuit created a split in the circuits when it held that the two laws must be read independently.)

FOIA exemption (b)(3) provides that access under the FOIA is not required if the material sought is specifically barred from disclosure by statute (other than by the FOIA itself), provided that such statute: (a) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue or (b) establishes particular criteria for withholding or refers to particular types of matters to be withheld.

Records may be withheld from the individual under the Privacy Act if they are maintained in exempt systems of records as provided by sections (j) or (k) of the Act or if the records were compiled in reasonable anticipation of civil action or proceedings as provided in subsection (d)(5).

Note.—For certain exempt systems, substantial portions of the covered records may be required to be released. For example, see the requirements of (k)(5)."

[FR Doc. 83-21781 Filed 8-9-83; 8:45 am]

BILLING CODE 3110-01-M

SECURITIES AND EXCHANGE COMMISSION

[File No. 1-8096]

Fairfield Communities, Inc., Common Stock, $.10 Par Value; Application to Withdraw From Listing and Registration

August 3, 1983.

The above name issuer has filed an aplication with the Securities and Exchange Commission pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2-2(d) promulgated thereunder, to withdraw the specified security from listing and registration on the American Stock Exchange, Inc. ("Amex").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

1. The common stock of Fairfield Communities, Inc. ("Company") is listed and registered on the Amex. Pursuant to a Registration Statement on Form 8-A which became effective on May 27, 1983, the Company is also listed and registered on the New York Stock Exchange ("NYSE"). The Company has determined that the direct and indirect costs and expenses do not justify maintaining the dual listing of the common stock on the Amex and the NYSE.

2. This application relates solely to withdrawal of the common stock from listing and registration on the Amex and shall have no effect upon the continued listing of such stock on the NYSE. The Amex has posed no objection to this matter.

Any interested person may, on or before August 24, 1983, submit by letter to the Secretary of the Securities and Exchange Commission Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-21729 Filed 8-9-83; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 20047; (SR-NASD-83-5)]

National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change

August 4, 1983.

The National Association of Securities Dealers, Inc. ("NASD"), 1735 K Street, NW., Washington, D.C. 20006, submitted on May 9, 1983, a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder to amend the Interpretation of the Board of Governors—Review of Corporate Financing ("Interpretation") under Article III, Section 1 of the NASD Rules of Fair Practice. The proposed rule change will add a section entitled "Overallotment Options." This new section will state that in the case of a "firm commitment" public offering, an underwriter or related person may be granted an overallotment option of up to fifteen percent of the amount of the securities being offered and that any option for an overallotment of more than fifteen percent shall be presumed to be unfair and unreasonable.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by the issuance of a Commission release (Securities Exchange Act Release No. 19789, May 19, 1983) and by publication in the **Federal Register** (48 FR 23957, May 27, 1983). No comments were received with respect to the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of Section 15A and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-21731 Filed 8-9-83; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 13424; (812-5575)]

Shearson + Related Housing Properties Limited Partnership, et al.; Filing of Application

August 3, 1983.

Notice is hereby given that Shearson + Related Housing Properties Limited Partnership (the "Partnership"), 645 Fifth Avenue, New York, New York 10022, a Massachusetts limited partnership formed to invest in other limited partnerships ("Local Limited Partnerships") which will own and operate existing apartment complexes primarily for low and moderate income persons in accordance with the purposes and criteria set forth in Investment Company Act Release No. 8456 (August 9, 1974), together with the Partnership's general partners (the "General Partners"), Related Housing Programs Corporation, Shearson Government Assisted Properties, Inc., and Shearson/Related Housing Associates Limited Partnership (collectively "Applicants"), filed an application on June 7, 1983, and an amendment thereto on July 19, 1983, pursuant to Section 6(c) of the Investment Company Act of 1940 (the "Act") to exempt the Partnership from all provisions of the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act for the pertinent provisions thereof.

Applicants represent that any subscriptions for units of limited partnership interests ("Units") and additional limited partnership interests will be approved by the General Partners which approval will be required to be conditioned upon representations as to suitability of the investment for each subscriber. The application states the form of the subscription agreement for Units provides that each subscriber represent, among other things, that (1) without regard to this investment, he expects to have taxable income for the current year (and which is expected to continue) which will be subject to federal and state income tax at the combined rate of 40% or more; and (2) he meets the requirements of having either (i) an annual gross income of at least $50,000 and a net worth (exclusive of home, home furnishings and personal automobiles) of at least $50,000 or (ii) a net worth (exclusive of home, home furnishings and personal automobiles) of at least $150,000. Investors residing in certain states may be required to meet higher suitability standards. Any prospective transferee of a Unit or limited partnership interest will be required, among other things, to make similar representations in writing to the Partnership. Applicants state that the Partnership's Agreement of Limited Partnership contains numerous provisions designed to ensure fair dealing by the General Partners with the limited partners ("Limited Partners"). Applicants state further that the offering is structured so that fair dealing will govern the conduct of the General Partners toward the Limited Partners. Each of the multifamily rental housing projects to be owned and operated by the Local Limited Partnerships will be appraised by an independent MAI appraiser. Applicants represent that the General Partners believe the fee structure to be fair, normal and not excessive for transactions structured with the tax characteristics of an offering of this type and sold to investors meeting suitability standards such as those included in the offering.

Applicants submit that the contemplated arrangement of the Partnership is not susceptible to the abuses the Act was designed to remedy. Applicants further submit that the suitability standards described above, and in the application, the requirements for fair dealing provided by the Partnership's governing instruments, and pertinent governmental regulations imposed on the Partnership and on each Local Limited Partnership by various federal, state and local agencies, provide protection to investors in the Partnership comparable to and in some respects greater than that provided by the Act.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than August 25, 1983, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities

and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicants at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-21732 Filed 8-9-83; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 13423; (811-2205)]

United of Omaha Variable Fund B; Filing of Application

August 3, 1983.

Notice is hereby given that United of Omaha Variable Fund B ("Applicant"), Mutual of Omaha Plaza, Omaha, Nebraska 68175, a Separate Account Of United of Omaha Life Insurance Company registered under the Investment Company Act of 1940 ("Act") as a diversified open-end management investment company, filed an application on May 12, 1983, pursuant to Section 8(f) of the Act, for an order declaring that Applicant has ceased to be an investment company. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and are referred to the Act for a statement of the relevant provision.

Applicant registered under the Act on June 28, 1971 and filed a registration statement pursuant to Section 8(b) of the Act on July 1, 1971. Applicant states that a registration statement was filed with respect to the Securities Act of 1933 and was effective March 17, 1972. Applicant states, *inter alia*, that it has distributed substantially all of its assets pursuant to a Plan of Liquidation proposed by its Board of Managers and approved at a special meeting of its contractowners. Applicant also states that it has no debts or other liabilities and has terminated its legal existence under state law.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than August 29, 1983, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request shall be served personally or by mail on Applicants at the address stated above. Proof of service (by affidavit, or in the case of an attorney at law, by certificate) shall be filed with the request. After said date an order disposing of the application will be issued unless the Commission orders the hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-21730 Filed 8-9-83; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

Public Information Collection Requirements Submitted to OMB for Review

On August 5, 1983 the Department of the Treasury submitted the following public information collection requirement(s) to OMB (listed by submitting bureaus), for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of these submissions may be obtained from the Treasury Department Clearance Officer, by calling (202) 634-2179. Comments regarding these information collections should be addressed to the OMB reviewer listed at the end of each bureau's listing and to the Treasury Department Clearance Officer, Room 309, 1625 "I" Street, NW., Washington, D.C. 20220.

Internal Revenue Service

OMB Number: 1545-0026
Form Number: 926
Title: Return by a Transferor or Property to a Foreign Corporation, Foreign Estate or Trust, or Foreign Partnership

OMB Number: 1545-0155
Form Number: 3468
Title: Computation of Investment Credit
OMB Reviewer: Norman Frumkin (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503.

Dated: August 5, 1983.

Rita A. DeNagy,

Departmental Reports Management Office.

[FR Doc. 83-21853 Filed 8-9-83; 8:45 am]

BILLING CODE 4810-25-M

Fiscal Service

[Dept. Circ. 570, 1983 Rev., Supp. No. 1]

Surety Companies Acceptable on Federal Bonds; The Central National Insurance Company of Omaha

A certificate of authority as an acceptable surety on Federal bonds is hereby issued to the following company under Sections 9304 to 9308 Title 31 of the United States Code. An underwriting limitation of $5,757,000 has been established for the company.

Name of Company:

THE CENTRAL NATIONAL INSURANCE COMPANY OF OMAHA

Business Address:

105 South 17th Street
Omaha, Nebraska 68102

State of Incorporation:

Nebraska

Certificates of Authority expire on June 30 each year, unless renewed prior to that date or sooner revoked. The certificates are subject to subsequent annual renewal so long as the companies remain qualified (31 CFR Part 223). A list of qualified companies is published annually as of July 1 in Department Circular 570, with details as to underwriting limitations, areas in which licensed to transact surety business and other information. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 1983 Revision, at page 30531 to reflect this addition. Copies of the circular, when issued, may be obtained from the Operations Staff, Banking and Cash Management, Department of the Treasury, Washington, DC 20226.

Dated: August 1, 1983.

W. E. Douglas,

Commissioner.

[FR Doc. 83-21733 Filed 8-9-83; 8:45 am]

BILLING CODE 4810-35-M

Sunshine Act Meetings

Federal Register
Vol. 48, No. 155
Wednesday, August 10, 1983

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94–409) 5 U.S.C. 552b(e)(3).

CONTENTS

1

COMMODITY FUTURES TRADING COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 48 FR 146.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10 a.m., Tuesday, August 16, 1983.

CHANGES IN THE MEETING:

Addition: Fees for Contract Market Designations.

[S–1146–83 Filed 8–5–83; 4:26 pm]

BILLING CODE 6351–01–89

2

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11 a.m., Friday, August 19, 1983.

PLACE: 2033 K Street NW., Washington, D.C., Eighth floor conference room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Surveillance Briefing

CONTACT PERSON FOR MORE INFORMATION: Jane Stuckey, 254–6314.

[S–1143–83 Filed 8–5–83; 4:26 pm]

BILLING CODE 6351–01–M

3

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11 a.m., Friday, August 12, 1983.

PLACE: 2033 K Street NW., Washington, D.C., Eighth floor conference room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Surveillance Briefing

CONTACT PERSON FOR MORE INFORMATION: Jane Stuckey, 254–6314.

[S–1144–83 Filed 8–5–83; 4:26 pm]

BILLING CODE 6351–01–M

4

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10 a.m., Tuesday, August 13, 1983.

PLACE: 2033 K Street NW., Washington, D.C., eighth floor conference room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Rule Enforcement Review
Financial Rule Enforcement Review

CONTACT PERSON FOR MORE INFORMATION: Jane Stuckey, 254–6314.

[S–1145–83 Filed 8–5–83; 4:26 pm]

BILLING CODE 6351–01–M

5

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:30 p.m. on Monday, August 15, 1983, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, by vote of the Board of Directors, pursuant to sections 552b(c)(2), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of Title 5, United States Code, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Recommendations with respect to the initiation, termination, or conduct of administrative enforcement proceedings (cease-and-desist proceedings, termination-of-insurance proceedings, suspension or removal proceedings, or assessment of civil money penalties) against certain insured banks or officers, directors, employees, agents or other persons participating in the conduct of the affairs thereof:

Names of persons and names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), and (c)(9)(A)(ii)).

Note.—Some matters falling within this category may be placed on the discussion agenda without further public notice if it becomes likely that substantive discussion of those matters will occur at the meeting.

Discussion Agenda:

Application for consent to merge and establish twelve branches:

People Trust Bank, Fort Wayne, Indiana, an insured State nonmember bank, for consent to merge, under its charter and with the title "Summit Bank," with Indiana Bank and Trust Company of Fort Wayne, Fort Wayne, Indiana, and for consent to establish the twelve offices of Indiana Bank and Trust Company of Fort Wayne as branches of the resultant bank.

Recommendation regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 45,738–L (Amended): The Madison County Bank, Fredericktown, Missouri

Personnel actions regarding appointments, promotions, administrative pay increases, reassignments, retirements, separations, removals, etc.:

Names of employees authorized to be exempt from disclosure pursuant to provisions of subsections (c)(2) and (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2) and (c)(6)).

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street, N.W., Washington, D.C.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the corporation, at (202) 389–4425.

Dated: August 8, 1983.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[S–1151–83 Filed 8–8–83; 2:34 pm]

BILLING CODE 6714–01–M

6

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 2 p.m. on Monday, August 15, 1983, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Application for consent to convert into a non-FDIC-insured institution:

Southern Florida Bank, National Association, Riviera Beach, Florida.

Request for rescission of a previous denial of an application for consent to transfer assets in consideration of the assumption of deposit liabilities:

Monroe Savings Bank, Rochester, New York, a federally-chartered savings bank insured by the Federal Deposit Insurance Corporation, for consent to transfer certain assets to Empire of America, FSA, Southfield, Michigan, a federal savings association not insured by the Federal Deposit Insurance Corporation, in consideration of the assumption of liabilities for deposits made in the Corning, Dansville and Hornellsville, New York, branches of Monroe Savings Bank.

Recommendations regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 45,429–L (Amended): Franklin National Bank, New York, New York
Memorandum and Resolution re: United States National Bank, San Diego, California

Reports of committee and officers:

Minutes of actions approved by the Standing Committees of the Corporation pursuant to authority delegated by the Board of Directors.
Reports of the Divison of Bank Supervision with respect to applications, requests, or actions involving administrative enforcement proceedings approved by the Director or an Associate Director of the Division of Bank Supervision and the various Regional Directors pursuant to authority delegated by the Board of Directors.
Report of the Director, Office of Corporate Audits and Internal Investigations:
Audit Report re: The Hohenwald Bank and Trust Company, Hohenwald, Tennessee, dated July 19, 1983

Discussion Agenda:

No matters scheduled.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street, N.W., Washington, D.C.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 389–4425.

Dated: August 8, 1983.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[S–1150–83 Filed 8–8–83; 2:35 pm]

BILLING CODE 6714–01–M

7

FEDERAL ELECTION COMMISSION

Federal Register No. 1124

PREVIOUSLY ANNOUNCED DATE AND TIME: Tuesday, August 9, 1983, 10 a.m.

CHANGE IN MEETING: Pursuant to 11 CFR 3.2(b)(v) and 3.5(b) of the Federal Election Commission's Sunshine Act Regulations, the Commission has agreed to add the following item to its agenda for Tuesday, August 9, 1983:

Proposed GAO Audit on Monitoring the $25,000 Individual Contribution Ceiling

PERSON TO CONTACT FOR MORE INFORMATION: Mr. Fred Eiland, Information Officer, telephone 202–523–4065.

Marjorie W. Emmons,

Secretary of the Commission.

[S–1149–83 Filed 8–8–83; 2:40 pm]

BILLING CODE 6715–01–M

8

FEDERAL RESERVE SYSTEM

(Board of Governors)

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 48 FR 35066, Tuesday, August 2, 1983.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10 a.m., Monday, August 8, 1983.

CHANGES IN THE MEETING: One of the items announced for inclusion at this meeting was consideration of any agenda items carried forward from a previous meeting; the following such closed item(s) was added:

Proposed purchase of computers within the Federal Reserve System. (This item was originally announced for a closed meeting on August 3, 1983.)

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board, (202) 452–3204.

Dated: August 8, 1983.

James McAfee,

Associate Secretary of the Board.

[S–1152–83 Filed 8–8–83; 3:40 pm]

BILLING CODE 6210–01–M

9

FEDERAL RESERVE SYSTEM

(Board of Governors)

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 48 FR 35066, August 2, 1983.

PREVIOUSLY ANNOUNCED DATE OF THE MEETING: Monday, August 8, 1983.

CHANGES IN THE MEETING: Addition of the following closed item(s) to the meeting:

Request from an outside organization for funding

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board (202) 452–3204.

Dated: August 8, 1983.

James McAfee,

Associate Secretary of the Board.

[S–1153–83 Filed 8–8–83; 3:40 pm]

BILLING CODE 6210–01–M

10

PAROLE COMMISSION

National Commissioners (the Commissioners presently maintaining offices at Chevy Chase, Maryland Headquarters)

TIME AND DATE: 10 a.m., Thursday, August 18, 1983.

PLACE: Room 420–F, One North Park Building, 5550 Friendship Blvd., Chevy Chase, Maryland 20815.

STATUS: Closed pursuant to a vote to be taken at the beginning of the meeting.

MATTERS TO BE CONSIDERED: Referrals from Regional Commissioners of approximately 4 cases in which inmates of Federal prisons have applied for parole or are contesting revocation of parole or mandatory release.

CONTACT PERSON FOR MORE INFORMATION: Linda Wines Marble, Chief Case Analyst, National Appeals Board, United States Parole Commission, (301) 492–5987.

[S–1148–83 Filed 8–8–83; 2:05 pm]

BILLING CODE 4410–01–M

11

POSTAL RATE COMMISSION

TIME AND DATE: 2 p.m., Monday, August 15, 1983.

PLACE: Conference Room, room 500, 2000 L Street NW., Washington, D.C.

STATUS: Closed.

MATTERS TO BE CONSIDERED: (Closed pursuant to 5 U.S.C. 552b(c)(10).

Consolidation of Dockets R83–1 and C83–1

CONTACT PERSON FOR MORE INFORMATION: Cyril J. Pittack, Acting Secretary, Postal Rate Commission, Room 500, 2000 L Street, NW., Washington, D.C. 20268, telephone (202) 254–3880.

[S–1154–83 Filed 8–8–83; 3:40 pm]

BILLING CODE 7715–01–M

12

SECURITIES AND EXCHANGE COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: (48 FR 35560, August 4, 1983.

STATUS: Closed meeting.

PLACE: 450 5th Street NW., Washington, D.C.

DATE PREVIOUSLY ANNOUNCED: Monday, August 1, 1983.

CHANGE IN THE MEETING: Additional items. The following additional items will be considered at a closed meeting schedule for Tuesday, August 9, 1983, at 10 a.m.

Formal orders of investigation.

Commissioner Evans, as duty officer, determined that Commission business required the above changes that no earlier notice thereof was possible.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: JoAnn Zuercher at (202) 272–2014.

August 5, 1983.

[S–1147–83 Filed 8–8–83; 12:47 pm]

BILLING CODE 8010–01–M

13

SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of August 15, 1983, at 450 5th Street, NW., Washington, D.C.

An open meeting will be held on Tuesday, August 16, 1983, at 9 a.m. in room C30 followed by a closed meeting.

The Commissioners, Counsel to the Commissioners, the Secretary of the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, the items to be considered at the closed meeting may be considered pursuant to one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a) (4), (8), (9)(i) and (10).

Chairman Shad and Commissioners Evans and Treadway voted to consider the items listed for the closed meeting in closed session.

The subject matter of the open meeting scheduled for Tuesday, August 16, 1983, at 9 a.m., will be:

1. Consideration of whether to issue a release announcing the adoption of amended Rule 14a–8 under the Securities Exchange Act of 1934 and changes to certain interpretations thereunder. For further information, please contact William E. Morley or John J. Forman at (202) 272–2573.

2. Consideration of whether to adopt rules to implement the authority the Commission recently was given to accept payment or reimbursement from nonfederal entities for the travel expenses incurred by Commission members and staff in connection with participation in conferences and meetings. For further information, please contact Myrna Siegel at (202) 272–2430.

The subject matter of the closed meeting scheduled for Tuesday, August 16, 1983, following the 9 a.m. open meeting, will be:

Access to investigative files by Federal, State, or Self-Regulatory authorities.
Litigation matter.
Settlement of administrative proceedings of an enforcement nature.
Institution of administrative proceeding of an enforcement nature.
Institution of injunctive action.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Robet J. Zutz at (202) 272–2091.

August 5, 1983.

[S–1142–83 Filed 8–5–83; 4:25 pm]

BILLING CODE 8010–01–M

federal register

Wednesday
August 10, 1983

Part II

Department of the Interior

Bureau of Land Management

Recreation Management; Prohibited Acts and Penalties; Final Rule

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 8360

[Circular No. 2531]

Recreation Management; Prohibited Acts and Penalties

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule.

SUMMARY: This final rulemaking sets minimum standards for conduct for persons using the public lands and the penalties that may be imposed for failure to obey the regulations. The rulemaking is designed to ensure safe, enjoyable and environmentally sound visitation on the public lands, free from unwarranted disturbance.

EFFECTIVE DATE: September 9, 1983.

ADDRESS: Any inquiries or suggestions should be sent to Director (340), Bureau of Land Management, 1800 C St., N.W. Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Bruce R. Brown (202) 343-9353.

SUPPLEMENTARY INFORMATION: A proposed rulemaking providing rules and procedures for closure of public lands, standards of conduct for visitors to the public lands, and penalties for violation of such standards, was published in the **Federal Register** on December 23, 1982 (47 FR 57404), with a 60-day comment period.

During the comment period ending February 22, 1983, 20 written and 2 telephone comments were received on the proposed rulemaking. Nine comments were received from field offices or personnel of the Bureau of Land Management, 3 from State agencies, 1 from a State citizens advisory commission, 1 from a local government agency, 3 written comments and 1 telephone comment from recreation and recreation industry associations, 1 from an environmental organization, 1 telephone comment from a member of a Federal advisory council, and 2 from individuals. These comments were given careful consideration during preparation of the final rulemaking.

All but 2 of the comments generally supported the proposed rulemaking, although many of them offered specific suggestions for amendment. A major concern was that the proposal would give "too much discretion to the authorized officer." The proposed rulemaking was designed to afford land managers of the Bureau of Land Management the flexibility to deal with local conditions and situations, and the final rulemaking retains this flexibility. The final rulemaking also gives the authorized officer the flexibility, in appropriate cases, to waive regulatory requirements. This arrangement is essential because of the great variety of lands and resource uses under the jurisdiction of the Bureau.

Another general criticism of the proposed rulemaking was that it lacked the detail of the Forest Service regulations with which it is intended to be consistent. The final rulemaking, while it adds some specificity to the regulations, remains less detailed than the Forest Service regulations at 36 CFR Part 261 for two reasons. First, the final rulemaking is less detailed because of the great variety of land uses it must accommodate. It must remain flexible to allow the public interest to be served in every instance. Second, a rulemaking covering in detail all the possible recreational uses of the various public lands would be cumbersome to interpret and apply. The final rulemaking is designed to avoid conflicts with the regulations of other land management agencies, rather than to adhere closely to the wording of such regulations.

Specific comments made by commenters and the Bureau response are given under each section heading.

Subpart 8360 One commenter suggested adding the Sikes Act as an authority for the regulations and making it clear that the section on penalties applies to violations of supplementary rules authorized by § 8365.1-6. Other commenters suggested adding definitions for certain terms used in the regulations: "authorized officer," "campfire," "developed sites and areas" and "public lands." These recommendations have been adopted in the final regulations.

Section 8360.0-7 This section of the final rulemaking has been amended upon the recommendation of the Solicitor of the Department of the Interior. The amendment makes it clear that penalties for violation of State or local laws are governed by State and local law, not by these regulations.

Section 8364.1 Several commenters addressed the section on closure and restriction orders, seeking to impose stricter tests for determining whether access should be restricted or cut off, to add a requirement that closures or restrictions be temporary, and to require that restrictions be applied to all uses. These suggestions have not been adopted in the final rulemaking. Requirements that activities be shown to be substantially damaging to public lands and resources, or to present a clear and present danger to persons or property, would impose unnecessary burdens on the Bureau's managers and establish tests practically impossible to meet. Closing lands to all uses when perhaps only the most intensive uses endanger the public or the resource would be an unnecessary deprivation of access to the public's lands.

Other comments were addressed to the notice and posting provisions of the section, asking for mandatory publication of closure notices in the **Federal Register** and broader and more detailed local dissemination of the notice. The requirements that notices be published in the **Federal Register** and include statements of reasons for closures and restrictions have been adopted in the final rulemaking. Other provisions have been added that, although they are not the specific recommendations in the comments, provide the authorized officer the flexibility to publicize and post the regulations in ways calculated best to inform the recreating public.

Section 8365.0-2 One commenter pointed out that the proposed regulations would apply to all public lands, not just to recreation areas on public lands, and asked that this be clarified in the section on Objective. This recommendation has been adopted in the final rulemaking.

Section 8365.1 One commenter asked that this section make it clear that public lands are those managed by the Bureau of Land Management. This recommendation has been adopted and a definition of "public lands" has been added to the final rulemaking.

Section 8365.1-1 One commenter suggested that a provision be added encouraging visitors to take their trash with them when they leave the public lands. This recommendation has been adopted in the final rulemaking. While trash will still be removed from designated receptacles, voluntary removal by the visitor will reduce burdens on taxpayers and help keep the public lands clean.

Other commenters recommended that the term "authorized fires" in § 8365.1-1(b) be explained, and that the prohibition against waste dumping be relaxed. The word "campfire" has been substituted in the final rulemaking to avoid the interpretation that special authorization is always necessary for campfires on public land. "Campfire" has also been defined in § 8360.0-5. The final rulemaking also contains amendments permitting waste wash water to be drained or dumped on public lands. Also added to the final rulemaking in a provision enabling the authorized officer to allow normally prohibited acts in appropriate

circumstances. The section has also been renumbered to accommodate the new provisions.

Section 8365.1–2 Two commenters asked that paragraph (a) establish a definite time limit for camping on public land. One suggested 14 days and the other suggested 6 months. The proposed language affords the authorized officer the flexibility to set time limits appropriate to the land resources and to the needs of the public. The disparity in the limits suggested illustrates the need for this flexibility. The comments have not been adopted.

One commenter suggested that paragraph (b) employ the word "abandon" in place of "leave unattended" with respect to personal property left on the public lands. This recommendation has not been adopted in the final rulemaking. It is not practical to require the authorized officer to infer an intent to abandon property on the part of an individual solely because of the presence of that property on the public land for an extended period of time. The rulemaking also allows the authorized officer discretion to allow property to be left longer than 10 days under appropriate circumstances.

Section 8365.1–3 One commenter suggested that the vehicle regulations be limited to off-road vehicles, and another suggested that drivers should not be prohibited from acting "in a reckless, careless or negligent manner," because such a prohibition might be inconsistently applied. These comments have not been adopted in the final rulemaking. The section applies to travel on Bureau of Land Management roads as well as to cross-country travel, so that non-ORV's must be covered by the rule. The authorized officer needs to be able to protect other users and the land resources from reckless or negligent behavior. These terms are ultimately defined by the courts; there will be no penalties imposed without opportunity for trial before the appropriate magistrate.

Section 8365.1–4 One commenter requested that the terms "unreasonable noise," "nuisance" and "threatening, resisting or interfering" be defined, and that the phase "or volunteer" be deleted from paragraphs (d) and (e) because any individual might identify himself as a volunteer and harass other visitors. There is no need to define the terms because they are all in common usage. The interpretation applied by the courts of the appropriate local jurisdiction will govern. The reference in the rulemaking to volunteers applies only to volunteers engaged in official duties enumerated in their Volunteer Agreements.

Another commenter stated that regulations to protect public health, safety and comfort are the responsibility of local officials and are not enforceable by Bureau personnel. The authority for Bureau personnel to enforce these regulations is found in Section 303 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1733). The same commenter pointed out that it is not illegal to lie except under oath. Section 8365.1–4(e) has therefore been amended to limit it to prohibiting the giving of false alarms.

Section 8365.1–5 Several commenters stated that this section on resource protection was overly broad in the proposed rulemaking, and that the prohibitions would effectively bar any recreational use that might disturb the surface of the land. In the final rulemaking, paragraph (a)(1) has been amended to make it clear that willful disturbance is prohibited only as to personal property and buildings, and scientific, cultural, archaeological and historic resources, objects and areas. Paragraph (a)(2) has been amended to remove the word "disturb" and to prohibit only willful removal or destruction of natural resources. Thus, incidental disturbance associated with ordinary recreational use of the public lands is not prohibited. One commenter also suggested that the rulemaking extend the resource protection provisions so as to protect caves on the public lands. This comment has been adopted in the final rulemaking.

One commenter urged that metal detectors not be included in the prohibition against using mechanical devices to aid in the collection of specimens (paragraph (a)(3)). This recommendation has been adopted in the final rulemaking. One commenter stated that the reference to "common invertebrate fossils" in paragraph (b)(2) of the proposed rulemaking presents problems of interpretation and enforcement, and that the reference to common fossils should be eliminated or that a list of collectable fossils should be published. The suggestion has not been adopted. The regulation must remain general on this point because whether a fossil is rare varies greatly by geographic area and by species. Not all invertebrate fossils are common. Some of the rarest and scientifically most important are fossilized insects, which are invertebrates. Whether an invertebrate fossil is common and collectable must be determined on a case-by-case basis.

One commenter suggested that the Archaeological Resources Protection Act of 1979 (16 U.S.C. 470aa, *et seq.)* gives the public the right to collect arrowheads and other artifacts. While collection of arrowheads is not subject to penalties under that Act, arrowheads are archaeological resources under the definition in the Act, and remain United States property. Their removal from public lands is punishable under other statutes and remains prohibited under this rulemaking.

One commenter suggested providing in a separate paragraph for collection of forest products for noncommercial purposes on the public lands, and requiring special permits for collection. This comment has been adopted in the final rulemaking, except that special permits are not required to collect firewood for campfires on the public lands.

Section 8365.1–6 Several commenters addressed this section, which allows the authorized officer to establish supplementary rules. One objected to the section because of the amount of discretion it gives to the authorized officer, and another asked that publication of supplementary rules in the **Federal Register** and the local press be mandatory. The latter suggestion has been adopted in the final rulemaking. The former has not been wholly adopted because of the need for flexibility and discretion to establish supplementary rules to deal with the varying situations and conditions that may arise. However, the scope of the authority has been limited in the final rulemaking to the protection of persons, property, public lands and their resources, and this discretion has been restricted to the State Director.

One commenter suggested that a formal statement that violation of supplementary rules is prohibited be included in the regulations. This suggestion has been adopted in the final rulemaking.

Section 8365.1–7 Two commenters suggested adding subjects to be governed by State and local laws and ordinances, including pets, forest products and cave resources. The Solicitor of the Department of the Interior advised that this section should be amended to make it clear that State and local authorities will enforce State and local laws. These recommendations have been adopted in the final rulemaking.

Section 8365.2 One commenter suggested that rules for use of developed areas be posted at the entrance to each area. A provision that rules shall be posted in a conspicuous location at or near the entrance of a site or area has been added to this section in the final rulemaking.

Section 8365.2–1 One commenter suggested adding the words "unless otherwise authorized" to allow the authorized officer flexibility. This suggestion has been adopted in the final rulemaking.

Another commenter pointed out that even if an animal is attached to a 6-foot leash under subsection (c), it does little good unless the other end of the leash is somehow secured. The final rulemaking amends this subsection accordingly.

A third commenter suggested that a subsection be added prohibiting pollution of water sources. This suggestion has not been adopted because the prohibition is included in § 8365.1–1, which applies to all public lands, including developed sites.

Section 8365.2–2 One commenter addressed the section on audio devices, pointing out that some operators of CB radios and similar equipment interfere electronically with activities of others using developed sites on public lands, rather than by just making noise, and requested that "interference" be substituted for "noise" in subsection (a). This comment has not been adopted in the final rulemaking because electronic interference is the responsibility of the Federal Communications Commission and is beyond the jurisdiction of the Bureau of Land Management.

The commenter also suggested imposing definite space limits and curfews on noisemaking. This suggestion has not been adopted because it is better to let the local land manager establish restrictions that suit the location, the situation and the season, based on a standard of reasonableness.

It was also suggested that public address systems be allowed with the permission of the authorized officer. This provision is unnecessary because the proposed regulation as worded has that effect. All the activities prohibited by this section may be "otherwise authorized." The suggestion that single wire antennas separate from vehicles be permitted if they use natural supports has not been adopted in the final rulemaking. Single wires are nearly invisible, as the commenter points out. They could therefore be a hazard to other users of the developed area, especially if strung at eye level or at ankle level. However, nothing in the regulations prohibits someone who wishes to set up such an antenna from getting the approval of the authorized officer if it can be erected where its wires will not be a hazard.

Section 8365.2–3 One commenter suggested that the word "areas" be substituted for the word "facilities" at the beginning of the section. This comment has been adopted in the final rulemaking. "Areas" better describes the primitive-style sites on public lands than does "facilities." The phrase "unless otherwise authorized" has been moved to the beginning of the section in the final rulemaking to make it clear that the authorized officer may allow variances from the regulations in appropriate circumstances.

Several commenters stated that the 24-hour time limit for leaving personal property unattended in developed areas was unreasonable because it would effectively prohibit, for example, overnight hikes away from a campground. In the final rulemaking subsection (b) has been amended to apply the 24-hour limit only to day-use areas, and to extend the limit to 72 hours in other areas unless posted otherwise. To leave property unattended for longer periods will require the permission of the authorized officer.

In order to prevent a local authorized officer from arbitrarily imposing discriminatory limits on campsite occupancy under subsection (f), one commenter suggested amending the subsection to require such limits to be posted at each campsite. The comment has been adopted in the final rulemaking. The authorized officer will retain the discretion to set such limits and to change them from time to time as necessary.

One commenter suggested that a provision be added prohibiting visitors from moving picnic tables and other campground furniture. The comment has been adopted in the final rulemaking.

One commenter suggested that the rulemaking be amended to make it clear that the authority to collect fees in 36 CFR 71 applies to recreation sites on public lands. This amendment has been added in the final rulemaking.

Section 8365.2–5 One commenter suggested removing the prohibition on using, as opposed to discharging, firearms in developed recreation sites. The prohibition has been retained in the final rulemaking in order to prevent other uses of weapons short of discharging them: Threatening, brandishing, assault. The regulation does not prohibit cleaning weapons, nor does it prohibit the use of tools, such as knives, for normal recreational activities, even though they are capable of being used as weapons.

One commenter pointed out that, particularly in Alaska, there might be an inconsistency between § 8365.2–5(b) of the proposed rule and § 8365.2–1(c), because dogs may be used as pack or draft animals but may also be kept on leashes. In response to this comment, subsection (b) has been removed from the final rulemaking. There is no need for a general rule excluding work animals from recreation sites on public lands. However, if local conditions require such exclusion, the authorized officer may establish supplementary rules to that effect under § 8365.1–6.

The principal author of this final rulemaking is Robert L. Conquergood, Division of Recreation, Cultural and Wilderness Resources, assisted by the staff of the Office of Legislation and Regulatory Management, Bureau of Land Management.

It is hereby determined that the publication of this final rulemaking is not a major Federal action significantly affecting the quality of the human environment, and that a detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C) is not required.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and that it will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 610 *et seq.*). The rulemaking will serve to protect the recreation resources and opportunities on the public lands. The rulemaking affects individuals using the public lands for recreation purposes, and those who would destroy, damage or impair the recreational opportunities of others.

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 43 CFR Part 8360

Environmental protection, Penalties, Public lands—recreation, Recreation, Traffic regulations.

Under the authority of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701, *et seq.*), the Taylor Grazing Act (43 U.S.C. 315a), the Sikes Act (16 U.S.C. 670g), the Wild and Scenic Rivers Act (16 U.S.C. 1281c, *et seq.*), the Land and Water Conservation Fund Act (16 U.S.C. 460*l*–6a), and the National Trails System Act (16 U.S.C. 1241, *et seq.*), Part 8360, of Subchapter H, Chapter II, of Title 43 of the Code of Federal Regulations is revised to read as set forth below:

Garrey E. Carruthers,

Assistant Secretary of the Interior.

July 19, 1983.

PART 8360—VISTOR SERVICES

Subpart 8360—General

Sec.

8360.0–3 Authority.

Sec.

Authority: 43 U.S.C. 1701 *et seq.*, 43 U.S.C. 315a, 16 U.S.C. 1281c, 16 U.S.C. 670 *et seq.*, 16 U.S.C. 460/–6a, 16 U.S.C. 1241 *et seq.*

Subpart 8360—General

§ 8360.0–3 Authority.

The regulations of this part are issued under the provisions of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*), the Sikes Act (16 U.S.C. 670g), the Taylor Grazing Act (43 U.S.C. 315a), the Wild and Scenic Rivers Act (16 U.S.C. 1281c), the Act of September 18, 1960, as amended, (16 U.S.C. 877 et seq.), the Land and Water Conservation Fund Act (16 U.S.C. 460/–6a) and the National Trails System Act (16 U.S.C. 1241 *et seq.*).

8360.0–5 Definitions.

As used in this part, the term:

(a) "Authorized officer" means any employee of the Bureau of Land Management who has been delegated the authority to perform the duties described in this part.

(b) "Campfire" means a controlled fire occurring out of doors, used for cooking, branding, personal warmth, lighting, ceremonial or aesthetic purposes.

(c) "Developed sites and areas" means sites and areas that contain structures or capital improvements primarily used by the public for recreation purposes. Such sites or areas may include such features as: delineated spaces for parking, camping or boat launching; sanitary facilities; potable water; grills or fire rings; tables; or controlled access.

(d) "Public lands" means any lands and interests in lands owned by the United States and administered by the Secretary of the Interior through the Bureau of Land Management without regard to how the United States acquired ownership.

§ 8360.0–7 Penalties.

Violations of any regulations in this part by a member of the public, except for the provisions of § 8365.1–7, are punishable by a fine not to exceed $1,000 and/or imprisonment not to exceed 12 months. Violations of supplementary rules authorized by § 8365.1–6 are punishable in the same manner.

Subpart 8361—Emergency Services [Reserved]

Subpart 8362—Interpretive Services [Reserved]

Subpart 8363—Resource and Visitor Protection [Reserved]

Subpart 8364—Closures and Restrictions

§ 8364.1 Closure and restriction orders.

(a) To protect persons, property, and public lands and resources, the authorized officer may issue an order to close or restrict use of designated public lands.

(b) Each order shall:

(1) Identify the public lands, roads, trails or waterways that are closed to entry or restricted as to use;

(2) Specify the uses that are restricted;

(3) Specify the period of time during which the closure or restriction shall apply;

(4) Identify those persons who are exempt from the closure or restrictions;

(5) Be posted in the local Bureau of Land Management Office having jurisdiction over the lands to which the order applies;

(6) Be posted at places near and/or within the area to which the closure or restriction applies, in such manner and location as is reasonable to bring prohibitions to the attention of users;

(7) Include a statement on the reasons for the closure; and

(c) In issuing orders pursuant to this section, the authorized officer shall publish them in the **Federal Register.**

(d) Any person who fails to comply with a closure or restriction order issued under this subpart may be subject to the penalties provided in § 8360.0–7 of this title.

Subpart 8365—Rules of Conduct

§ 8365.0–1 Purpose.

The purpose of this subpart is to set forth rules of conduct for the protection of public lands and resources, and for the protection, comfort and well-being of the public in its use of recreation areas, sites and facilities on public lands.

§ 8365.0–2 Objectives.

The objective of this subpart is to insure that public lands, including recreation areas, sites and facilities, can be used by the maximum number of people with minimum conflict among users and minimum damage to public lands and resources.

§ 8365.1 Public lands—general.

The rules in this subsection shall apply to use and occupancy of all public lands under the jurisdiction of the Bureau of Land Management. Additional rules for developed sites and areas are found in § 8365.2 of this title.

§ 8365.1–1 Sanitation.

(a) Whenever practicable, visitors shall pack their trash for disposal at home.

(b) On all public lands, no person shall, unless otherwise authorized:

(1) Dispose of any cans, bottles and other nonflammable trash and garbage except in designated places or receptacles;

(2) Dispose of flammable trash or garbage except by burning in authorized fires, or disposal in designated places or receptacles;

(3) Drain sewage or petroleum products or dump refuse or waste other than wash water from any trailer or other vehicle except in places or receptacles provided for that purpose;

(4) Dispose of any household, commercial or industrial refuse or waste brought as such from private or municipal property;

(5) Pollute or contaminate water supplies or water used for human consumption; or

(6) Use a refuse container or disposal facility for any purpose other than for which it is supplied.

§ 8365.1–2 Occupancy and use.

On all public lands, no person shall:

(a) Camp longer than the period of time permitted by the authorized officer; or

(b) Leave personal property unattended longer than 10 days (12 months in Alaska), except as provided under § 8365.2–3(b) of this title, unless otherwise authorized. Personal property left unattended longer than 10 days (12 months in Alaska), without permission

of the authorized officer, is subject to disposition under the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 484(m)).

§ 8365.1-3 Vehicles.

When operating a vehicle on the public lands, no person shall exceed posted speed limits, willfully endanger persons or property, or act in a reckless, careless or negligent manner.

§ 8365.1-4 Public health, safety and comfort.

No person shall cause a public disturbance or create a risk to other persons on public lands by engaging in activities which include, but are not limited to, the following:

(a) Making unreasonable noise;

(b) Creating a hazard or nuisance;

(c) Refusing to disperse, when directed to do so by an authorized officer;

(d) Resisting arrest or issuance of citation by an authorized officer engaged in performance of official duties; interfering with any Bureau of Land Management employee or volunteer engaged in performance of official duties; or

(f) Knowingly giving any false or fraudulent report of an emergency situation or crime to any Bureau of Land Management employee or volunteer engaged in the performance of official duties.

§ 8365.1-5 Property and resources.

(a) On all public lands, unless otherwise authorized, no person shall:

(1) Willfully deface, disturb, remove or destroy any personal property, or structures, or any scientific, cultural, archaeological or historic resource, natural object or area;

(2) Willfully deface, remove or destroy plants or their parts, soil, rocks or minerals, or cave resources, except as permitted under paragraph (b) or (c) of this subsection; or

(3) Use on the public lands explosive, motorized or mechanical devices, except metal detectors, to aid in the collection of specimens permitted under paragraph (b) or (c) of this subsection.

(b) Except on developed recreation sites and areas, or where otherwise prohibited and posted, it is permissible to collect from the public lands reasonable amounts of the following for noncommercial purposes:

(1) Commonly available renewable resources such as flowers, berries, nuts, seeds, cones and leaves;

(2) Nonrenewable resources such as rocks, Minerals specimens, common invertebrate fossils and semiprecious gemstones;

(3) Petrified wood as provided under subpart 3622 of this title;

(4) Mineral materials as provided under subpart 3621 of this title; and

(5) Forest products for use in campfires on the public lands. Other collection of forest products shall be in accordance with the provisions of group 5500 of this title.

(c) The collection of renewable or nonrenewable resources from the public lands for sale or barter to commercial dealers may be done only after obtaining a contract or permit from an authorized officer in accordance with parts 3610 or 5400 of this title.

§ 8365.1-6 Supplementary rules.

The State Director may establish such supplementary rules as he/she deems necessary. These rules may provide for the protection of persons, property, and public lands and resources. No person shall violate such supplementary rules.

(a) The rules shall be available for inspection in each local office having jurisdiction over the lands, sites or facilities affected;

(b) The rules shall be posted near and/or within the lands, sites or facilities affected;

(c) The rules shall be published in the **Federal Register**; and

(d) The rules shall be published in a newspaper of general circulation in the affected vicinity, or be made available to the public by such other means as deemed most appropriate by the authorized officer.

§ 8365.1-7 State and local laws.

Except as otherwise provided by Federal law or regulation, State and local laws and ordinances shall apply and be enforced by the appropriate State and local authorities. This includes, but is not limited to, State and local laws and ordinances governing:

(a) Operation and use of motor vehicles, aircraft and boats;

(b) Huting and fishing;

(c) Use of firearms or other weapons;

(d) Injury to persons, or destruction or damage to property;

(e) Air and water pollution;

(f) Littering;

(g) Sanitation;

(h) Use of fire;

(i) Pets;

(j) Forest products; and

(k) Caves.

§ 8365.2 Developed recreation sites and areas.

The rules governing conduct and use of a developed recreation site or area shall be posted at a conspicuous location near the entrance to the site or area.

§ 8365.2-1 Sanitation.

On developed recreation sites and areas, no person shall, unless otherwise authorized:

(a) Clean fish, game, other food, clothing or household articles at any outdoor hydrant, pump, faucet or fountain, or restroom water faucet;

(b) Deposit human waste except in toilet or sewage facilities provided for that purpose; or

(c) Bring an animal into such an area unless the animal is on a leash not longer than 6 feet and secured to a fixed object or under control of a person, or is otherwise physically restricted at all times.

§ 8365.2-2 Audio devices.

On developed recreation sites or areas, unless otherwise authorized, no person shall:

(a) Operate or use any audio device such as a radio, television, musical instrument, or other noise producing device or motorized equipment in a manner that makes unreasonable noise that disturbs other visitors;

(b) Operate or use a public address system;

(c) Construct, erect or use an antenna or aerial for radiotelephone, radio or television equipment, other than on a vehicle or as an integral part of such equipment.

§ 8365.2-3 Occupancy and use.

In developed camping and picnicking areas, no person shall, unless otherwise authorized:

(a) Fail to pay any fees imposed in accordance with 36 CFR Part 71.

(b) Pitch any tent, park any trailer, erect any shelter or place any other camping equipment in any area other than the place designed for it within a designated campsite;

(c) Leave personal property unattended for more than 24 hours in a day use area, or 72 hours in other areas. Personal property left unattended beyond such time limit is subject to disposition under the Federal Property and Administration Services Act of 1949, as amended (40 U.S.C. 484(m));

(d) Build any fire except in a stove, grill, fireplace or ring provided for such purpose;

(e) Enter or remain in campgrounds closed during established night periods except as an occupant or while visiting persons occupying the campgrounds for camping purposes;

(f) Enter or use a site or a portion of a site closed to public use; or

(g) Occupy a site with more people than permitted within the developed campsite. Limits on the number of

occupants permitted at any site shall be clearly posted near the entrance of the developed campsite or facility in such a manner as to bring it to the reasonable attention of the user.

(h) Move any table, stove, barrier, litter receptacle or other campground equipment.

§ 8365.2–4 Vehicles.

Unless otherwise authorized, no motor vehicle shall be driven within developed recreation sites or areas except on roads or places provided for this purpose.

§ 8365.2–5 Public health, safety and comfort.

On developed recreation sites and areas, unless otherwise authorized, no person shall:

(a) Discharge or use firearms, other weapons, or fireworks; or

(b) Bring an animal, except a Seeing Eye or Hearing Ear dog, to a swimming area.

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Part III

Department of Health and Human Services

Public Health Service

Proposed Regulations on Limitation on Federal Participation for Capital Expenditures and Certificate of Need Reviews by State Health Planning and Development Agencies and Health Systems Agencies

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Parts 100 and 125

Limitation on Federal Participation for Capital Expenditures

AGENCY: Public Health Service, HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: Section 1122 of the Social Security Act, "Limitation on Federal Participation for Capital Expenditures," establishes under which the Secretary may deny Federal reimbursement under titles XVIII and XIX of the Act for expenses related to capital expenditures by or on behalf of health care facilities (1) which the health planning agency designated for a State has found to be inconsistent with standards, criteria, or plans developed under the Public Health Service Act, or (2) for which the designated planning agency was not provided notification as required. These proposed regulations include changes in the regulations now codified at 42 CFR Part 100 based on (1) the proposed amendments to the regulations published in the **Federal Register** on March 19, 1976, and comments submitted in response to that Notice, (2) the amendments to Title XV of the Public Health Service Act enacted by the Health Planning and Resources Development Amendments of 1979 (Pub. L. 96–79), the Health Programs Extension Act of 1980 (Pub. L. 96–538), and the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97–35), and (3) the amendments to section 1122 enacted by the Health Maintenance Organization Amendments of 1978 (Pub. L. 95–559), the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97–35), and the Social Security Amendments of 1983 (Pub. L. 98–21). Interested persons are invited to submit written comments and suggestions concerning this Notice of Proposed Rulemaking (NPRM).

DATE: Comments must be received on or before October 11, 1983.

ADDRESS: Interested persons may submit written comments and recommendations on the proposed rules to: John M. Heyob, Acting Associate Director, Office of Health Planning, 5600 Fishers Lane, Highway, Room, 13–56A, Rockville, Maryland 20857.

All comments received in timely response to this document will be considered and will be available for public inspection at the above address between the hours of 8:30 a.m. and 5:00 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. Jon Gold, Director, Division of Regulatory Activities, Office of Health Planning, 5600 Fishers Lane, Room 13–44A, Rockville, Maryland 20857. Telephone Number (301) 443–6350.

SUPPLEMENTARY INFORMATION: On March 19, 1976, the Department published in the **Federal Register** (41 FR 11688) a Notice of Proposed Rulemaking (NPRM), proposing to revise 42 CFR Part 100, the regulations implementing section 1122 of the Social Security Act, 42 U.S.C. 1320a–1. The Department gave interested persons 45 days to submit comments on the proposed modification of the regulations. The proposed rule set out below proposes changes in 42 CFR Part 100 based on (1) the March 19, 1976, Notice and the comments submitted in response to it, (2) the Health Planning and Resources Development Amendments of 1979 (Pub. L. 96–79), which amended Title XV of the Public Health Service (PHS) Act, (3) the Health Maintenance Organization Amendments of 1978 (Pub. L. 95–559), which deleted the specific reference to health maintenance organizations from section 1122, (4) the Health Programs Extension Act of 1980 (Pub. L. 96–538) (5) the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97–35), and (6) the Social Security Amendments of 1983 (Pub. L. 98–21).

The authority for these regulations derives from Title XV of the Public Health Service (PHS) Act as well as from section 1122 of the Social Security Act.

Under Section 1122 of the Social Security Act, the Secretary may deny Federal reimbursement under the Medicare (Title XVIII) and Medicaid (Title XIX) programs for expenses related to capital expenditures (1) which the health planning agency designated for a State (the designated planning agency or DPA) has found to be inconsistent with standards, criteria, or plans developed under the PHS Act or (2) for which the designated planning agency was not provided notification as required. Under section 1521 of the PHS Act, the Secretary designates a State Agency as the State health planning and development agency (SHPDA). The SHPDA's functions are set out in section 1523 of the PHS Act. In performing its functions, which include serving as the section 1122 designated planning agency, a SHPDA is required to follow the applicable procedures of section 1532(b). (See sections 1523(a)(4) and 1532(a) of the PHS Act. The procedures of section 1532(b) (1)–(11) and (13) apply to all SHPDA reviews under section 1523. The procedures contained in the other subparagraph, section 1532(b)(12), apply to certificate of need reviews, but the Secretary, as appropriate, may apply them to other review programs.)

Another function of the SHPDA, related to its section 1122 review function, is to administer a certificate of need program. This program must provide for the review and determination of need before a health care facility may incur obligations for certain capital expenditures or offer new institutional health services and before a person may acquire certain major medical equipment. (See section 1523(a)(4)(B) of the PHS Act). A SHPDA that administers both a section 1122 and a certificate of need program commonly conducts a single review for projects that are reviewable under both programs. To permit SHPDAs to coordinate both programs, the Department has proposed these regulations with the intent of making them as consistent as possible with the proposed revised rules for the certificate of need program, also published today in the **Federal Register.**

The Secretary decided to publish these regulations as an NPRM again because of the lengthy period which has transpired since publication of the previous NPRM. The Department is giving interested persons 60 days to comment on this NPRM. The Secretary will consider these comments in developing the final rule. Summarized below are the major changes proposed in this NPRM.

The Secretary proposes (1) to publish the revised regulations as a new Part 125, and (2) to revoke Part 100 90 days after Part 125 becomes effective. In order to assist the reader in locating corresponding provisions of the regulations, the Department has prepared a chart, contained in Appendix I, which identifies in both the revised proposed regulations and 42 CFR Part 100 the location of each subject area.

Section 125.102 Definitions.

Section 14(b) of the Health Maintenance Organization Amendments of 1978 (Pub. L. 95–559) amended section 1122 by deleting from it the references to health maintenance organizations (HMOs). Previously, capital expenditures by or on behalf of health care facilities and HMOs were subject to section 1122 review. As a result of this amendment, a capital expenditure by an HMO would be reviewable only if the expenditure satisfies the remaining review requirement of being by or on behalf of a health care facility. The Social Security Amendments of 1983 (Pub. L. 98–21) provide for an even

further limitation in the reviewability of HMO related expenditures by providing for an exemption if certain requirements are met. (See discussion below of § 125.103, "Expenditures covered.") The Secretary proposes to delete the definition of HMOs and all references to HMOs from the regulations to conform to the 1978 statutory amendments.

To clarify the regulations, the Secretary proposes to add definitions of the following terms: capital expenditure, designated planning agency, and health service area.

In accordance with the amendment to section 1122(g) enacted by Social Security Amendments of 1983, the Secretary proposes to revise the definition of "capital expenditure" to remove the former threshold of $100,000 and to insert in its place "$600,000 (or such lesser amount as the State may establish)." The definition of "capital expenditure" would also be revised to delete coverage of decreases in bed capacity and terminations of services that are not associated with capital expenditures of $600,000 or more. The Department believes that this change is consistent with Section 1122's central purpose of assuring that Medicare and Medicaid funds are not used to pay higher health care costs that result from duplication or irrational growth of health care facilities, while at the same time advancing the policy of the new Medicare prospective payment system, which provides health care facilities with incentives to eliminate inefficient services. It should be noted that where a proposed capital expenditure exceeds $600,000 all elements of that proposal, including any bed reductions or elimination of services, would be subject to review.

In the current certificate of need regulations, the Secretary no longer identifies the circumstances in which computed tomographic (CT) scanner services are considered "services". These circumstances had been incorporated into the certificate of need and section 1122 regulations on April 25, 1979 (44 FR 24428). The Secretary is proposing to delete this provision in the section 1122 regulations as well. CT scanning services will be covered when there is a purchase of CT scanning equipment by or on behalf of a health care facility (1) which exceeds $600,000 or (2) which is associated with a capital expenditure less than $600,000 and the offering of which is considered a new service.

Section 125.103 Expenditures covered.

The Department is proposing to simplify this section by reorganizing its structure and by placing a portion of its former content in § 125.102, Definitions.

The Department proposes to add a Note to this section that references the amended procedure in § 125.109(f) permitting a DPA to elect not to review capital expenditures that are not required to be reviewed under the Department's amended certificate of need regulations unless the expenditure is reviewable under the State's certificate of need program. As noted in Program Information Letter 82-04 (Bureau of Health Planning October 21, 1981), the Secretary is allowing States to elect not to review these expenditures in order to permit greater consistency between the section 1122 and certificate of need programs. The Department is unable to make the coverage requirements for the section 1122 and the certificate of need programs identical because each program has a different statutory basis. However, the Secretary does have the authority under section 1122(d)(1) to withhold reimbursement "for such period as he finds necessary in any case to effectuate the purpose of this section." Under this authority the Secretary has decided not to withhold reimbursement when both (1) the capital expenditure is not reviewable under the Department's certificate of need regulations (unless the expenditure is reviewable under the State's certificate of need program) and (2) the DPA concludes that a section 1122 review is not warranted. Because the Secretary has decided not to withhold reimbursement in these cases, it would be meaningless for the Department to require DPAs to review these expenditures. Accordingly, the Secretary has decided to permit DPAs to elect not to review these expenditures. In making this decision, the Secretary recognizes that the section 1122 program, to a great extent, serves as a supplement to a State's certificate of need program by providing an additional sanction. The proposal to permit DPAs to elect not to review the capital expenditures that are not required to be reviewed under the Federal requirements for State certificate of need programs would permit greater coordination of these two programs. By including this decision in this NPRM, the Secretary invites public comment as to whether DPAs should continue to have the ability to elect not to review these expenditures.

The four major areas of coverage that are included in the section 1122 program, but not in the Federal certificate of need regulations, for which a DPA may elect not to review proposed capital expenditures are (1) expenditures that are less than the certificate of need expenditure minimum, which is $600,000 or a cost adjusted figure (see § 123.404(a)(1)), but more than the DPA's section 1122 dollar threshold; (2) acquisitions of health care facilities, except as provided in § 123.404(a)(5); (3) certain activities by health maintenance organizations that are exempt from review under § 123.405(b) but would not fall within the exemption provided by the Social Security Amendment of 1983; and (4) changes in the bed capacity of a facility that do not meet the "bed threshold" of the certificate of need program and are associated with capital expenditures of less than the certificate of need expenditure minimum.

The first coverage area, expenditures less than the expenditure minimum, would apply only when the capital expenditure is not otherwise reviewable under a different capital expenditure threshold. For example, a capital expenditure of less than the State's expenditure minimum associated with the addition of a new service would be reviewable under § 123.404(a)(3)(i). Therefore, the DPA would not be permitted to elect not to review this expenditure.

A DPA may elect not to review acquisitions of health care facilities only if the required notice is given. The certificate of need regulations provide that, even if an acquisition does not involved a change in beds or services, the acquisition must be reviewable under a State's certificate of need program if the facility fails to provide notice of the proposed acquisition to the State and the HSA. (See § 123.406(b).) If this notice is not given, the acquisition would be reviewable under section 1122. Similarly, § 123.405(b) provides that under a State certificate of need program the State Agency will decide whether an activity by an HMO qualifies for an exemption. In this case, the DPA would have to determine whether the requirements necessary to exempt the expenditure from review were met unless that determination had already been made under the State's certificate of need program.

It should be noted that in a State whose certificate of need law provides for the review of all acquisitions of health care facilities, a DPA would not have the option not to review these expenditures under the section 1122 program. On the other hand, because a State may not review HMO activities that meet the exemption requirements of § 123.405(b), every DPA may elect not to review those HMO activities.

In the 1976 proposed amendments, § 125.103(c) required that any change in an approved capital expenditure which (1) exceeds $100,000 or (2) changes the bed capacity of the facility, or (3) substantially changes the services of the facility, would be considered a capital expenditure and would subject the entire capital expenditure to a second review by the DPA. The Secretary is proposing to modify this requirement by giving the DPA the option of reviewing either the entire capital expenditure or merely the change. This modification would give the DPA the flexibility to decide which expenditure would be more appropriate to review. The following example illustrates the operation of this proposed provision: A hospital receives section 1122 approval to build a 200-bed facility at a cost of $10,000,000; the hospital revises its plans by proposing to add 20 more beds to the facility at an additional cost of $5,000,000. Cost overruns to the original project are included in this $5,000,000 additional cost. Before the facility incurs obligations for the additional expenditures, it provides notice of the change to the DPA. The DPA has the option of reviewing the entire capital expenditure (220-bed facility, $15,000,000) or just the change (the additional 20 beds, $5,000,000). A DPA may want to review the entire expenditure when the proposed change affects the issue of whether the project as a whole is consistent with the applicable plans, criteria, and standards. For example, in this case the DPA may conclude that the cost overrun calls into question the financial feasibility of the entire project and merits review of the entire expenditure. If the DPA decides to review the entire expenditure and finds that the total capital expenditure, as modified by the proposed change, is not consistent with the applicable standards, criteria, or plans, reimbursement related to the entire capital expenditure for the 220-bed, $15,000,000 facility may be withheld. However, if the applicant decides to expand the bed capacity of the hospital after completing construction of the facility, § 125.103(c) would not apply. In this case, if a capital expenditure were involved in this proposal, only the proposal to increase the facility's bed capacity would be subject to review, and the DPA would not have the option to review the completed hospital as well.

As noted above, the Social Security Amendments of 1983 (Pub. L. 98-21) revised the treatment of HMOs under section 1122. Specifically, section 1122(j) now provides that expenditures for services will not be subject to review if (1) 75 percent of the patients expected to use the service will be enrollees of an "eligible organization" as that term is defined in section 18767(b) of the social Security Act, and (2) the Secretary determines that the organization needs the services under certain specified criteria. Section 1876(b) defines the term "eligible organization" to include entities that are qualified as HMOs under Title XIII of the Public Health Service Act and certain other entities that share many of the characteristics of qualified HMOs. The Secretary proposes to add a new § 125.103(b)(3) to incorporate this provision.

Section 125.104 Procedures for determining whether an expenditure is subject to review

This new proposed section contains provisions previously in § 100.103, "Expenditures covered." This change would simplify the organization of the regulation. The Secretary proposes to retain the provision that an applicant may appeal to the Secretary a determination that an expenditure is reviewable in § 125.104. The section would provide that during this appeal the time periods under § 125.109 and § 125.114 are suspended, if requested by the applicant. The deletion of the previous automatic suspension in § 100.103(d) is to allow section 1122 reviews to run concurrently with certificate of need reviews if the applicant prefers.

Section 125.105 Incurring an obligation

This provision, previously contained in § 100.103(c), would be placed in a new section to simplify the organization of the regulations. In addition, because a "force account expenditure" is not a commonly understood term and its only use was in this provision, the Secretary would substitute its definition—a formal action committing funds for a construction project undertaken by the facility as its own contractor—(previously contained in § 100.103(a)(1)) for the term itself. A paragraph would be added to this section providing that the Secretary will view an obligation for a capital expenditure which is contingent upon issuance of a certificate of need or upon a finding of consistency by the DPA not to be incurred until that condition occurs, unless a State's certificate of need program expressly provides that this obligation is incurred on the date on which the contract is entered into (or the governing board takes the formal action or the gift is completed). The Department is proposing to add this contingency provision, which is a statement of existing policy, to the regulation in order to ensure that health care facilities are aware of this policy. Further, in deciding when an obligation has been incurred, the Secretary will continue to give great weight to a SHPDA's determination of the date on which a contract is entered into for purposes of determining whether an obligation has been made. Where appropriate, the Secretary intends to ask the SHPDA to request from its legal counsel an opinion on this question.

Section 125.106 Agreement; general.

The Secretary proposes to change § 125.106 to clarify that the section 1122 agreement requires the DPA to review certain capital expenditures that have been incurred. Section 100.104(a) of the current regulations provides that the reviews of the DPA were to be made of "each capital expenditure *proposed* by or on behalf of a health care facility" (emphasis added). Because of the reference to proposed capital expenditures, some questions arose whether a DPA has the authority to review capital expenditures that have already been made. By proposing to delete the word "proposed" from § 125.106(a), the Secretary is making clear that the DPA will be required to make findings as to the conformity with applicable standards, criteria, and plans of both proposed and completed capital expenditures.

The Secretary is proposing to add a provision to § 125.106(d) which requires the DPA to send a statement of the scope of the program to health care agencies and organizations, the Statewide Health Coordinating Council (SHCC), HSAs and any agency establishing rates for health care facilities in the State. The Secretary suggests this may be done simultaneously with the DPA's transmittal of the review procedures required under § 125.109.

Section 125.107 Designated planning agency.

The Secretary proposes to require at § 125.107(b) that the Statewide Health Coordinating Council designated under section 1524 of the PHS Act shall be the advisory board for the section 1122 program, if the SHPDA is the DPA. This requirement does not preclude a DPA from having other advisory boards for different purposes. For examples, some States have special advisory boards that make recommendations on specific decisions.

Section 125.109 Procedures for designated planning agency review.

The proposed rules of March 19, 1976, repeated in full the certificate of need procedural requirements applicable to both the certificate of need and section 1122 programs. To simplify the regulations, The Secretary proposes to substitute, where appropriate, an incorporation by reference of the applicable provision in 42 CFR 123.410. Thus, when these regulations are adopted in final form, the proposed amendments to the certificate of need regulations, when they become effective, would also apply to the section 1122 program.

Section 100.106(a) (1) and (4) of the 1976 proposed rules retained the former provision of the regulations that the review period during which the DPA must make its decision is determined by the expected date of obligation of the applicant. Without the approval of the applicant, this review period could not exceed 90 days. If the applicant had an earlier date on which an obligation was expected to be incurred, this period could have been as brief as 60 days. The Secretary has revised this proposal at § 125.109(a) to incorporate by reference the certificate of need review period provisions contained in § 123.410(a)(3). The Department proposes this change to enable DPAs, in conducting section 1122 reviews, to comply with the batching requirement of Section 1532(b)(13)(A)(ii) of the PHS Act. Under this provision, the DPA, in conducting section 1122 and certificate of need reviews, is required to consider proposals for similar types of services, facilities or equipment in relation to each other. The Secretary concluded that it would have been impossible to implement this provision if the DPA were required to make its finding (as required by the former regulations) within the period of 60 to 90 days of the date an applicant submits a complete application. By adopting the same review schedule established by section 1532(b)(2) for the section 1122 and the certificate of need programs, and by deleting the provision that gives the DPA's failure to complete its review in the applicable period the effect of a finding of consistency, the Department would allow participating States to coordinate better the administration of their section 1122 and certificate of need programs.

Thus, the Secretary has deleted the provision contained in § 100.106 (a)(4) and (c)(3) that provided that the failure of a DPA or a hearing officer to make the finding within the required period of time has the effect of a finding of conformity. In addition, § 125.109(a), which incorporates by reference § 123.410(a)(17), would provide that if the DPA fails to make its finding within the applicable period, the State program must permit the applicant to bring an action in State court to compel the DPA to make a finding.

Because the expected date of obligation would no longer be used to identify the length of the review period, the requirement that the applicant provide notice of this date is no longer necessary and would be deleted. Applicants may not incur an obligation for their capital expenditures until after the date the DPA sends its findings to the applicant. If the applicant does so, the Secretary may withhold reimbursement from the facility.

The Secretary proposes under § 125.109(e), "Revision of proposed capital expenditure, "that an applicant may submit changes to a proposed capital expenditure during the course of a DPA's review. This paragraph would provide that a DPA may treat the change as a new proposal only when the DPA finds such change to be substantial. A DPA may view a change as being "substantial" whether or not the change is associated with a capital expenditure that (1) exceeds $600,000 (or such lesser amount as the State may establish), (2) changes the bed capacity of the facility, or (3) substantially changes the services of the facility. For example, a DPA might regard an alternate method of financing as being substantial because it might affect the DPA's or HSA's finding as to the financial feasibility of the project. On the other hand, the DPA could merely consider this one factor and continue to review the proposal in accordance with the initial schedule for review. Even if it does not regard the change in the proposal as substantial, the DPA could ask, but not require, the applicant to agree to an extension of the review period. If the DPA considered this change in the proposal to be substantial, the review would begin anew and the DPA could request any additional information it needed.

Section 125.110 Exceptions to procedures.

This section would permit the DPA to request the Secretary to grant exceptions to those procedures required by § 125.109 for the purpose of being compatible with those used in the administration of a State certificate of need program. In addition, the DPA may obtain an exception for a non-certificate of need procedure if the granting of the exception is consistent with Section 1122 of the Social Security Act and will not adversely and substantially affect the rights of affected persons. Exceptions may be requested whether or not the certificate of need program meets the minimum Federal requirements under 42 CFR Part 123, Subpart E. This requirement should ensure that no State will be discouraged from participating in the section 1122 program because its present certificate of need and section 1122 programs are incompatible. By incorporating the certificate of need procedures for granting an exception (§ 123.411), the Secretary would also be able to grant a general exception to a section 1122 procedure.

Section 125.111 Criteria for agency review.

The regulations do not supply any criteria for review of proposed capital expenditures under the section 1122 program. The responsibility to develop criteria for review lies with the State and local planning agencies. Section 1122 provides that reviews be based on standards, criteria, and plans developed pursuant to the PHS Act. Thus, the DPA must employ, among others, health systems plans, annual implementation plans, State health plans, and the criteria developed under a State's certificate of need program.

Section 125.113 Recommendation of the designated planning agency.

This new section proposes to specify that the DPA shall submit recommendations to the Secretary on whether reimbursements should be withheld because of a finding of inconsistency or that an obligation was incurred before the DPA's findings were made. The grounds provided in § 125.113(b), for the DPA to make a recommendation not to exclude reimbursements despite findings of inconsistency or the obligation of the capital expenditure prior to receipt of the DPA's findings, are the same grounds on which the Secretary would be able to base a decision not to withhold under §125.115(d).

Section 124.114 Review of the designated planning agency's findings and recommendation; fair hearing and judicial review.

This section would provide for administrative and judicial review of a DPA's finding at the request of any affected person. The Secretary proposes to require that the section 1122 fair hearings be conducted by (1) an entity of the State other than the DPA that did not advise the DPA on the proposal during the DPA's review or (2) if permitted by State law, a person within the DPA who, or component of the DPA

which, (i) did not participate in making the section 1122 findings and (ii) has the authority to make a final decision on the appeal.

In § 125.114(b) the Secretary proposes to define the scope of the hearing officer's review. In reviewing the finding of the DPA as to consistency, the hearing officer would be limited to deciding (1) whether the person or agency requesting the hearing has established that the DPA's finding was incorrect and (2) whether the DPA adhered to the appropriate procedures.

The Secretary also proposes to add a provision that expressly prohibits the fair hearing officer from considering the correctness, adequacy, or appropriateness of the standards, plans and criteria applied by the DPA. In administering the program, the Secretary has noted that some fair hearing officers have misunderstand their role and have made determinations beyond the scope of their authority. This prohibition has been noted in the Department's "DPA Manual", but has not previously been expressly stated in the regulations.

Section 125.114(b) would require that there must be a provision for any person adversely affected by the findings of the hearing officer to obtain judicial review of that finding in accordance with § 123.410(a)(14). By incorporating by reference the corresponding provision of the certificate of need regulations, the Secretary would be adopting the provisions concerning judicial review of certificate of need decisions that were added to Title XV of the PHS Act by Pub. L. 96-79.

Section 125.115 Determinations by the Secretary.

As enacted, section 1122 provided that a determination to withhold reimbursement applied to capital-related funds a facility received under Title V, XVIII, and XIX of the Social Security Act. Section 2193(b)(3) of Pub. L. 97-35 deleted all references to Title V (Maternal and Child Health) from section 1122. As a result, reimbursement related to this program will no longer be subject to a withholding under section 1122. The Secretary proposes to amend these regulations by deleting all references to Title V to conform with this change.

The Secretary proposes to add § 125.115(e) which would provide that if a DPA elects not to review a capital expenditure under § 125.109(f), the Secretary will not withhold reimbursement with regard to the capital-related expenses. The DPA may make this election for capital expenditures that are not required to be reviewed under the Department's certificate of need regulations, unless the expenditures are reviewable under the State's certificate of need program. A DPA may only elect not to review expenditures that fall within this category under § 125.109(f). If the Secretary concludes that a DPA has elected not to review an expenditure under § 125.115 which was not in accordance with the provisions of § 125.109(f), the Secretary would not make a determination as to the withholding of reimbursement. The Secretary would request the DPA to review the expenditure. For a further discussion of the provision, see the discussion contained above in § 125.103, "Expenditures Covered."

The Secretary proposes to add § 125.115(f), which sets forth the conditions under which the Secretary will limit the time period for which reimbursement is withheld when an applicant has incurred an obligation before the DPA makes its findings. This provision includes, in part, the Department's Amended Policy on Lack of Timely Notice published in the **Federal Register** on December 16, 1981, which has been included as a note with the existing section 1122 regulations in Part 100 of the Code of Federal Regulations. The Secretary proposes to include this Policy in the regulations to give the public an opportunity to comment on whether this policy should be further revised.

The Secretary proposes to add § 125.115(f)(5) which would apply when either a health care facility declines to submit to the DPA an application for review as to consistency of a capital expenditure for which timely notice was not given or the DPA finds that the project does not conform to applicable plans, criteria and standards. In these cases, the Secretary would determine that reimbursement be withheld for an unlimited period. The Secretary may limit the period for which reimbursement will be withheld at a future date if one of the other provisions of § 125.115(f) becomes applicable.

Section 100.106(d) of the 1976 proposed regulations provided for a request for reconsideration within six months following the date of the Secretary's determination. To clarify when this six month period expires, the Secretary proposes to revise § 125.115(h) to require that the request for reconsideration must be received by the Secretary within six months of the date of the determination. The Secretary also proposes to change § 125.115(h) to specify those matters which the Secretary may consider upon a determination and reconsideration of that determination. The Secretary has added a provision to this section making it explicit that the Secretary does not review the correctness or adequacy of a DPA's finding as to conformity for purposes of the reconsideration determination.

Section 125.116 Continuing effect of determinations.

In § 125.116(a), the Secretary proposes to retain the provision establishing a one-year period (which may be extended for up to 6 months by the DPA on request) following a DPA's finding of consistency during which the approval remains in effect. However, the DPA would be able to apply a different time period if a different approval period has been established under a State certificate of need program.

The Secretary proposes under § 125.116(a)(2) to provide for the suspension of the approval period from the time the Secretary receives a request for reconsideration to the time notification of the decision is sent. This change would ensure that when a person requests the Secretary to reconsider a determination, the applicant will not risk the termination of the approval period if the applicant wishes to wait for the Secretary's decision upon reconsideration. This change would not prohibit an applicant from making a capital expenditure before a reconsidered determination is made. Nothing in the regulations prohibits an applicant from making a capital expenditure at any time. However, the applicant assumes a risk in doing so before the Secretary's determination concerning reimbursement under titles XVIII and XIX.

In order to provide the necessary incentive to applicants to complete needed projects within a reasonable period of time the Secretary proposes to require that applicants must begin construction projects within three years following the commencement of the approval period and must continue them with a reasonable date for completion. (See § 125.116(a)(5).) The DPA would determine whether the projected date of completion is reasonable and whether the approval period has terminated. If the approval period expires and the applicant then makes the capital expenditure, the Secretary would then be able to withhold reimbursement in accordance with § 125.115(a)(3).

Regulatory Flexibility Act and Executive Order 12291

The Department of Health and Human Services has determined that this proposed rule will not significantly

impact on small business, small entities, small organizational units, and small governmental jurisdictions. Therefore it does not require preparation of a Regulatory Flexibility Analysis under the Regulatory Flexibility Act, Pub. L. 96-354.

The Department also has determined that this proposed rule is not a "major rule" under Executive Order 12291, for which a regulatory impact analysis would be required because it will not:

(1) Have an annual effect on the economy of $100 million or more;

(2) Impose a major increase in costs or prices for consumers; individual industries; Federal, State or local government agencies; or geographic regions; or

(3) Results in significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States—based enterprises to compete with foreign—based enterprises in domestic or export markets.

We anticipate that these proposed rules will have no adverse cost implications to the planning agencies or to health care facilities. To the extent that section 1122 and certificate of need review requirements and procedures will be made more consistent by these proposed rules, planning agencies and health care facilities should realize administrative savings.

Recordkeeping and Reporting Requirements

This proposed rule contains information collection requirements. As required by the Paperwork Reduction Act of 1980, we are submitting a copy of this proposed rule to the Office of Management and Budget (OMB) for its review of these information collection requirements. Other organizations and individuals desiring to submit comments on these information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, New Executive Office Building (Room 3208), Washington, D.C. 20503, ATTN: Desk Officer for HHS.

List of Subjects in 42 CFR Part 100 and Part 125

Health planning, Health care.

Accordingly, it is proposed that (1) 42 CFR Part 125 be added as set forth below and (2) 42 CFR Part 100 be removed.

Dated: June 2, 1983.

Glenna M. Crooks,

Acting Assistant Secretary for Health.

Approved: June 23, 1983.

Margaret M. Heckler,

Secretary.

PART 100—[REMOVED]

Part 100 is removed.

Part 125 is added to Title 42 CFR, as follows:

PART 125—LIMITATION ON FEDERAL PARTICIPATION FOR CAPITAL EXPENDITURES

Sec.

Authority: Sec. 1122, Social Security Act, as amended, 97 Stat. 65-173, (42 U.S.C. 1320a-1); sec. 215, Public Health Service Act, 58 Stat. 690 (42 U.S.C. 216); and sec. 1501-1532, Public Health Service Act, as amended, 95 Stat. 570-578 (42 U.S.C. 300k-1-300n-1).

§ 125.101 Applicability and purpose.

The regulations of this part apply to agreements entered into by the Secretary with the various States and to determinations made by the Secretary under Section 1122 of the Social Security Act (42 U.S.C. 1320a-1). The purpose is to assure that Federal funds appropriated under titles XVIII and XIX of the Social Security Act are not used to support unnecessary capital expenditures made by or on behalf of health care facilities which are reimbursed under either of those titles and that, to the extent possible, reimbursement shall support planning activities with respect to health services and facilities in the various States.

§ 125.102 Definitions.

As used in this part:

"Act" means the Social Security Act, as amended (42 U.S.C. Chap. 7).

"Applicant" means a person who proposes a capital expenditure.

"Capital expenditure" means an expenditure which, under generally accepted accounting principles, is not properly chargeable as an expense of operation and maintenance and which meets at least one of the following conditions: It exceeds $600,000 (or such lesser amount as the State may establish), it changes the bed capacity of the health care facility with respect to which the expenditure is made, or it substantially changes the services of the health care facility. For purposes of this definition:

(a) The term "changes the bed capacity" of a health care facility refers to a capital expenditure which is associated with an increase in bed capacity under applicable State law or a relocation of beds from one physical facility or site to another.

(b) The term "substantially changes the services of a health care facility" refers to a capital expenditure which is associated with the addition of a clinically related (i.e., diagnostic, treatment, or rehabilitative) service not provided by or on behalf of the health care facility within the previous twelve months.

"Designated planning agency" or "DPA" means the agency of a State designated in the Agreement described in § 125.106 to carry out the functions of section 1122 of the Act in that State.

"Health care facility" or "facility" means a hospital, skilled nursing facility, kidney disease treatment center (including freestanding hemodialysis units), intermediate care facility, rehabilitation facility, or ambulatory surgical facility. It does not include Christian Science sanatoriums operated, or listed and certified, by the First Church of Christ, Scientist, Boston, Massachusetts. For purposes of this defintion:

(a) "Hospital" means an institution which primarily provides to inpatients by or under the supervision of physicians, diagnostic services and therapeutic services for medical diagnosis, treatment and care of injured, disabled, or sick persons, or rehabilitation services for the rehabilitation of injured, disabled, or sick persons. This term also includes psychiatric and tuberculosis hospitals.

(b) "Psychiatric hospital" means an institution which primarily provides to inpatients, by or under the supervision of a physician, specialized services for the diagnosis, treatment and rehabilitation of mentally ill and emotionally distrubed persons.

(c) "Tuberculosis hospital" means an institution which primarily provides to inpatients, by or under the supervision

of a physician, medical services for the diagnosis and treatment of tuberculosis.

(d) "Skilled nursing facility" means an institution or a distinct part of an institution which primarily provides to inpatients skilled nursing care and related services for patients who require medical or nursing care, or rehabilitation services for the rehabilitation of injured, disabled, or sick persons.

(e) "Intermediate care facility" means an institution which provides, on a regular basis, health-related care and services to individuals who do not require the degree of care and treatment which a hospital or skilled nursing facility provides, but who because of their mental or physical condition require health related care and services (above the level of room and board).

(f) "Rehabilitation facility" means an inpatient facility which is operated for the primary purpose of assisting in the rehabilitation of disabled persons through an integrated program of medical and other services which are provided under competent professional supervision.

(g) "Ambulatory surgical facility" means a facility, not a part of a hospital, which provides surgical treatment to patients not requiring hospitalization. This term does not include the offices of private physicians or dentists, whether for individual or group practice.

"Health service area" means an area designated by the Secretary under section 1511 of the Public Health Service Act as a health service area.

"Health systems agency" or "HSA" means an agency designated by the Secretary under section 1515 (b) or (c) of the Public Health Service Act.

"Secretary" means the Secretary of Health and Human Services and any other officer or employee of the Department of Health and Human Services to whom the authority involved has been delegated.

"State" means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

§ 125.103 Expenditures covered.

(a) All capital expenditures by or on behalf of health care facilities are subject to review under this part except as provided in paragraph (b) of this section.

Note.—Although all capital expenditures (as defined in § 125.102) by or on behalf of health care facilities are subject to section 1122 review, a DPA may under § 125.109(f) elect not to review a capital expenditure that would not be subject to review under the Department's certificate of need regulations (42 CFR 123.401 *et seq.*) unless that expenditures is reviewable under the State's certificate of need program. If a DPA elects not to review a capital expenditure on this basis, under § 125.115(e), the Secretary will not withhold reimbursement associated with that expenditure.

(1) A lease (or comparable arrangement) or donation of (i) a health care facility, (ii) a part of a health care facility, or (iii) equipment for a health care facility, shall be considered a capital expenditure by or on behalf of a health care facility if the lease (or comparable arrangement) or donation would have been considered a capital expenditure had the person acquired the facility or part thereof, or the equipment, by purchase.

(2) The costs of all planning and development activities (including studies, surveys, designs, plans, working drawings, specifications, financing arrangements, site acquisitions, and other activities related to the acquisition, improvement, expansion, or replacement or the health care facility or equipment concerned) shall be included in determining the cost of an expenditure.

(3) The acquisition of an existing health care facility, the fair market value of which exceeds $600,000 (or such lesser amount as the State may establish), is a capital expenditure and is subject to review under this part.

(4) A capital expenditure incurred by a person other than a health care facility is considered to be "on behalf of" that health care facility if it results in a change in the bed capacity of, or a substantial change in the services provided in, by, or through the facility or involves an expenditure of more than $600,000 (or such lesser amount as the State may establish) for the benefit of the facility.

(b) The following capital expenditures are exempt from review under this part:

(1) Capital expenditures for which an obligation was incurred at a time when no agreement under section 1122 was effective for the State.

(2) Capital expenditures for items included in a formal plan of expansion or replacement by or on behalf of a health care facility which (i) was providing health care services on December 18, 1970, (ii) was committed to the formal plan of expansion or replacement on that date, and (iii) had made preliminary expenditures of $100,000 or more toward that plan during the three year period that ended December 17, 1970.

(3) A capital expenditure made by or on behalf of a health care facility if 75 percent of the patients who can reasonably be expected to use the service with respect to which the capital expenditure is made will be individuals enrolled in an eligible organization as defined in section 1876(b) of the Act, and if the Secretary determines that such capital expenditure is for services and facilities which are needed by such organization in order to operate efficiently and economically and which are not otherwise readily accessible to such organization because (i) the facilities do not provide common services at the same site (as usually provided by the organization), (ii) the facilities are not available under a contract of reasonably duration, (iii) full and equal medical staff privileges in the facilities are not available, (iv) arrangements with such facilities are not administratively feasible, or (v) the purchase of such services is more costly than if the organization provided the services directly.

(c) Any change in an approved capital expenditure (including a change solely in the cost of an approved project) that meets the definition of capital expenditure under § 125.102 shall itself be considered a capital expenditure. When such a change is proposed, the DPA shall have the option either (1) to review the entire capital expenditure (i.e., the previously approved capital expenditure as so changed), or (2) to review only the change itself. However, a DPA may elect not to review either the proposed change or the entire revised capital expenditure if the change in the capital expenditure does not result in a change in bed capacity or a substantial change in services. This election not to review has the effect of a finding that the change in the proposed capital expenditure is consistent with applicable standards, criteria and plans.

§ 125.104 Procedures for determining whether an expenditure is subject to review.

(a) Any person may request that the DPA make a finding whether an expenditure is subject to section 1122 review. A finding by the DPA that an expenditure is not reviewable is not appealable and is binding on the Secretary.

(b) A finding by the DPA that a proposal is a capital expenditure subject to review under section 1122 may be appealed to the Secretary by the applicant. This appeal may be at any time before the expiration of the six month period for requesting the Secretary to reconsider a determination under this part (see § 125.115(g)). During the pendency of this appeal, at the request of the applicant, the running of

all time periods under § 125.109 and § 125.114 shall be suspended.

§ 125.105 Incurring an obligation.

(a) For purposes of this part, an obligation for a capital expenditure is considered to be incurred by or on behalf of a health care facility:

(1) When a contract, enforceable under State law, is entered into by or on behalf of the health care facility for the construction, acquisition, lease or financing of a capital asset; or

(2) When the governing board of the health care facility takes formal action to commit its own funds for a construction project undertaken by the health care facility as its own contractor; or

(3) In the case of donated property, on the date on which the gift is completed under applicable State law.

(b) The Secretary will not consider an obligation for a capital expenditure which is contingent upon issuance of a certificate of need or finding of consistency by the DPA to be incurred until the certificate of need is issued or the finding of consistency is made, unless the State certificate of need program expressly provides that this obligation is incurred on the date the contract is entered into, the governing board takes the formal action, or the gift is completed.

§ 125.106 Agreement.

After consultation with the Governor (or other chief executive officer) and with other appropriate public officials, the Secretary will make an Agreement with any State which is able and willing to do so, under which a DPA will perform the functions described in this part. The Agreement must require that the DPA will:

(a) Review each capital expenditure subject to review in accordance with this part;

(b) Submit to the Secretary, as directed by the Secretary, the following information with respect to each covered capital expenditure:

(1) The DPA's findings as described in § 125.112 and its recommendation as described in § 125.113;

(2) The findings and recommendations of the appropriate HSA or HSAs and of the agency of the State, if any, designated under section 604(a) of the Public Health Service Act;

(3) A detailed statement of the reasons for any findings it makes that is inconsistent with the finding made by the health systems agency or the goals of the applicable health systems plan or the priorities of the annual implementation plan of the appropriate HSA or HSAs; and

(4) Any supporting materials the Secretary may require;

(c) Keep records and accounts and furnish reports as may be required by the Secretary;

(d) Submit to the applicant, the appropriate HSAs and other affected persons the notices and statements, as required under this part; and

(e) Carry out the residual activities required by the Secretary in regard to expenditures subject to review in the event the Agreement is terminated, or not extended, by either the Secretary or the Governor.

§ 125.107 Designated planning agency.

(a) Where the Secretary has designated a State health planning and development agency (SHPDA) for a State under section 1521 of the Public Health Service Act, the SHPDA shall, except as authorized by 42 CFR 123.110, be the DPA. If no SHPDA is so designated, then section 1122(b) of the Act shall govern the designation of the DPA.

(b) The DPA shall have a governing body or advisory board at least half of whose members represent consumer interests. If the SHPDA is the DPA, the Statewide Health Coordinating Council (SHCC) shall be the advisory board.

§ 125.108 Adoption of review procedures.

(a) *General.* Each DPA shall adopt, publish, review and revise as necessary, procedures to govern its review of proposed capital expenditures under this part.

(b) The DPA, SHCC and the HSAs within the State shall cooperate in the development of procedures under this subpart to the extent necessary to achieve efficient reviews.

(c) Before adopting the review procedures required by this subpart or any revisions of the procedures, the DPA shall give interested persons an opportunity to offer comments on the procedures or any revisions thereof.

§ 125.109 Prodecures for designated planning agency review.

(a) *Procedures incorporated by reference.* The DPA shall conduct its reviews of capital expenditures in accordance with the following provisions of 42 CFR 123.410: Section 123.410(a)(1) (Schedules for submitting applications); § 123.410(a)(2) (Notification of the beginning of a review); § 123.410(a)(3) (Review period); § 123.410(a)(4) (Information requirements); § 123.410(a)(5) (Periodic reports); § 123.410(a)(6) (Written findings and conditions); § 123.410(a)(7) (Notification of the status of a review); § 123.410(a)(8) (Public hearing in the course of review); § 123.410(a)(9) (Ex parte contacts); § 123.410(a)(11) (Public hearings for reconsideration of a State Agency decision); § 123.410(a)(15) (Regular reports of the State Agency); § 123.410(a)(16) (Public access); § 123.410(a)(17) (Failure to act on an application within the required time); § 123.410(b) (Procedures may vary depending on particular review); and § 123.410(c) (Provision for HSA to perform certain of these functions in place of State Agency). Any exception to one of the above procedures that the Secretary grants to a State Agency for its certificate of need program shall also apply to the section 1122 review. For purposes of this part, the term "review" as it appears in those paragraphs of 42 CFR 123.410, refers to the review of a capital expenditure (as defined in § 125.102), and the term "State Agency" as it appears in those paragraphs refers to the DPA. (As to incorporation of § 123.410(a)(13), concerning hearings and § 123.410(a)(14) concerning judicial reviews, respectively, see § 125.114.)

(b) *Submission of application for proposed capital expenditures.* (1) The application must be submitted:

(i) To the DPA, in which case the DPA shall distribute copies to the appropriate HSA (or HSAs) and the agency, if any, designated under section 604(a) of the Public Health Service Act; or

(ii) Simultaneously to the DPA and the appropriate HSA(s), in which case the DPA will send a copy to the agency, if any, designated under section 604(a) of the Public Health Service Act.

(2) Except as provided in this subparagraph, the Secretary may determine under § 125.115 that reimbursement will be withheld from any person who incurs an obligation after submitting an application for review and before the DPA makes its findings. Expenditures for planning and predevelopment activities, if less than $600,000 (or such lesser amount as the State may establish) in total (and if permitted under a State's certificate of need law) may be made before submission of this notice, even though the total cost of the proposed capital expenditure, including the planning and predevelopment costs, will exceed $600,000 (or such lesser amount as the State may establish).

(c) *Abeyance of review period and notice of review findings.* (1) The DPA and applicant, by mutual consent, may hold in abeyance the running of the review period.

(2) The DPA shall send to the applicant the following: Its finding, as described in § 125.112; its recommendation, as described in

§ 125.113; the findings and recommendations of the other agencies consulted; and a statement giving the applicant, where appropriate, an opportunity for review of the DPA's findings, in accordance with § 125.114. The DPA shall send a copy of these materials to the appropriate HSA and the Secretary.

(d) *Obligation incurred without designated planning agency review.* (1) Where the DPA believes that a person has incurred an obligation for a capital expenditure (as defined in § 125.102) by or on behalf of a health care facility without submitting an application to the DPA for review of the capital expenditure (or that a previously approved expenditure was changed in such a way that would require review under § 125.103(c)), the DPA shall send written notice to the health care facility of its proposed finding that an obligation for a capital expenditure subject to this part was incurred without submitting a timely application to the DPA. The DPA shall allow the health care facility 30 days following the date of that notice to comment on its proposed finding.

(2) After considering any comments submitted by the health care facility, the DPA shall send, within 30 days of receiving the facility's comments, a written notice of its findings to the health care facility. If this finding is that a capital expenditure subject to review under this part was made without review, the DPA shall request at the same time that the health care facility submit an application for review in accordance with § 125.109(b)(1).

(3)(i) If a complete application for review is submitted within 60 days of the DPA's request under paragraph (d)(2) of this section, the DPA shall review it is accordance with the procedural requirements of this part and shall submit to the Secretary (A) its finding that an obligation for a capital expenditure reviewable under this part was incurred without DPA review, (B) its finding whether the expenditure is consistent with the applicable standards, criteria, and plans which are in effect at the time of review, and (C) the recommendation described in § 125.113.

(ii) If an application is not submitted, the DPA shall so notify the Secretary.

(iii) In either case (or if the DPA fails to take the action described in this paragraph), the Secretary will make a determination concerning the withholding of reimbursement under § 125.115(e).

(e) *Revision of proposed capital expenditure.* An applicant may submit a revised application at any time before the date the DPA makes its findings under § 125.112. After consulting with the appropriate HSA(s), the DPA shall determine whether the revisions are substantial. If the DPA determines that the revisions are substantial, the DPA shall treat the revised application as a new application.

(f) *Election not to review.* The DPA may elect not to review any capital expenditure which would not be subject to review under the Department's certificate of need regulations at 42 CFR 123.401 *et seq.* unless the expenditure is reviewable under that State's certificate of need program. The capital expenditures that the DPA may elect not to review include (1) expenditures that are less than the expenditure minimum (See § 123.404(a)(1)); (2) acquisitions of health care facilities, except as provided in § 123.404(a)(5); (3) certain activities by health maintenance organizations that are exempt from review under § 123.405(b); (4) certain research activities that are exempt under 123.406(d); and (5) changes in the bed capacity of a facility that are associated with capital expenditures that are not reviewable under the State's certificate of need program or the Department's certificate of need regulations.

§ 125.110 Exceptions to procedures.

(a) At the request of the DPA, the Secretary may grant an exception to any procedure under this part (except one required by section 1122 of the Act) if the Secretary determines that: (1) The exception is for the purpose of obtaining consistency with a State certificate of need program, or (2) the granting of an exception is consistent with section 1122 of the Act and will not adversely and substantially affect the rights of affected persons.

(b) The provisions of § 123.411 for obtaining an exception to the use of procedures and for providing notice of approved exceptions shall apply to exceptions under this part.

§ 125.111 Criteria for agency review.

The DPA shall publish, and update as appropriate, (a) a list of the standards, criteria, and plans developed under the Public Health Service Act to meet the need for adequate health care facilities and (b) a statement identifying the location and availability of the texts of these standards, criteria, and plans. The DPA shall use these standards, criteria, and plans in conducting its reviews under this part. These criteria shall include the criteria developed by the State Health Planning and Development Agency for its certificate of need program, including those criteria based on the considerations in § 123.412 of this title.

§ 125.112 Findings of the designated planning agency.

(a) The findings of the DPA (or the appropriate reviewing agency or person, upon appeal) must be in writing and must include:

(1) Whether the person incurred an obligation for the capital expenditure before the DPA made its finding; and

(2) Whether the capital expenditure is consistent with the standards, criteria, and plans referred to in § 125.111.

(b) In reaching its findings, the DPA shall consult with, and take into consideration the findings and recommendations of the appropriate HSA (or HSAs) if any, and the agency of the State, if any, designated under section 604(a) of the Public Health Service Act.

(c) The DPA may not make conditional or partial findings. However, if a proposed capital expenditure is separable into distinct components which themselves meet the definition of a capital expenditure subject to review, the DPA may make the findings described in paragraph (a) or paragraph (b) of this section for each of these components.

§ 125.113 Recommendation of the designated planning agency.

(a) If the DPA finds that a capital expenditure is not consistent with the standards, criteria, or plans described in § 125.111 or that an obligation for a capital expenditure was incurred before the date the DPA made its findings, the DPA shall submit to the Secretary its recommendation as to whether the Secretary should withhold reimbursement for the expenses related to the capital expenditure.

(b) Despite a finding of inconsistency, the DPA may recommend to the Secretary that reimbursement not be withheld only if the DPA submits its finding, together with any supporting material which the Secretary may require, that:

(1) The health care facility has demonstrated proof of capability to provide comprehensive health care services (including institutional services) efficiently, effectively, and economically, and that the exclusion of these expenses would discourage the operation or expansion of the health care facility;

(2) The exclusion of these expenses would be inconsistent with the effective organization and delivery of health services; or

(3) The exclusion of these expenses would be inconsistent with the effective administration of title XVIII or XIX of the Act.

§ 125.114 Review of the designated planning agency's findings; fair hearing and judicial review.

(a) The DPA shall grant a fair hearing to any affected person, as defined in 42 CFR 123.401, requesting review of the DPA's findings.

(1) This hearing shall be conducted by (i) an entity of the State other than the DPA that did not advise the DPA on the proposal during the DPA's review or (ii) if permitted by State law, a person within the DPA who, or component of the DPA which, (A) did not participate in making the section 1122 findings and (B) has the authority to make a final decision on the appeal.

(2) The DPA shall establish and maintain procedures for holding these hearings that conform to the requirements of 42 CFR 123.410(a)(13) and any applicable provisions of State law governing the practices and procedures of administrative agencies.

(3) The hearing body or officer may remand the matter to the DPA for further action or consideration if applicable State law permits.

(4) The fair hearing body or officer, except when remanding the matter to the DPA, is limited to deciding (i) whether the person or agency requesting the hearing has established that the DPA's finding regarding the consistency of the capital expenditure with the applicable standards, criteria, and plans was incorrect; and (ii) for purposes of advising the Secretary, whether the DPA adhered to procedural requirements of this part. The fair hearing body or officer may not make findings as to correctness, adequacy, or appropriateness of the standards, criteria, and plans against which the expenditure was measured. In addition, the hearing body or officer is limited to considering the capital expenditure, without revision, upon which the hearing was requested.

(5) The hearing body or officer may not make a conditional or partial decision.

(6) The hearing officer's decision must be submitted to the DPA and the Secretary in the form and manner prescribed by the Secretary.

(7) The DPA shall send the written findings of the hearing officer to the applicant, the person requesting the review, the appropriate health systems agency, and to others upon request.

(b) There must be provision for any person adversely affected by the findings of the hearing officer or any person who participated in the proceeding before the DPA to obtain judicial review of that finding in accordance with 42 CFR 123.410(a)(14).

(c) Any decision of a hearing officer or a court arrived at in accordance with this section which reverses a finding of the DPA under § 125.112(a)(2) or of the hearing officer, supersedes that finding.

§ 125.115 Determinations by the Secretary.

(a) *Initial determination as to withholding.* Except as provided in paragraphs (d) and (e) of this section, the Secretary will (for the period the Secretary deems necessary to effectuate the purposes of section 1122 of the Act), in determining the Federal payments to be made under titles XVIII and XIX of the Act, withhold reimbursement for expenses related to the capital expenditure, if the Secretary determines that:

(1) An obligation for the capital expenditure was incurred before the DPA sent written notice of its findings to the applicant; or

(2) The final State finding made in accordance with requirements of section 1122 of the Act was that the expenditure is not consistent with the standards, criteria, or plans described in § 125.111; or

(3) The obligation for the capital expenditure was incurred after approval of the proposed capital expenditure expired in accordance with § 125.116.

(b) *Changes in approved capital expenditures.* As provided in § 125.103(c), when a change in an approved capital expenditure that meets the criteria for review set forth in §125.103 has been made, the DPA may review either (i) the total capital expenditure (including the change) or (ii) the change itself.

(1) The Secretary will, in determining the Federal payments to be made under titles XVIII and XIX, withhold reimbursement for expenses related to the entire capital expenditure if:

(i) The applicant fails to submit this change to the DPA for review, or

(ii) The DPA elects to review the entire capital expenditure and the Secretary makes a determination to exclude expenses under paragraph (a) of this section.

(2) The Secretary will withhold reimbursement for expenses related only to the change in an approved capital expenditure if the DPA elects to review only this change and the Secretary makes a determination to withhold under paragraph (a) of this section.

(c) *Leases or comparable arrangements and donations.* (1) When the Secretary determines under this section that reimbursement for expenses related to a lease or comparable arrangement will be withheld from Federal payments to be made under titles XVIII and XIX, the Secretary will (i) in computing the person's rental expense, deduct the amount that would have been withheld if the person had acquired the health care facility or equipment by purchase; and (ii) in computing the person's return on equity capital, deduct any amount deposited under the terms of the lease or comparable arrangement.

(2) When the Secretary determines under this section that reimbursement related to an acquisition by donation will be withheld from Federal payments to be made under titles XVIII and XIX, the Secretary will exclude from reimbursement any amount claimed for depreciation of the health care facility or equipment and other costs related to the acquisition.

(d) *Exception to withholding.* The Secretary will, in determining Federal payments to be made under titles XVIII and XIX, include reimbursement, either in whole or in part, for expenses related to a capital expenditure which would otherwise be withheld under paragraph (a), (b), or (c) of this section if, after submitting the matters involved to the National Council on Health Planning and Development (established under section 1503 of the Public Health Service Act) and after taking into consideration the recommendations of the DPA and the appropriate HSA (or HSAs), the Secretary determines that:

(1) The health care facility has demonstrated proof of capability to provide comprehensive health care services (including institutional services) efficiently, effectively, and economically, and that the exclusion of these expenses would discourage the operation or expansion of the health care facility; or

(2) The exclusion of these expenses would be inconsistent with the effective organization and delivery of health services; or

(3) The exclusion of these expenses would be inconsistent with the effective administration of title XVIII or XIX of the Act.

(e) *Elections not to review.* The Secretary will, in determining Federal payments to be made under titles XVIII and XIX, not exclude reimbursement for expenses related to a capital expenditure which the DPA has elected not to review under § 125.109(f).

Note.—The Secretary will not determine under § 125.115(e) that reimbursement will be included if the DPA made an election not to review which was not in accordance with the provisions of § 125.109(f).

(f) *Period of withholding for obligation incurred before completion of designated planning agency review.*

Where the Secretary makes the determination described in paragraph (a)(1) of this section, the time period for which reimbursement will be withheld will be as follows:

(1) Where the health care facility by or on behalf of which the expenditure was made demonstrates to the satisfaction of the Secretary that a reasonable effort has been made to determine from the designated planning agency whether the expenditure was subject to review, and the designated planning agency had not informed the facility within a reasonable period of time that the proposed expenditure was subject to review, the Secretary will not withhold reimbursement related to the capital expenditure.

(2) Where the designated planning agency has, in accordance with the requirements of section 1122 of the Act and this part, submitted to the Secretary its finding that such expenditure is not consistent with the standards, criteria, or plans described in § 125.111, and where paragraph (f)(1) of this section is not applicable, the Secretary will withhold all reimbursement related to the capital expenditure: *Provided*, That where the designated planning agency, in accordance with § 125.116(c), submits to the Secretary a revised finding in accordance with paragraph (c)(2) of that section, the Secretary will apply the provisions of paragraph (f)(3) or paragraph (f)(4) of this section, whichever is applicable.

(3) Where the designated planning agency makes a finding that the capital expenditure is consistent with the standards, criteria, and plans and recommends to the Secretary that no withholding of reimbursement occur, the Secretary will not withhold reimbursement related to the capital expenditure.

(4) Where the designated planning agency submits to the Secretary its findings that the capital expenditure is consistent with the standards, criteria, and plans described in § 125.111 which apply at the time of the review by the designated planning agency, but the provisions of neither paragraph (f)(1) nor paragraph (f)(3) of this section apply, the Secretary will withhold reimbursement related to the capital expenditure for a period of one year.

(5) In all other cases, the Secretary will withhold reimbursement without time limit. The Secretary may modify this determination if at a later date it is determined that another provision of this paragraph applies.

(g) *Notice of determination.* Upon making a determination under this section, the Secretary will promptly notify the applicant or person making the expenditure, the DPA, and the appropriate HSA (or HSAs) of the determination and the basis for it.

(h) *Reconsideration by the Secretary.* (1) Any person dissatisfied with a determination by the Secretary under this part with respect to a particular capital expenditure may request the Secretary to reconsider the determination in regard only to the following: (i) Whether the proposed capital expenditure is subject to review under this part; (ii) whether the DPA had made the required findings before the applicant incurred the obligation; (iii) whether the final State finding regarding consistency was made in accordance with requirements of section 1122 of the Act and these regulations; and (iv) whether the final State finding was that the proposed capital expenditure is consistent with the applicable standards, criteria and plans. The Secretary will not review the final State finding that a capital expenditure is or is not consistent with the applicable standards, criteria, and plans.

(2) To be effective, the request must be received by the Secretary within 6 months of the date of the Secretary's determination. The request for reconsideration must be in writing, addressed to the Secretary or to any officer or employee of the Department of Health and Human Services to whom the Secretary has delegated responsibility to receive these requests, and must set forth the grounds based upon the record of proceedings and any issues of law upon which the reconsideration is requested.

(3) Reconsideration will be based upon the record of the proceedings, which shall consist of the findings, recommendations and supporting materials submitted to the Secretary by the DPA (including the findings and recommendations of other agencies) which relate to the findings and recommendations involved, the record of the hearing (if any) provided by the DPA, the record of any judicial proceedings, the materials submitted in connection with the request, and any relevant written information the Secretary may receive from any person.

(4) The Secretary will send written notification of any reconsidered determination under this paragraph to the DPA, the appropriate HSA (or HSAs), the applicant or the person making the capital expenditure, and the person requesting the reconsideration.

(i) *Non-reviewability of the Secretary's determinations.* The Secretary's determinations under this part are not subject to administrative review (other than reconsiderations under paragraph (h) of this section) or judicial review.

§ 125.116 Continuing effect of determinations.

(a) *Period for incurring obligation.* (1) Except in the case of a long-term plan for capital expenditures described in paragraph (b) of this section, where the DPA has found that a proposed capital expenditure is consistent with the standards, criteria, and plans described in §125.111, the obligation for the capital expenditure must be incurred (i) not more than one year following the date of this finding (or the final State finding where the DPA's finding was subject to administrative or judicial review), or (ii) within any different period established under the appropriate State certificate of need program. In the absence of any State law to the contrary, the DPA may, before the end of the original period, extend that period for up to an additional six months for good cause shown by the applicant.

(2) The running of any of the time periods described in paragraph (a)(1) of this section will be suspended from the date the Secretary receives a timely request for reconsideration under § 125.115(h) to the date the Secretary sends written notification of the reconsidered determination to the person requesting the reconsideration.

(3) If the appropriate period for incurring the obligation for the capital expenditure expires and no obligation (as provided by § 125.105) or no obligation other than for financing of the capital expenditure, has been incurred, the DPA's approval expires and the capital expenditure is again subject review under this part.

(4) If obligations for only part of the capital expenditure have been incurred within the appropriate period, the DPA's approval expires with respect to the part of the capital expenditure for which no obligation was incurred. In this event, the DPA shall so notify the Secretary, the applicant and the appropriate HSA.

(5) The DPA's approval expires if a construction project (i) is not begun within three years of the date the approval period commences, or within any different period established under the State certificate of need program, or (ii) does not continue with a reasonable date for completion. In this event, the DPA shall so notify the Secretary, the applicant, and the appropriate HSA.

(b) *Long-term plan for capital expenditures.* In the case of any plan for capital expenditures proposed by or on behalf of a health care facility under which a series of capital expenditures for discrete components of the plan is to

be incurred over a period longer than one year, the DPA may approve for purposes of this part those capital expenditures which are proposed to be made within a period of up to five years following the final State finding. This approval shall expire at the end of the period established by the DPA.

(c) *Subsequent review by the designated planning agency.* (1) In any case in which the DPA has found that a capital expenditure is not consistent with the applicable standards, criteria, or plans described in § 125.111, the applicant is entitled, upon submitting a written request to the DPA in the form and manner specified by the DPA, to another review by the DPA of the application:

(i) Whenever the DPA determines that there is a substantial change in existing or proposed health facilities or services of the type proposed, in the area served or proposed to be served by the applicant; or

(ii) Whenever the DPA determines that there has been a substantial change in the need for facilities or services of the type proposed, in the area served or proposed to be served by the applicant, as reflected in the standards, criteria, and plans referred to in § 125.111; or

(iii) At any time following the expiration of three years from the date of the most recent finding of the DPA under this part.

(2) (i) If the DPA finds that the capital expenditure is consistent with the standards, criteria, and plans described in § 125.111, it shall promptly so notify the Secretary, the appropriate agencies, and the applicant, including a written, detailed statement of the reasons for this finding.

(ii) If the DPA, upon review, reaffirms its previous finding, the procedures set forth in § 125.114 following an initial determination must be followed.

APPENDIX I—NEW SECTION 1122 REGULATIONS MATCHED WITH NOV. 13, 1973, REGULATIONS

Subject matter	Revised proposed regulations (Section)	Nov. 13, 1973, regulations (Section)
Applicability	125.101	100.101.
Definitions	125.102	100.102.
Expenditures covered	125.103	100.103.
Operating definition of "capital expenditure"	125.102, 125.103(a), (1) and (3)	100.103(a)(1).
Planning and development activities	125.103(a)(2)	100.103(a)(2)(ii).
Estimated project cost under $100,000 as:		
Certified by licensed architect or engineer	Deleted	100.103(a)(2)(ii).
Change in bed capacity	125.102(a)	100.103(a)(2)(iii).
Change in services	125.102(b)	100.103(a)(2)(iv).
Change in proposed capital expenditure	125.103(c), 125.115(b)	100.102(a)(2)(v).
Capital expenditures "on behalf of" health care facility	125.103(a)(4)	100.103 (introductory paragraph).
Lease arrangement or donations	125.103(a)(1)	100.103(b).
Determination of Federal payments in lease arrangement	125.115(c)(1)	100.103(b)(1).
Exclusion from Federal reimbursement in the case of a donation	125.115(c)(2)	100.103(b)(2).
Acquisition of an existing health care facility	125.103(a)(3)	100.103(a) (see preamble 38 FR 31380 Nov. 13, 1973).
Effect of DPA finding that proposal is not a capital expenditure subject to review	125.104(a)	100.103(d).
DPA finding that proposal is a capital expenditure subject to review may be appealed to Secretary.	125.104(b)	100.103(d).
When is an obligation incurred	125.105	100.103(c).
Incurred obligation for a capital expenditure	125.105	100.103(c).
Enforceable contract as an obligation	125.105(a)(1)	100.103(c)(1).
Governing board action (force account)	125.105(a)(2)	100.103(c)(2).
Donated property	125.105(a)(3)	100.103(c)(3).
Obligations contingent upon section 1122 finding or certificate of need	125.105(b)	Not included.
Agreement: General	125.106	100.104.
DPA review of each capital expenditure	125.106(a)	100.104(a).
DPA submission of findings	125.106(b)	100.104(a).
Keeping records and accounts	125.106(c)	Not included.
Reporting requirements for the DPA	125.106 (d) and (e)	100.104.
Residual activities upon termination of program	125.106(f)	Not included.
Agreement: Designated planning agency	125.107	100.105.
Designation of DPA	125.107(a)	100.105(a).
DPA governing body (SHCC advisory body)	125.107(b) revised proposed	100.105(b), Nov. 13, 1973.
Agreement: Adoption of review procedures and exceptions to use of procedures: General	125.108	100.106.
Adoption and distribution of review procedures	125.108(a)	100.106(a) (1) and (2).
Exceptions to adoption and distribution request	125.108(b)	Not included.
Agreement: Procedures for designated planning agency review	125.109	100.106.
Procedures incorporated by reference	125.109(a)	Not included.
Submission of application for proposed capital expenditures	125.109(b)	100.106(a) (1) and (2).
Review period	125.109(c)	100.106(a)(3).
Time period allotted for HSA review	125.109(a) (see § 123.410(a)(3)(ii)	Not included.
Length of time of review and DPA notification of finding	125.109 (a) and (c)	100.106(a)(4).
Abeyance of review period	125.109(c)(1)	Not included.
DPA dissemination of findings and recommendations	125.109(c)(2)	100.106(a)(5).
Obligation incurred without submission of application	125.109(d)	Not included.
Revision of proposed capital expenditure	125.109(e)	100.103(a)(2)(v)
Agreement: Exceptions to procedures	125.110	Not included.
Agreement: Criteria for agency review	125.111	100.107.
Findings of the designated planning agency	125.112	100.104(a).
Applicant notifying DPA of proposed capital expenditure (timely notice)	125.112(a)(1), 125.109(b)(2)	100.104(a)(1) and 100.106(a)(1).
Consistency with standards, criteria, and plans	125.112(a)(2)	100.104(a)(2).
Findings and recommendations of other agencies	125.112(b)	100.104 (a)(2)(i), (c) and (d)
Conditional findings	125.112(d)	Not included.
Recommendation of the designated planning agency	125.113	100.104(b).
Recommended exclusion of expenses	125.113(a)	100.104(b)(1).
DPA recommendation to Secretary	125.113	100.104(b).
Recommendation not to exclude expenses	125.113(b) (1), (2), and (3)	100.104(b)(2).
Review of the designated planning agency's findings and recommendation: Fair hearing and judicial review.	125.114	100.106(c).
Opportunity for fair hearing person or agency	125.114(a)	100.106(c).
Conducting fair hearing	125.114(a)	100.106(c)(2).
DPA decision modified by hearing officer decision	125.114(b)	100.106(c)(4).
Fair hearing decision time limit	125.114(a)	100.106(c)(3).
Judicial review	125.114(b)	100.106(c)(5).
Determination by the secretary	125.115	100.108
Bases for withholding reimbursement	125.115(a) (1), (2), and (3)	100.108(a).

APPENDIX I—NEW SECTION 1122 REGULATIONS MATCHED WITH NOV. 13, 1973, REGULATIONS—Continued

Subject matter	Revised proposed regulations (Section)	Nov. 13, 1973, regulations (Section)
Period of withholding for changes in approved proposed capital expenditures	125.115(b)	Not included.
Leases or comparable arrangements and donations	125.115(c) (1) and (2)	100.103(B)(1).
Exceptions to withholding	125.115(d)	110.108.
(Section 1122(d)(2)) withholding for obligations incurred before DPA finding	125.115(e)	Not included (see note following 42 CFR 100.108).
Notice of determination	125.115(f)	100.108(c).
Reconsideration by the Secretary	125.115(h)	100.108(d).
Form of reconsideration request	125.115(h)(2)	100.108(d)(1).
Basis of reconsideration determination	125.115(h)(3)	100.108(d)(2).
Notification of reconsideration determination	125.115(h)(4)	100.108(d)(3).
Non-reviewability of the Secretary's determination	125.115(i)	100.108(e).
Reimbursement in the case of a donation	125.115(c)(2)	100.103(b)(2).
Acquisition of an existing health care facility	125.103(a)(3)	100.103(a) (see preamble 38 FR 31380 Nov. 13, 1973).
Effect of DPA finding that proposal is not a capital expenditure subject to review	125.104(a)	100.103(d).
DPA finding that proposal is a capital expenditure subject to review may be appealed to Secretary.	125.104(b)	100.103(d).
When is an obligation incurred	125.105	100.103(c)
Incurred obligation for a capital expenduture	125.105	100.103(c).
Enforceable contract as an obligation	125.105(a)(1)	100.103(c)(1).
Governing board action (force account)	125.105(a)(2)	100.103(c)(2).
Donated property	125.105(a)(3)	100.103(c)(3).
Obligations contingent upon section 1122 finding or certificate of need	125.105(b)	Not included.
Agreement: General	125.106	100.104.
DPA review of each capital expenditure	125.106(a)	100.104(a).
DPA submission of findings	125.106(b)	100.104(a).
Keeping records and accounts	125.106(c)	100.110(d).
Reporting requirements for the DPA	125.106(d)	100.104.
Residual activities upon termination of program	125.106(e)	Not included.
Continuing effects of determinations	125.116	100.109.
Duration of DPA's approval	125.116 (a)(1) and (b)	100.109(a).
Time period suspension following request for reconsideration	125.116(a)(2)	Not included.
Action necessary for exercising approval	125.116(a) (3) and (4)	100.109(a).
DPA approval expires, failure to proceed on construction project	125.116(a)(5)	Not included.
Long-term plan for capital expenditures	125.116(b)	100.109(b).
Circumstances warranting re-review of the DPA	125.116(c)(1) (i), and (iii)	100.109(c)(1) (i) and (ii).
Re-review finding of conformity	125.116(c)(2)(i)	100.109(c)(2)(i).
Reaffirmed previous finding	125.116(c)(2)(ii)	100.109(c)(2)(ii).
Determination of future payments	125.115(e)(4)	100.109(c)(3).
Subsequent review by the DPA	125.116(c)	100.109(c).

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42 CFR Parts 122 and 123

Health Systems Agency and State Health Planning and Development Agency Reviews; Certificate of Need Programs

AGENCY: Public Health Service, HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Assistant Secretary for Health, with the approval of the Secretary of Health and Human Services, proposes to amend the regulations governing certificates of need reviews by State health planning and development agencies (State Agencies) and health systems agencies (HSAs). The proposed amendments would accomplish two tasks: (1) Implement amendments to the Public Health Service Act made by the Health Programs Extension Act of 1980 (Pub. L. 96–538) and the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97–35) and (2) reduce Federal regulatory burdens. Under the provisions of Title XV of the Public Health Service Act, the planning agencies are required to administer certificate of need programs consistent with the Secretary's regulations, under which they review and determine the need for proposed capital expenditures, institutional health services and major medical equipment. These regulations set forth proposed changes to the requirements for satisfactory certificate of need programs. Interested persons are invited to submit written comments and recommendations concerning these proposed rules as well as suggestions for alternative methods of implementing any of the provisions of the amendments that affect the requirements for certificate of need programs.

DATE: The Secretary will consider comments received on or before October 11, 1983.

ADDRESS: Interested persons may submit written comments and recommendations on the proposed regulations to: John M. Heyob, Acting Associate Director for Health Planning, Bureau of Health Maintenance Organizations and Resources Development, 5600 Fishers Lane, Room 13A–56, Rockville, Maryland 20857.

All comments received in timely response to this document will be considered and will be available for public inspection at the above address between the hours of 8:30 a.m. and 5 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. Jon Gold, Director, Division of Regulatory Activities, Office of Health Planning, Bureau of Health Maintenance Organizations and Resources Development, 5600 Fishers Lane, Room 13A–44, Rockville, Maryland 20857, (301) 443–6350.

SUPPLEMENTARY INFORMATION: The present regulations governing certificate of need programs (42 CFR 122.301 et seq. and 123.401 et seq., 45 FR 69740–69773) are proposed to be revised to implement recent changes to Title XV of the Public Health Service Act ("the Act") that affect the requirements for those programs and to reduce Federal regulatory burdens.

The statutory changes were enacted by the Health Programs Extension Act of 1980 (Pub. L. 96–538) and the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97–35). This proposal is consistent with the goals of the Presidential Task Force on Regulatory Relief to review the health planning regulations for purposes of reducing the regulatory burdens they impose. In addition, the proposal would implement the Department of Health and Human Services' goal of reducing regulatory burden by allowing the States

maximum flexibility in operating their State certificate of need programs.

Under section 1523(a)(4)(B) of the Act, as amended (42 U.S.C. 300m-2(a)(4)(B)), State Agencies are required to administer certificate of need programs which (1) apply to the obligation of capital expenditures, the offering of new institutional health services, and the acquisition of major medical equipment, and (2) are consistent with standards established by the Secretary by regulation. The changes made in 1980 and 1981 by Pub. L. 96-538 and Pub. L. 97-35, respectively, to the existing certificatef of need program are primarily technical in nature. The basic requirements for satisfactory certificate of need programs, which were established by the National Health Planning and Resources Development Act of 1974 (Pub. L. 93-641) and amended by the Health Planning and Resources Development Amendments of 1979 (Pub. L. 96-79), have been retained. The 1980 and 1981 statutory amendments (1) raise the minimum thresholds for proposed projects which are required to be subject to review, (2) permit States to exempt from review certain projects which are solely for medical research purposes, (3) modify the requirements for a health maintenance organization (HMO) or combination of such organizations to qualify for an exemption of certain projects from the certificate of need program, and (4) make other minor changes.

In addition, for the purpose of reducing Federal regulatory requirements, the Secretary is proposing to give State Agencies greater discretion to determine (1) the types of projects which will be covered, (2) the procedures followed, and (3) the criteria these agencies will consider in their review of applications.

To allow the States maximum flexibility to develop certificate of need programs to meet the needs of their local and State communities, the Secretary proposes to eliminate most of the provisions in the existing regulations which are not specifically required by the statute. The Secretary proposes to delete these provisions to give States additional flexibility in their certificate of need programs.

The Secretary proposes to retain the requirements that HSAs make written recommendations and State Agencies make specific written findings on criteria for need and access (§ 123.412(a)(5) and (6)). These requirements are being retained because equal access to quality health care at a reasonable cost is a primary goal of the health planning program. Although written recommendations and findings are not specifically required by statute, the goal of achieving equal access to health care was clearly established in the legislative history of the law and these requirements help ensure that access issues are fully considered before a certificate of need is issued.

State agencies are required, among other things, to administer satisfactory certificate of need programs in order to be fully designated under section 1521(b)(3) of the Act. Under section 1521(d), the continued eligibility of the State and of entities within the State for certain Federal health funds depends on there being a fully designated State Agency by a date determined by the State's legislative schedule. This date is for most States two years after the start of the first regular State legislative session which begins after December 17, 1980. This date for most States was between January 1983 and April 1983.[1]

As noted above, in 1980 and 1981 there were two statutory amendments (Pub. L. 96-538 and Pub. L. 97-35) modifying the regulatory requirements for satisfactory certificate of need programs. As noted earlier, although section 1521(b) currently requires States to have a satisfactory certificate of need program, Section 101(e) of Pub. L. 97-377, the continuing resolution appropriating funds for the Department during Fiscal Year 1983, prohibits the Secretary from imposing a penalty on a State under section 1521(d) and from terminating an agency's designation agreement. Since this prohibition applies only through September 30, 1983, absent further legislation, States that are not fully designated on that date may be subject to this penalty and termination of their SHPDA conditional designation agreements. If the proposed regulations are not adopted in final form by September 30, 1983, those regulations published in the **Federal Register** on October 21, 1980 (45 FR 69740), as modified by the two statutory amendments mentioned above, will prevail. States should bear in mind that with the exception of a minor change to the exemption applicable to HMO projects, Pub. L. 96-538 and Pub. L. 97-35 liberalized the minimum requirements for State certificate of need programs. As a result, any State that met the requirements of the regulations prior to the enactment of these statutory amendments would continue to meet the new requirements. Of course, a State that amended its certificate of need law to be consistent with the 1980 and 1981 statutory amendments would still meet the Federal certificate of need program requirements.

This Notice proposes to revise the regulations for both HSA and State Agency reviews under certificate of need programs (Part 122, Subpart D, and Part 123, Subpart E, respectively). Except where otherwise noted, discussion in this Preamble of provisions in the State Agency regulations applies to HSA reviews as well. Set forth below is a summary of the major proposed changes to the regulations. The Secretary invites public suggestions on how the regulations can be further simplified and clarified. The public should be aware, however, that the Secretary has no authority to remove from the requirements for certificate of need programs any provisions required by the statute.

Definitions (§ 123.401)

Person and effected persons. To give States more flexibility and to reduce overly burdensome Federal regulation, the definitions of "person" and "affected persons" have been deleted.

Expenditure minimums. To conform with Pub. L. 97-35, the Secretary proposes to replace the $150,000 figure at both places it appears in the definition of the "expenditure minimum for capital expenditures" with $600,000. In like manner the Secretary proposes to replace the $75,000 figure at both places it appears in the definition of "expenditure minimum for annual operating costs" with $250,000. Both of these figures may be adjusted to reflect changes since October 1979 in a specified cost index. Any State Agency with the authority to do so may adjust these figures as specified below, in the proposed rules and in the Notice published in the **Federal Register** on April 11, 1983 (48 FR 15539).

The Secretary is proposing to continue using the Department of Commerce Composite Construction Cost Index for both the capital and annual operating expenditure minimums. States that currently use the Department of Commerce Cost Index to change the above expenditure minimums can adjust the new minimums by increasing the capital expenditure amount to $695,285 and by increasing the annual operating cost amount to $289,782. (See **Federal Register** published on April 11, 1983, 48 FR 15539.)

To conform with Pub. L. 97-35, the Secretary proposes to replace the $150,000 figure in the definition of "major medical equipment" with

[1] In Pub. L. 97-377, the Department's continuing resolution for Fiscal Year 1983, the Congress prohibited the imposition of this sanction under section 1521(d) through September 30, 1983.

$400,000. The statute does not authorize an adjustment to this figure. In addition, the definition of "major medical equipment" has been changed be deleting "a single unit" and "single system" to give States the flexibility to define the term to meet their program needs.

Scope of Certificate of Need Programs (§ 123.404)

Capital expenditures that exceed the expenditure minimum (§ 123.404(a)(1)). The proposed regulations would delete the non-statutory language in this subsection as well as the explanatory note following the subsection. The non-statutory language prescribed that the cost of "staff effort and consulting and other services" be included as "other activities" in the calculation of a capital expenditure. The deletion of these specific factors allows the States the flexibility to determine what factors, if any, they wish to consider as "other activities" in calculating the amount of a capital expenditure.

Bed capacity (§ 123.404(a)(2)). The Secretary is proposing to follow the statutory language of the Act at section 1431(6). The proposed regulations would eliminate the existing regulatory definition of a substantial change in beds, which requires that the obligation of any capital expenditure by or on behalf of a health care facility which increases or decreases the total number of beds (or redistributes beds among various categories or relocates beds from one physical facility to another) by ten beds or ten percent be subject to certificate of need review. The proposal would instead allow each State to determine what would be considered a substantial change in bed capacity.

Health services (§ 123.404(a)(3)). The proposed regulations would delete the requirement that the obligation of any capital expenditure by or on behalf of a health care facility which is associated with the addition of a health service or the termination of a health service be required to be subject to review and would adopt instead the language of the Act. This proposal would allow each State to determine what should be considered a substantial change in services, when associated with a capital expenditure (§ 123.404(a)(3)(i)). In addition, at § 123.404(a)(3)(ii) the Secretary proposes to modify the required coverage of an addition of a health service which is not associated with a capital expenditure obligation but which entails an operating cost of at least the expenditure minimum. The proposed regulations eliminate the requirement that the service be considered "new" if it was not offered by or on behalf of the health care facility within the twelve-month period before the month in which the service would be offered. States would thus be allowed to determine this period themselves.

Incurring an obligation (§ 123.404(c)). The Secretary proposed to delete the explanation of when an obligation occurs. The deletion will allow States to make their own determinations according to their State law.

Subsequent reviews (§ 123.404(d)). The Secretary proposes to eliminate this section from the Federal regulations. The Secretary believes that it is appropriate to permit each State to decide whether changes in the scope of a project, changes in the use of major medical equipment, and changes in the types of services and number of beds within a facility after it is acquired, should be subject to review if these changes are not associated with a capital expenditure.

Research exemption (new § 123.404(d)). The Secretary proposes to add a new section which permits a State certificate of need program not to apply to certain types of projects if these projects are solely for medical research. This section is required by Pub. L. 96–538. Specifically, a State may exclude from certificate of need review a health care facility's acquisition of major medical equipment, offering of a new institutional health service, or obligation of a capital expenditure, if these are *solely for research* and if two conditions are met. First, the acquisition, offering or obligation may not: (1) Affect the charges of the facility for the provision of medical or other patient care services, other than the services which are included in the research; (2) substantially changes the bed capacity of the facility; or (3) substantially change the medical or other patient care services of the facility which were offered before the acquisition, offering or obligation. Second, the health care facility must notify the State Agency in writing of the facility's intent and the use to be made of such medical equipment, institutional health service, or capital expenditure.

In accordance with Pub. L. 96–538, the Secretary has also proposed at § 123.406(d) that, if States change their certificate of need programs by adopting the research exemption provision, their programs must provide that if the notice described above is not filed or the State Agency determines within 60 days after receipt of the notice that one of the other conditions mentioned above is not met, then the health care facility will be required to obtain a certificate of need. Moreover, any subsequent change to the excluded acquisition, offering or obligation which (1) affects the charges of the facility for the provision of medical or other patient care services, other than the services which are included in the research, (2) substantially changes the bed capacity of the facility, or (3) substantially changes the medical or other patient care services of the facility, will require a certificate of need before that change can be made. This amendment is permissive; therefore, a State program that requires a certificate of need for research medical equipment as provided in the existing regulations will not be inconsistent with this provision.

Health Maintenance Organizations (HMOs) (§ 123.405)

The proposed regulations incorporate an amendment contained in Pub. L. 97–35 (section 949(c)) which eliminates the requirement that, for an HMO or combination of HMOs to receive an exemption for a project under the State certificate of need program, the HMO or combination of HMOs must have an enrollment of at least 50,000 individuals (§ 123.405(b)). The proposed regulations also delete the phrase "such enrolled individuals" and replace it with the phrase "individuals enrolled in such organization or organizations" as required by Pub. L. 97–35. In addition, the requirements of the Act related to the sale or lease of an HMO-related health care facility or medical equipment, the acquisition or construction of which was initially exempted from review, were revised by Pub. L. 96–538. Accordingly, the proposed revisions at § 123.405(b)(3)(ii) take into account the amendments made by both Pub. L. 96–538 and Pub. L. 97–35 by providing that the sale or lease of an HMO-related health care facility or medical equipment, the acquisition or construction of which was initially exempted from review, will be exempt from review if the requirements that provided for the initial exemption are met. Both of the proposed changes were effective on October 1, 1982. (See section 949(d) of Pub. L. 97–35.)

Adoption and Public Notice of Review Procedures and Criteria (§ 123.409) and (§ 122.307)

The Secretary proposes to delete the specific distribution and publication requirements of this section. Deletion of these specific provisions will give agencies the flexibility to determine methods of notification and publication more suitable to their own circumstances.

Procedures for State Agency Review (§ 123.410) and Procedures for HSA Review (§ 122.308)

Schedules for submitting applications. The Secretary proposes to eliminate from Federal regulations at 42 CFR 123.410(a)(1)(ii) those specific categories in which a conforming State certificate of need program must batch completed applications. States would be required to develop, as they deem appropriate, categories for batching of completed applications for similar types of services, facilities or equipment which affect the same health service area.

Notification of the beginning of a review. The proposed regulations would eliminate from the current regulations the provision defining when this date occurs (§ 123.401(a)(2)(i) and § 122.308(a)(i)). The Secretary is also proposing to eliminate the provision at 42 CFR 123.410(a)(2)(ii) and 122.308(a)(2)(ii) which permit written notification to members of the public and third party payers to be provided through newspapers of general circulation in the health service area and which require that notification to all other affected persons be by mail. Without such specifications, each State would be able to determine the manner in which it will provide written notification to affected persons.

Review period. The proposed regulations would allow States to determine when the review period begins. They also would allow each State Agency to develop its own criteria for determining when the period may be longer than 90 days and would strike the requirement that the State Agency receive approval for these criteria from the Secretary (§ 123.410(a)(3)(11)). Of course, review periods may be shorter than 90 days. The Secretary is also proposing to delete the provision requiring that each HSA must be allowed 60 days to perform its review except in those cases where the HSA has consented to a shorter period in writing (§ 123.410(a)(3)(iii)). However, each State Agency must consider the recommendation of the appropriate HSA (if one exists) before reaching its decision. The Secretary encourages State Agencies and HSAs to cooperate in the development of categories of projects, if any, in which the review period would be shorter than 90 days.

Written findings and conditions. The proposed regulations would delete the requirements to send written findings on HMO applications to the regional office (§ 123.410(a)(6) and § 122.308(a)(6)). This requirement was deleted because it is imposed as unnecessary paperwork burden on the planning agencies.

Public hearing in the course of review. The proposed regulations would eliminate the following overly prescriptive requirements: (1) the specified time period within which a public hearing during the course of a review may be requested (§ 123.410(a)(8)(i) and § 122.308(a)(8)(i)); (2) the specific procedural requirements concerning HSA hearings (§ 122.308(a)(8) (iii), (iv) and (v)); (3) the requirement that the State Agency maintain a *verbatim* record of the hearing (§ 123.410(a)(8)(iii)); and (4) the prohibition against imposing fees for the hearing (§ 123.410(a)(8)(iv) and § 122.308(a)(8)(ii)).

Public hearings for reconsideration of a State Agency decision. The proposed regulations would eliminate: (1) The prohibition against imposing fees for the hearing (§ 123.410(a)(11)(i)); and (2) the specification of situations that the State Agency must determine constitute good cause for obtaining this hearing (§ 123.410(a)(11)(ii)); (3) the time periods in which a request for a reconsideration is to be received, the hearing is to be held and the decision is to be made (§ 123.410(a)(11) (iii) and (v)); and (4) the specification of the entities which the State Agency must inform that there is going to be a reconsideration hearing (§ 123.410(a)(11)(iv)). The Secretary believes that it is preferable to allow States to follow the procedures applicable under their existing administrative law rather than to impose additional, and possibly conflicting, requirements.

Review of State Agency decisions (currently "Administrative Review"). To comply with a change enacted by Pub. L. 96–538, the Secretary proposes to strike at 42 CFR 123.410(a)(13) the word "administrative" each time it appears. As a result of this change, a State certificate of need program would be required to have an administrative review as its appeals mechanism only if an administrative agency is the appeals mechanism under the State's law governing the practices and procedures of administrative agencies. If the law of a particular State provides only for judicial review as its appeals mechanism and that judicial review meets the requirements of § 123.410(a)(14), it need not have a second judicial appeal as provided in § 123.410(a)(14). In addition, the proposed regulations would eliminate the provisions governing the time periods in which an appeal must be requested, the appeal must be heard, a decision on the appeal must be reached, and the definition of "person adversely affected" (§ 123.410(a)(14) (i), (ii) and (iv)).

Regular reports of the State Agency (currently "annual reports of the State Agency"). The Secretary proposes to return this subsection to statutory language by replacing the word "annual" with the word "regular" each time it appears in § 123.410(a)(15).

Exceptions to the use of procedures (§ 123.411 and § 122.309). The Secretary is proposing to streamline the requirements of this section to give agencies the maximum degree of flexibility to develop substitute procedures.

Criteria for State Agency Review (§ 123.412)

Relationship of health services to ancillary or support services. The Secretary is proposing to eliminate the specific consideration listed at § 123.412(a)(9), which required State Agencies to develop criteria which consider the relationship of the proposed health service to ancillary or support services, because it is not required by statute.

Special needs and circumstances of biomedical and behavioral research projects. The Secretary is proposing to eliminate the criterion which appears at § 123.412(a)(14) because it is no longer necessary given the specific research exemption provisions enacted by Pub. L. 96–538.

Regulatory Flexibility Act and Executive Order 12291

The Department of Health and Human Services has determined that this proposed rule will not significantly impact on small business, small entities, small organizational units, and small governmental jurisdictions. Therefore it does not require preparation of a Regulatory Flexibility Analysis under the Regulatory Flexibility Act, Pub. L. 96–354.

Because this NPRM would lessen the regulatory burden on State Agencies and HSAs and provide the States with greater flexibility in the development of conforming certificate of need programs, it is anticipated that compliance with the regulatory requirements proposed in the NPRM would decrease expenditures on the part of HSAs and State Agencies. The impact on entities providing health care will depend on the requirements States choose to maintain.

The Department also has determined that this proposed rule is not a "major rule" under Executive Order 12291 for which a regulatory impact analysis would be required because it will not:

(1) Have an annual effect on the economy of $100 million or more;

(2) Impose a major increase in costs or prices for consumers, individual industries; Federal, State or local government agencies; or geographic regions; or

(3) Result in significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Recordkeeping and Reporting Requirements

Sections 122.306(a) (2), (4), (5) and (9), 123.404(a)(5), 123.405(b)(2), 123.406 (a), (b) and (d), and 123.410(a) (4), (5) and (15) of this proposed rule contain information collection requirements. As required by the Paperwork Reduction Act of 1980, we are submitting a copy of this proposed rule to the Office of Management and Budget (OMB) for its review of these information collection requirements. Other organizations and individuals desiring to submit comments on these information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, New Executive Office Building (Room 3208), Washington, D.C., 20503, ATTN: Desk Officer for HHS.

List of Subjects in 42 CFR Parts 122 and 123

Health planning, Health care.

Accordingly, 42 CFR Part 122, Subpart D, and 42 CFR Part 123, Subpart E, are proposed to be amended in the manner set forth below.

Dated: June 2, 1983.

Glenna M. Crooks,

Acting Assistant Secretary for Health.

Approved: June 23, 1983.

Margaret M. Heckler,

Secretary.

PART 122—HEALTH SYSTEMS AGENCIES

1. Part 122 of Title 42 CFR, is amended by revising Subpart D to read as follows:

* * * * *

Subpart D—Certificate of Need Reviews

Sec.

Authority: Sec. 215, Public Health Service Act, 58 Stat. 690 (42 U.S.C. 216); secs. 1501–1532, Public Health Service Act, sec. 936, Pub. L. 97–35, 95 Stat. 570–578 (42 U.S.C. 300k–1—300n–1)

Subpart D—Certificate of Need Reviews

§ 122.301 Definitions.

Terms used in this subpart shall have the meanings given them in Subpart A of this Part and § 123.401 of this title.

§ 122.302 Purpose and applicability.

(a) Section 1513(f) of the Act requires each health systems agency to assist State Agencies in carrying out certificate of need programs under section 1523(a)(4)(B) of the Act. In doing so, health systems agencies are required to review and make recommendations to the appropriate State Agency respecting the need within the health service area for capital expenditures, new institutional health services, and major medical equipment.

(b) Section 1532(a) of the Act requires that in performng its review functions under section 1513(f) of the Act, each health systems agency shall (except to the extent approved by the Secretary) follow procedures and apply criteria developed and published by the health systems agency in accordance with regulations of the Secretary. This subpart sets forth requirements respecting these procedures and criteria.

§ 122.303 General.

Each recommendation by the health systems agency to a State Agency to issue or not to issue a certificate of need or to withdraw a certificate of need must be based solely (a) on the review by the health systems agency conducted in accordance with procedures and criteria it has adopted under this subpart and (b) on the record of the administrative proceedings held on the application for the certificate or the State Agency proposal to withdraw the certificate.

§ 122.304 Scope of certificate of need review programs.

Each health systems agency shall conduct reviews of projects located or proposed to be located within its health service area and which are subject to review under the State certificate of need program under Subpart E of Part 123 of this title.

§ 122.305 Health maintenance organizations (HMOs).

(a) *Inclusion in health plans.* If an HMO or a health care facility which is controlled, directly or indirectly, by an HMO applies for a certificate of need, the health systems agency shall not recommend denial of the certificate of need (or otherwise made a finding under this subpart that the project is not needed) solely because the proposal is not discussed in the applicable health systems plan, annual implementation plan, or State health plan.

(b) *Required recommendation to approve.* Notwithstanding general review criteria established in accordance with § 123.412 of this title, if an HMO or a health care facility which is controlled, directly or indirectly, by an HMO applies for a certificate of need, the health systems agency shall recommend issuance of the certificate of need if it finds (in accordance with § 123.412(a)(13) of this title) that

(1) Issuance of the certificate of need is required to meet the needs of the members of the HMO and of the new members which the HMO can reasonably be expected to enroll, and

(2) The HMO is unable to provide, through services or facilities which can reasonably be expected to be available to the HMO, its institutional health services in a reasonable and cost-effective manner which is consistent with the basic method of operation of the HMO and which makes these services available on a long-term basis through physicians and other health professionals associated with it.

§ 122.306 Required recommendations.

Under § 123.407 of this title, if an application is made for a certificate of need for a capital expenditure, a certificate of need must be issued if

(a) The capital expenditure is required to eliminate or prevent safety hazards, or to comply with licensure, certification, or accreditation standards, and

(b) If the State Agency determines (1) that the facility or service for which the capital expenditure is proposed is needed, and (2) that the obligation of the capital expenditure is not inconsistent with the State health plan. For those applications for which approval is sought under § 123.407 of this title, the health systems agency is required to make recommendations to the State Agency on whether the project meets the conditions in § 123.407(a).

Explanatory note.—For applications which meet the requirements of § 123.407(a), the health systems agency shall use procedures and apply criteria (to the extent applicable to

enable it to make a recommendation on need) as required by this subpart. Health systems agencies may wish to expedite the reviews of applications intended to correct deficiencies which pose a threat to the public health. In so doing, health systems agencies may use any exceptions to the required review procedures which have been approved under § 122.309. See also the explanatory note which follows § 123.407.

§ 122.307 Adoption and public notice of review procedures and criteria.

(a) Each health systems agency shall adopt, publish, review and revise as necessary, review procedures and criteria in accordance with paragraph (b) of this section prior to conducting reviews.

(b) Before adopting the review procedures and critieria required by this subpart or any revisions of the procedures and critieria, the health systems agency shall give interested persons an opportunity to offer comments on the procedures and criteria, or any revisions thereof, which it proposes to adopt.

§ 122.308 Procedures for health systems agency review.

(a) The procedures adopted and used by a health systems agency for conducting the reviews covered by this subpart must include at least the following:

(1) *Review schedule.* Review of applications in accordance with a schedule established by the State Agency under § 123.410(a)(1) of this title, including the consideration together of applications that have been batched (see § 123.410(a)(1)) under the State Agency schedule.

(2) *Notification of the beginning of a review.* Timely written notification to affected persons and to the State Agency of the beginning of a review, and, if a person has asked the health systems agency to place the person's name on a mailing list maintained by the health systems agency, notification to the person.

(3) *Review period.* Schedules which provide that no review shall take longer than the period specified by the appropriate State Agency under § 123.410(a)(3) of this title. If, after a review has begun, the health systems agency requires the applicant to submit additional information, it shall give the applicant at least fifteen days to submit the information. The health systems agency shall notify the applicant that the applicant may request that the State Agency extend the review period at least fifteen days.

(4) *Information requirements.* Provision for persons subject to a review to submit to the health systems agency, in the form and manner and containing the information which the health systems agency shall prescribe and publish, any information that the health systems agency may require concerning the subject of the review.

(i) The information requirements may vary according to the purpose for which a particular review is being conducted or the type of health service being reviewed.

(ii) The health systems agency may require no information of a person subject to review which is not prescribed and published as being required.

(iii) The health systems agency shall develop procedures to ensure that requests for information in connection with a review under this subpart are limited to only that information which is necessary for the health sysetms agency to perform the review.

(5) *Periodic reports.* Submission of periodic reports by providers of health services and other persons subject to review respecting the development of proposals subject to review.

(6) *Written findings.* Provision for written findings (including, as applicable, the required findings under § 122.305(b)) which state the basis for any recommendation made by the health systems agency. The health systems agency shall send written findings to the applicant and to the State Agency for the State in which the project is proposed, and to others upon request.

(7) *Notification of the status of a review.* Timely notification, upon request, of providers of health services and other persons subject to review under this subpart of the status of the health systems agency review, findings made in the course of the review, and other appropriate information respecting the review.

(8) *Public hearing in the course of review.* Provision for a public hearing in the course of review (and before the health systems agency makes its recommendation to the State Agency) if requested by any affected person.

(9) *Regular reports of the health systems agency.* Preparation and publication of regular reports by the health systems agency of the reviews being conducted (including a statement concerning the status of each review) and of the reviews completed by the agency since the publication of the last report and a general statement of the findings and recommendations made in the course of those reviews.

(10) *Public access.* Access by the general public to all applications reviewed by the health systems agency and to all other written materials essential to any health systems agency review.

(11) *Conflict of interest.* In the exercise of any reviews under this subpart, no member of a governing body, executive committee, or any entity appointed by a governing body or executive committee may vote on any matter respecting an applicant with which the member has (or within the twelve months preceding the vote, had) any substantial ownership, employment, medical staff, fiduciary, contractual, creditor, or consultative relationship. A governing body, executive committee, and any entity appointed by a governing body or executive committee shall require each of its members who has or has had such a relationship to make a written disclosure of the relationship before any action is taken by the body, committee, or entity with respect to the applicant and to make the relationship public at any meeting in which action is to be taken with respect to the applicant.

(12) *Coordination with the MSA.* Each health systems agency whose health service area includes part of a metropolitan statistical area (as determined by the Office of Management and Budget) shall coordinate its certificate of need review activities with all other health systems agencies whose health service areas include part of the metropolitan statistical area. This coordination shall include at least an opportunity to offer written comments on the procedures and criteria, or any revisions thereof, which it proposes to adopt in accordance with § 122.307.

(b) Procedures adopted for reviews in accordance with paragraph (a) of this section may vary according to the purpose for which a particular review is being conducted or the type of health service being reviewed.

(c) The procedures may provide that the requirements of paragraph (a)(2) of this section shall be considered satisfied if the appropriate State Agency, in providing notice of the beginning of the review under § 123.410(a)(2) of this title, provides the information described in paragraph (a)(2) of this section.

(d) The procedures may provide that the requirements of paragraph (a) (4) or (5) of this section shall be considered satisfied if the appropriate State Agency has provided for the corresponding procedure found at § 123.410(a) (4) or (5) of this title.

§ 122.309 Exceptions to use of procedures.

(a) The Secretary may approve an exception to any of the required review

procedures under § 122.308 either in response to a written request from the health systems agency or as a general exception of which any health systems agency may avail itself. In approving a general exception the Secretary will establish substitute procedures where appropriate. Before availing itself of a general exception approved by the Secretary, the health systems agency shall follow the notice and comment procedures of § 122.308(b).

(b) Before approving the request, the Secretary will determine that the procedures to be used are consistent with the purposes of the Act and will not adversely and substantially affect the rights of affected persons.

§ 122.310 Criteria for health systems agency review.

(a) The health systems agency shall adopt, and use as applicable, specific criteria for conducting the reviews covered by this subpart. The criteria must be based at least on the general considerations listed under § 123.412(a) of this title, except that in the case of an HMO or an ambulatory care facility or health care facility controlled, directly or indirectly, by an HMO or combination of HMOs, the criteria must be based only on the considerations set forth in § 122.412(a)(13) of this title. The health systems agency may not adopt any additional criteria which are inconsistent with those criteria based on the general considerations listed under § 123.412(a).

(b) Health systems agencies shall apply all applicable criteria based on the considerations listed at § 123.412. Criteria adopted for reviews in accordance with paragraph (a) of this section may vary according to the purpose for which a particular review is being conducted or the type of health service reviewed.

§ 122.311 Required findings on access.

(a) For each project described in § 123.413(a) of this title for which the health systems agency recommends issuance of a certificate of need, the health systems agency shall make a written finding (which must take into account the current accessibility of the facility as a whole) on the extent to which the project will meet the health systems agency's criteria based on the considerations in § 123.412(a) (5) and (6).

PART 123—STATE HEALTH PLANNING AND DEVELOPMENT AGENCIES

2. Part 123 of Title 42 CFR, is amended by revising Subpart E to read as follows:

* * * * *

Subpart E—Certificate of Need Reviews

Sec.
123.401 Definitions.
123.402 Purpose and applicability.
123.403 General.
123.404 Scope of certificate of need review programs.
123.405 Health maintenance organizations (HMO's).
123.406 Notice of intent.
123.407 Required approvals.
123.408 Enforcement.
123.409 Adoption and public notice of review procedures and criteria.
123.410 Procedures for State Agency review.
123.411 Exceptions to use of procedures.
123.412 Criteria for State Agency review.
123.413 Required Findings on Access.

Authority: Sec. 215, Public Health Service Act, 58 Stat. 690 (42 U.S.C. 216); secs. 1501–1532, Public Health Service Act, Sec. 936, Pub. L. 97–35, 95 Stat. 570–578 (42 U.S.C. 300k–1—300n–1)

Subpart E—Certificate of Need Reviews

§ 123.401 Definitions.

In addition to the terms defined in Subpart A of this Part, as used in this subpart:

The term "capital expenditure" means an expenditure made by or on behalf of a health care facility which under generally accepted accounting principles is not properly chargeable as an expense of operation and maintenance.

The term "expenditure minimum for capital expenditures" means $600,000 for the twelve-month period beginning October 1, 1979, and for each twelve-month period thereafter, $600,000 or, at the discretion of the State, the figure in effect for the preceding twelve-month period, adjusted to reflect the change in the preceding twelve-month period in the Department of Commerce Composite Construction Cost Index.

The term "expenditure minimum for annual operating costs" means $250,000 for the twelve-month period beginning October 1, 1979, and for each twelve-month period thereafter, $250,000 or, at the discretion of the State, the figure in effect for the preceding twelve-month period, adjusted to reflect the change in the preceding twelve-month period in the Department of Commerce Composite Construction Cost Index.

The term "health" includes physical and mental health.

The term "health care facility" means hospitals, skilled nursing facilities, kidney disease treatment centers (including freestanding hemodialysis units), intermediate care facilities, rehabilitation facilities, and ambulatory surgical facilities, but does not include Christian Science sanatoriums operated, or listed and certified, by the First Church of Christ, Scientist, Boston, Massachusetts. Further:

(1) The term "hospital" means an institution which primarily provides to inpatients, by or under the supervision of physicians, diagnostic services and therapeutic services for medical diagnosis, treatment and care of injured, disabled, or sick persons, or rehabilitation services for the rehabilitation of injured, disabled, or sick persons. This term also includes pyschiatric and tuberculosis hospitals.

(2) The term "psychiatric hospital" means an institution which primarily provides to inpatients, by or under the supervision of a physician, specialized services for the diagnosis, treatment and rehabilitation of mentally ill and emotionally disturbed persons.

(3) The term "tuberculosis hospital" means an institution which primarily provides to inpatients, by or under the supervision of a physician, medical services for the diagnosis and treatment of tuberculosis.

(4) The term "skilled nursing facility" means an institution or a distinct part of an institution which primarily provides to inpatients skilled nursing care and related services for patients who require medical or nursing care, or rehabilitation services for the rehabilitation of injured, disabled, or sick persons.

(5) The term "intermediate care facility" neans an institution which provides, on a regular basis, health-related care and services to individuals who do not require the degree of care and treatment which a hospital or skilled nursing facility provides, but who because of their mental or physical condition require health related care and services (above the level of room and board).

(6) The term "rehabilitation facility" means an inpatient facility which is operated for the primary purpose of assisting in the rehabilitation of disabled persons through an integrated program of medical and other services which are provided under competent professional supervision.

(7) The term "ambulatory surgical facility" means a facility, not a part of a hospital, which provides surgical treatment to patients not requiring hospitalization. The term does not include the offices of private physicians or dentists, whether for individual or group practice.

The term "health maintenance organization" or "HMO" means a public or private organization organized under the laws of any State,

(1) Which is a qualified health maintenance organization under section 1310(d) of the Act, or

(2) Which: (i) provides or otherwise makes available to enrolled participants health care services, including at least the following basic health care services: Usual physician services, hospitalization, laboratory, x-ray, emergency and preventive services, and out of area coverage; and

(ii) Is compensated (except for copayments) for the provision of the basic health care services listed in paragraph (2)(i) of this definition to enrolled participants by a payment which is paid on a periodic basis without regard to the date the health care services are provided and which is fixed without regard to the frequency, extent, or kind of health service actually provided; and

(iii) Provides physicians' services primarily (A) directly through physicians who are either employees or partners of the organization, or (B) through arrangements with individual physicians or one or more groups of physicians (organized on a group practice or individual practice basis).

The term "health services" means clinically related (i.e., diagnostic, treatment, or rehabilitative) services, and includes alcohol, drug abuse, and mental health services.

The term "major medical equipment" means medical equipment which is used to provide medical and other health services and which costs more than $400,000. This term does not include medical equipment acquired by or on behalf of a clinical laboratory to provide clinical laboratory services, if the clinical laboratory is independent of a physician's office and a hospital and has been determined under title XVIII of the Social Security Act to meet the requirements of paragraphs (10) and (11) of section 1861(s) of that Act. In determining whether medical equipment costs more than $400,000, the cost of studies, surveys, designs, plans, working drawings, specifications, and other activities essential to acquiring the equipment shall be included.

Note.—The acquisition of equipment which does not meet the definition of major medical equipment and thus is not subject to review under § 123.404(a)(4), will be subject to review if it meets any other requirement under § 123.404(a).

The term "physician" means a doctor of medicine or osteopathy legally authorized to practice medicine and surgery by a State.

§ 123.402 Purpose and applicability.

(a) Section 1523(a)(4)(B) of the Act requires each State health planning and development agency (State Agency) to administer a State certificate of need program which (1) applies to the obligation of capital expenditures within the State, the offering within the State of new institutional health services, and the acquisition of major medical equipment, and (2) is consistent with regulations of the Secretary. This subpart sets forth the requirements and standards that a State certificate of need program must meet. A State certificate of need program may include additional provisions not inconsistent with the requirements of this subpart.

(b) Section 1532(a) of the Act requires that in performing its review functions under section 1523(a)(4)(B) of the Act, each State Agency shall (except to the extent approved by the Secretary) follow procedures, and apply criteria, developed and published by the State Agency in accordance with regulations of the Secretary. This subpart sets forth requirements respecting these procedures and criteria.

§ 123.403 General.

(a) Each State Agency shall administer within the State a certificate of need program meeting the requirements of this subpart.

(b) Only the State Agency (or the appropriate administrative or judicial review body) may issue, deny or withdraw certificates of need, grant exemptions from certificate of need reviews, or determine that certificate of need reviews are not required.

(c) In issuing or denying certificates of need or in withdrawing certificates of need, the State Agency shall take into account recommendations made by health systems agencies under Subpart D of Part 122 of this title.

(d) Each decision of the State Agency (or the appropriate administrative or judicial review body) to issue a certificate of need must be consistent with the State health plan, except in emergency circumstances that pose an imminent threat to public health.

(e) Each decision of a State Agency to issue, deny, or withdraw a certificate of need must be based (1) on the review by the State Agency conducted in accordance with procedures and criteria it has adopted under this subpart, and (2) on the record of the administrative proceedings held on the application for the certificate or the State Agency's proposal to withdraw the certificate. Each decision of a State Agency to grant or deny an exemption under § 123.405 (HMOs) must be made in accordance with the State Agency's procedures for reviewing applications for exemptions and must be based solely on the record of the administrative proceedings held on the application.

§ 123.404 Scope of certificate of need review programs.

(a) *Required coverage.* The State certificate of need program must apply to the obligation of capital expenditures, the offering of new institutional health services, and the acquisition of major medical equipment. For purposes of this subpart, "the obligation of capital expenditures, offering of new institutional health services, and acquisition of major medical equipment" means the following:

(1) *Capital expenditures that exceed the expenditure minimum.* The obligation by or on behalf of a health care facility of any capital expenditure (other than to acquire an existing health care facility) that exceeds the expenditure minimum for capital expenditures (or any lesser amount the State may specify). The cost of any studies, surveys, designs, plans, working drawings, specifications, and other activities essential to the acquisition, improvement, expansion, or replacement of any plant or equipment with respect to which an expenditure is made shall be included in determining if the expenditure exceeds the expenditure minimum. (Note that the acquisition of an existing health care facility may be subject to review as provided for under § 123.404(a)(s)).

(2) *Bed capacity.* The obligation of any capital expenditure by or on behalf of a health care facility which substantially changes the bed capacity of the facility with respect to which the expenditure is made.

(3) *Health services.* (i) The obligation of any capital expenditure by or on behalf of a health care facility which substantially changes the health services of such facility, or (ii) The addition of a health service which is offered by or on behalf of the health care facility which was not offered by or on behalf of the facility within the twelve-month period before the month in which the service would be offered, and which entails annual operating costs of at least the expenditure minimum for annual operating costs.

(4) *Major medical equipment.* (i) The acquisition by any person of major medical equipment that will be owned by or located in a health care facility; or

(ii) The acquisition by any person of major medical equipment not owned by or located in a health care facility, if (A) the notice of intent required by § 123.406(a) is not filed in accordance with that paragraph, or (B) the State Agency finds, within 30 days after the

date it receives a notice in accordance with § 123.406(a), that the equipment will be used to provide services for inpatients of a hospital.

(iii) An acquisition of major medical equipment need not be reviewed if it will be used to provide services to inpatients of a hospital only on a temporary basis in the case of (A) a natural disaster, (B) a major accident, or (C) equipment failure.

(iv) A State program that did not, by September 30, 1982, cover major medical equipment not owned by or located in a health care facility beyond the minimum coverage required by this subparagraph may not be changed to include additional requirements for coverage of this equipment.

(5) *Acquisitions of health care facilities.* (i) Except as provided in § 123.405(b) (HMOs), the obligation of a capital expenditure by any person to acquire an existing health care facility (A) if the notice of intent required at § 123.406(b) is not filed in accordance with that paragraph, or (B) if the State Agency finds, within 30 days after the date it receives a notice in accordance with § 123.406(b), that the services or bed capacity of the facility will be changed in being acquired.

(ii) Each State Agency shall specify, for purposes of the preceding sentence, what activities result in a change in the services or bed capacity of a health care facility.

(b) *Leases, donations, and transfers.* An acquisition by donation, lease, transfer, or comparable arrangement must be reviewed if the acquisition would be subject to review under paragraph (a) of this section if made by purchases. An acquisition for less than fair market value must be reviewed if the acquisition at fair market value would be subject to review under paragraph (a) of this section.

(c) *Incurring an obligation.* No person may incur an obligation for a capital expenditure that is subject to review under paragraphs (a)(1), (a)(2), (a)(3)(i), or (a)(5) of this section without obtaining a certificate of need for the capital expenditure.

(d)(1) *Research activities.* The State certificate of need program need not apply to the acquisition by a health care facility of major medical equipment to be used solely for research, the offering of an institutional health service by a health care facility solely for research, or the obligation of a capital expenditure by a health care facility to be made solely for research if the acquisition, offering, or obligation does not—(i) affect the charges of the facility for the provision of medical or other patient care services other than the services which are included in the research; (ii) substantially change the bed capacity of the facility; or (iii) substantially change the medical or other patient care services or the facility which were offered before the acquisition, offering, or obligation.

(2)(i) Before a health care facility acquires major medical equipment to be used solely for research, offers an institutional health service solely for research, or obligates a capital expenditure solely for research, the health care facility shall notify in writing the State Agency of the State in which the facility is located of the facility's intent and the use to be made of the medical equipment, institutional health service, or capital expenditure.

(ii) Paragraph (d)(1) of this section does not apply with respect to the acquisition of major medical equipment, the offering of institutional health services, or the obligation of a capital expenditure if—(A) the notice required by paragraph (d)(2)(i) of this section is not filed with the State Agency, or (B) the State Agency finds, within 60 days after the date it receives a notice in accordance with paragraph (d)(2)(i) of this section that the acquisition, offering, or obligation will have the effect or make a change described in paragraph (d)(1) (i), (ii), or (iii) of this section.

(3) If major medical equipment is acquired, an institutional health service is offered, or a capital expenditure is obligated and a certificate of need is not required for the acquisition, offering, or obligation as provided in paragraph (d)(1) of this section, the equipment, the service, or equipment or facilities acquired through the obligation of the capital expenditure, may not be used in such a manner as to have the effect or to make a change described in paragraph (d)(1)(i), (ii), or (iii) of this section unless the State Agency issues a certificate of need approving such use.

(4) For purposes of this paragraph, the term "solely for research" includes patient care provided on an occasional and irregular basis and not as part of a research program.

§ 123.405 Health maintenance organizations (HMOs).

(a) *Required coverage.* With respect to an HMO or a health care facility controlled, directly or indirectly, by an HMO or combination of HMOs, the State Agency shall review any activity specified in §123.404 which is undertaken by or on behalf of an inpatient health care facility (unless these activities are exempt under paragraph (b)(1) of this section). In addition, the State Agency shall review the acquisition of major medical equipment by an ambulatory care facility of an HMO to the extent required by §123.404(a)(4) and §123.404(d)(2) (unless the acquisition is exempt under paragraph (b)(1) of this section). A State program may not exceed the coverage specified in this paragraph.

Explanatory note.—A list of examples illustrating this coverage follows: (1) Major medical equipment acquired by HMOs which is not owned by or located in a health care facility and which is used primarily for inpatients of a hospital must be reviewed (unless the project is exempt); further, major medical equipment acquired by an HMO and located in a health care facility must be reviewed (unless the project is exempt). (2) A capital expenditure for an ambulatory clinic proposed by an HMO where the proposed expenditure is not by or on behalf of an inpatient health care facility is not subject to review. (3) The establishment of an HMO is not subject to certificate of need review. (4) Any capital expenditure exceeding the expenditure minimum by or on behalf of an HMO's inpatient health care facility must be reviewed (unless the project is exempt). (5) A capital expenditure associated with a substantial change in the bed capacity of an HMO's hospital must be reviewed (unless the project is exempt).

(b) *Exemptions*—(1) *Exemptions from review.* (1) The State Agency shall exempt from review any activity described in paragraph (a) of this section if the applicant meets the requirements of paragraph (b)(2) of this section and if the activity is proposed to be undertaken by:

(i) An HMO or a combination of HMOs if (A) the facility in which the service will be provided is or will be geographically located so that the service will be reasonably accessible to individuals enrolled in the HMO or combination of the HMOs and (B) at least 75 percent of the patients who can reasonably be expected to receive the health service will be individuals enrolled with the HMO or HMOs in the combination; or

(ii) A health care facility if (a) the facility primarily provides or will provide inpatient health services, (B) the facility is or will be controlled, directly or indirectly, by an HMO or a combination of HMOs (C) the facility is or will be geographically located so that the service will be reasonably accessible to the individual enrolled in the HMO or combination, and (D) at least 75 percent of the patients who can reasonably be expected to receive the health service will be individuals enrolled with the HMO or HMOs in the combination; or

(iii) A health care facility (or portion thereof) if (A) the facility is or will be

leased by an HMO or combination of HMOs which has, on the date the application is submitted under paragraph (b)(2) of this section, at least fifteen years remaining in the term of the lease, (B) the facility is or will be geographically located so that the service will be reasonably accessible to the enrolled individuals, and (C) at least 75 percent of the patients who can reasonably be expected to receive the health service will be individuals enrolled with the HMO.

(2) *Application for exemption.* (i) An activity of an HMO, combination of HMOs, or health care facility shall not be exempt under paragraph (b)(1) of this section unless—

(A) The applicant has submitted, at the time and in the form and manner prescribed by the State Agency, an application for an exemption to the State Agency and the appropriate health systems agency,

(B) The application contains the information respecting the HMO, combination, or facility and the proposed offering, acquisition, or obligation that the State Agency may require to determine if the HMO or combination meets the requirements of paragraph (b)(1) of this section or the facility meets or will meet those requirements, and

(C) The State Agency approves the application.

(ii) The State Agency shall approve an application submitted under this paragraph if the applicable requirements of paragraph (b)(1) of this section have been met or will be met on the date the proposed activity for which an exemption was requested will be undertaken.

(3) *Sale, lease, acquisition, or use of exempt facilities or equipment.* The State program must provide that a health care facility (or portion thereof) or medical equipment for which an exemption was granted under paragraph (b)(1) of this section may not be sold or leased, a controlling interest in the facility or equipment or in a lease of the facility or equipment may not be acquired, and a health care facility described in paragraph (b)(1)(iii) of this section which was exempted under paragraph (b)(1) of this section may not be used by any person other than the lessee described in paragraph (b)(1)(iii), unless,

(i) The State Agency issues a certificate of need for the sale, lease, acquisition, or use, or

(ii) The State Agency determines, upon application, that with respect to the facility or equipment, the entity which intends to buy or lease the facility or equipment, or acquire the controlling interest in it, or which intends to use it meets the requirements of paragraph (b)(1)(i)(A) and (B) of this section or; the entity is a health care facility which meets the requirements of paragraph (b)(1)(ii) (A) and (C) of this section, and with respect to its patients meets the requirements of (b)(1)(ii)(D) of this section.

(4) *Method of payment.* The method of payment for services (i.e., prepaid or fee-for-service) is not relevant in determining whether an activity is subject to review under this subpart.

(c) *Inclusion in health plans.* In an HMO or a health care facility which is controlled, directly or indirectly, by an HMO applies for a certificate of need, a State Agency may not disapprove the application solely because the proposal is not discussed in the applicable health systems plan, annual implementation plan, or State health plan.

(d) *Required approval.* Notwithstanding general review criteria established in accordance with § 123.412, if an HMO or a health care facility which is controlled, directly or indirectly, by an HMO applies for a certificate of need, the State Agency shall approve the application if it finds (in accordance with § 123.412(a)(13)) that (1) approval of the application is required to meet the needs of the members of the HMO and of the new members which the HMO can reasonably be expected to enroll, and (2) the HMO is unable to provide, through services or facilities which can reasonably be expected to be available to the HMO, its health services in a reasonable and cost-effective manner which is consistent with the basic method of operations of the HMO and which makes these services available on a long-term basis through physicians and other health professionals associated with it.

(e) *Sale, acquisition, or lease of approved facilities or equipment.* The State program must provide that except as provided in paragraph (b)(2) of this section and notwithstanding § 123.406, a health care facility (or portion thereof) or medical equipment for which a certificate of need was issued under this section may not be sold or leased, and a controlling interest in the facility or equipment or in a lease of the facility or equipment may not be acquired, unless the State Agency issues a certificate of need for the sale, acquisition or lease.

§ 123.406 Notice of intent.

The State program must provide as follows:

(a) *Major medical equipment.* At least 30 days before any person enters into a contract to acquire major medical equipment which will not be owned by or located in a health care facility, the person shall notify the State Agency of the State in which the equipment will be located and the appropriate health systems agency of the person's intent to acquire the equipment and of the use that will be made of the equipment (see § 123.404(a)(4)(ii)). The notice must be in writing and contain all information the State Agency requires in accordance with § 123.410(a)(4).

(b) *Acquisition of health care facilities.* At least 30 days before any person acquires or enters into a contract to acquire an existing health care facility, the person shall notify the State Agency of the State in which the facility is located and the appropriate health systems agency of the person's intent to acquire the facility and of the services to be offered in the facility and its bed capacity (see § 123.404(a)(5)). The notice must be made in writing and must contain all information the State Agency requires in accordance with § 123.410(a)(4).

(c) *Construction projects.* The State Agency shall have procedures for persons proposing construction projects to submit to the State Agency and the appropriate health systems agency, as early as possible in the course of planning the project, a notice of intent in as much detail as may be necessary to inform the agencies of the scope and the nature of the project.

(d) *Actions undertaken solely for research.* If the State program exempts from review research activities as provided in § 123.404(d), at least 60 days before a health care facility (i) acquires major medical equipment, (ii) offers an institutional health service or (iii) obligates a capital expenditure, solely for research purposes, the health care facility shall notify the State Agency of the State in which the equipment will be located, the institutional health service will be offered, or the capital expenditure will be obligated and the appropriate health systems agency of the health care facility's intent to acquire, to offer or to obligate. The notice must be made in writing and must contain all information the State Agency requires in accordance with § 123.410(a)(4).

§ 123.407 Required approvals.

(a) Except as provided in paragraph (b) of this section, the State Agency shall issue a certificate of need for a proposed capital expenditure if

(1) The capital expenditure is required (i) to eliminate or prevent imminent safety hazard as defined by Federal, State, or local fire, building, or life safety

codes or regulations, or (ii) to comply with State licensure standards, or (iii) to comply with accreditation or certification standards which must be met to receive reimbursement under Title XVIII of the Social Security Act or payments under a State plan for medical assistance approved under Title XIX of that Act, and

(2) The State Agency has determined that (i) the facility or service for which the capital expenditure is proposed is needed, and (ii) the obligation of the capital expenditure is not inconsistent with the State health plan.

Explanatory note.—For applications which meet the requirements of § 123.407(a), the State Agency shall use procedures and apply criteria (to the extent they are appropriate to determine need) as required by this subpart. If the State Agency determines that the facility or service for which the expenditure is proposed is not needed (and thus that the expenditure to correct the deficiency is not needed), it must deny the certificate of need as required by § 123.408(a). If the State Agency determines that the expenditure is inconsistent with the State health plan, it must deny the certificate of need unless there is an emergency that poses an imminent threat to public health (see § 123.403(d)). Even in such a case, there is no requirement that the State Agency issue a certificate of need. The State Agency should consider alternative means of dealing with the threat to public health. State Agencies may wish to expedite the review of applications intended to correct deficiencies which pose a threat to the public health. In so doing, State Agencies may use any exceptions to the required review procedures which have been approved under § 123.411.

(b) Those portions of a proposed project which are not required to eliminate or prevent safety hazards or to comply with certain licensure, certification, or accreditation standards are subject to review using the criteria developed under § 123.412.

§ 123.408 Enforcement.

(a) The State certificate of need program must provide that (1) State Agencies may only issue a certificate of need for those obligations of capital expenditures, offerings of institutional health services, and acquisitions of major medical equipment which are found to be needed; and (2) persons may only obligate capital expenditures, offer institutional health services or acquire major medical equipment after a certificate of need is issued or an exemption under § 123.405(b) is obtained; and (3) persons may not obligate capital expenditures, offer institutional health services, or acquire major medical equipment if a certificate of need authorizing that obligation, offering, or acquisition has been withdrawn by the State Agency.

(b) The State certificate of need program must provide sanctions, such as the denial or revocation of a license to operate, civil or criminal penalties, or injunctive relief, which the Secretary finds sufficient to ensure compliance with paragraph (a) of this section.

§ 123.409 Adoption and public notice of review procedures and criteria.

(a) Each State Agency shall adopt, publish, review and revise as necessary, review procedures and criteria in accordance with the requirements of this subpart prior to conducting reviews.

(b) The State Agency, the Statewide Health Coordinating Council, and the health systems agencies within the State shall cooperate in the development of procedures and criteria under this subpart to the extent appropriate to achieve efficient reviews and consistent criteria for reviews.

(c) Before adopting the review procedures and criteria required by this subpart or any revisions of the procedures and criteria, the State Agency shall give interested persons an opportunity to offer comments on the procedures and criteria, or any revisions thereof, which it proposes to adopt.

§ 123.410 Procedures for State Agency review.

(a) The procedures adopted and used by a State Agency for conducting the reviews covered by this subpart must include at least the following:

(1) *Schedules for submitting applications.* Establishment of a schedule for submission of applications to the State Agency. The schedule must provide for the review of all completed applications pertaining to similar types of services, facilities, or equipment affecting the same health service area to be considered in relation to each other ("batched") at least twice a year. Applications which satisfy the requirements of § 123.407(a) for required approval are not required to be batched.

(2) *Notification of the beginning of a review.* Timely written notification to affected persons of the beginning of a review, and, if a person has asked the State Agency to place the person's name on a mailing list maintained by the State Agency, notification to the person.

(3) *Review period.* Schedules which provide for starting reviews in a timely fashion and which establish the period within which the State Agency will approve or disapprove applications for certificates of need and for exemptions under § 123.405(b).

(i) If, after a review has begun, the State Agency or the health systems agency requires the applicant to submit additional information, that agency shall give the applicant at least fifteen days to submit the information, and upon request of the applicant, the State Agency shall extend its review period at least fifteen days. This extension must apply to all other applications which have been batched with the application for which additional information is required.

(ii) The schedule must provide that no certificate of need review shall, to the extent practicable, take longer than 90 days from the date the review period begins.

(4) *Information requirements.* Provision for persons subject to a review to submit to the State Agency, in the form and manner and containing the information which the State Agency shall prescribe and publish, any information that the State Agency may require concerning the subject of the review.

(i) The information requirements may vary according to the purpose for which a particular review is being conducted or the type of health service being reviewed.

(ii) The State Agency may require no information of a person subject to review which is not prescribed and published as being required.

(iii) The State Agency shall develop procedures to ensure that requests for information in connection with a review under this subpart are limited to only that information which is necessary for the State Agency to perform the review.

(5) *Periodic reports.* Submission of periodic reports by providers of health services and other persons subject to review respecting the development of proposals subject to review.

(6) *Written findings and conditions.* Provision for written findings (including, as appropriate, the required findings under § 123.405(d) and § 123.413(a)) which state the basis for any final decision made by the State Agency. When a certificate of need is to be issued, these findings must include the finding of need required by § 123.408(a)(1). The State Agency may not make its final decision subject to any condition unless the condition directly relates to criteria established under § 123.412 or criteria prescribed by regulation by the State Agency in accordance with an authorization under State law. The State Agency shall send written findings to the applicant and to the health systems agency for the health service area in which the project is proposed, and shall make them available to others upon request.

(7) *Notification of the status of a review.* Timely notification, upon request, of providers of health services

and other persons subject to review under this subpart of the status of the State Agency review, findings made in the course of the review, and other appropriate information respecting the review.

(8) *Public hearing in the course of review.* Provision for a public hearing by the State Agency in the course of agency review (and before the State Agency makes its decision) if requested by any affected person.

(i) In a hearing, any person shall have the right to be represented by counsel and to present oral or written arguments and evidence relevant to the matter which is the subject of the hearing. Any person affected by the matter may conduct reasonable questioning of persons who make relevant factual allegations.

(ii) The agency shall maintain a record of the hearing.

(9) *Ex parte contacts.* Provision that, after the commencement of a hearing under paragraphs (a)(8) and (a)(11) of this section and before a decision is made, there shall be no ex parte contacts between (i) any person acting on behalf of the applicant or holder of a certificate of need, or any person opposed to the issuance or in favor of withdrawal of a certificate of need and (ii) any person in the State Agency who exercises any responsibility respecting the application or withdrawal.

(10) *Statement of reasons.* Provision that if the State Agency makes a decision which is inconsistent with a recomendation made by the health systems agency, the goals of the applicable health systems plan, or the priorities of the applicable annual implementation plan, the State Agency shall submit to the health systems agency and to the applicant a written, detailed statement of the reasons for the inconsistency.

(11) *Public hearings for reconsideration of a State Agency decision.* Provision that any person may, for good cause shown (as determined by the State Agency), request in writing a public hearing for purposes of reconsideration by the State Agency of its decision.

(i) The State Agency shall make written findings which state the basis for its decision.

(ii) A decision of the State Agency following a public hearing under this subparagraph shall be considered a decision of the State Agency for purposes of paragraphs (a)(6), (a)(7), (a)(10), (a)(13), (a)(14), and (a)(15) of this section.

Note.—Nothing in these regulations requires that a person must request a public hearing for reconsideration of a State Agency decision before obtaining administrative review (see paragraph (a)(13) of this section) or judicial review (see paragraph (a)(14) of this section). However, it is possible that applicable State law imposes such a requirement.

(12) *Maximums on capital expenditures.* Provision that, in issuing a certificate of need, the State Agency shall specify the maximum capital expenditure which may be obligated under the certificate. The State Agency shall (i) prescribe the method used to determine capital expenditure maximums, (ii) establish procedures to monitor capital expenditures obligated under certificates, and (iii) establish procedures to review projects for which the capital expenditure maximum is exceeded or expected to be exceeded.

(13) *Review of State Agency decisions.* Provision that upon request of any affected person, the decision of the State Agency to issue, deny, or withdraw a certificate of need or to grant or deny an exemption shall be reviewed, under an appeals mechanism consistent with State law governing the practices and procedures of administrative agencies, or, if there is no such State law, by an entity (other than the State Agency) designated by the Governor.

(i) The State Agency shall send the written findings of the reviewing entity to the person proposing the project, the person requesting the review, the appropriate health systems agency, and to others upon request.

(ii) The decision of the reviewing entity shall be considered the final decision of the State Agency. However, if permitted by applicable State law, the reviewing entity may remand the matter to the State Agency for further action or consideration.

Note.—Nothing in these regulations requires that a person must request adminstrative review before obtaining judicial review (see paragraph (a)(14) of this section). However, it is possible that applicable State law imposes such a requirement.

(14) *Judicial review.* Provision that any person adversely affected by a final decision of a State Agency with respect to a certificate of need or an application for an exemption may, within a reasonable period of time after the decision is made (and any administrative review of it completed), obtain judicial review of it in an appropriate State court.

(i) The State court shall affirm the decision of the State Agency unless it finds it to be arbitrary or capricious or not made in compliance with applicable law.

(ii) Where State law governing the practices and procedures of administrative agencies provides that review of State Agency decisions (as required by paragraph (a)(13) of this section) is to be carried out by an appropriate State court, this subparagraph does not require that the State Agency provide for any further judicial review.

(15) *Regular reports of the State Agency.* Preparation and publication of regular reports by the State Agency of the reviews being conducted (including a statement concerning the status of each review) and of the reviews completed by the agency since the publication of the last report and a general statement of the findings and decisions made in the course of those reviews.

(16) *Public access.* Access by the general public to all applications reviewed by the State Agency and to all other written materials essential to any State Agency review.

(17) *Failure to act on an application within the required time.* Provision that if the State Agency fails to approve or disapprove an application for a certificate of need or an exemption under § 123.405(b) within the applicable period, the applicant may, within a reasonable period of time following the expiration of that period, bring an action in an appropriate State court to require the State Agency to approve or disapprove the application. A certificate of need or an exemption may not be issued or denied solely because the State Agency failed to reach a decision.

(18) *Withdrawal of a certificate of need.* Provision that an application for a certificate of need shall specify the time the applicant will require to make the service or equipment available or to complete the project and a timetable for making the service or equipment available or to complete the project. After the issuance of a certificate of need, the State Agency shall periodically review the progress of the holder of the certificate in meeting the timetable specified in the approved application. If on the basis of this review the State Agency determines that the holder of a certificate is not meeting the timetable and is not making a good faith effort to meet it, the State Agency may, after considering any recommendation made by the appropriate health systems agency, withdraw the certificate. In withdrawing a certificate of need, the State Agency shall follow the procedures at paragraphs (a)(2), (a)(6), (a)(7), (a)(8), (a)(9), (a)(10), (a)(11), (a)(13), (a)(14), and (a)(15) of this section.

(b) Procedures adopted for reviews in accordance with paragraph (a) of this section may vary according to the purpose for which a particular review is being conducted or the type of health service being reviewed.

(c) The procedures may provide that the requirements of paragraph (a)(4) or (a)(5) of this section shall be considered satisified if the appropriate health systems agency has provided for the corresponding procedure found at § 122.308(a) (4) or (5) of this title. The procedures of paragraph (a)(8) of this section shall be considered satisfied if the State Agency delegates the hearing responsibility to the appropriate health systems agency and the heatlh systems agency follows the procedures at paragraph (a)(8) of this section.

§ 123.411 Exceptions to use of procedures.

(a) The Secretary may approve an exception to any of the required review procedures under § 123.410 either in response to a written request from a State Agency or as a general exception of which any State Agency may avail itself. In approving a general exception, the Secretary will establish substitute procedures where appropriate.

(b) Before approving the request, the Secretary will determine that the procedures which will be used are consistent with the purposes of the Act and will not adversely and substantially affect the rights of affected persons.

§ 123.412 Criteria for State Agency review.

(a) The State Agency shall adopt, and use as applicable, specific criteria for conducting the reviews covered by this subpart. The criteria must be based only on the following general considerations, except that the State Agency may include any additional criteria which it prescribes by regulation in accordance with and authorization under State law. In the case of an HMO or an ambulatory care facility or health care facility controlled, directly or indirectly, by an HMO or combination of HMOs, the criteria must be based only on the considerations set forth in paragraph (a)(12) of this section.

(1) The relationship of the health services being reviewed to the applicable health systems plan, annual implementation plan, and State health plan.

(2) The relationship of services reviewed to the long-range development plan (if any) of the person providing or proposing the services.

(3) The availability of less costly or more effective alternative methods of providing the services to be offered, expended, reduced, relocated, or eliminated.

(4) The immediate and long-term financial feasibility of the proposal, as well as the probable effect of the proposal on the costs of and charges for providing health services by the person proposing the service.

(5)(i) The need that the population served or to be served has for the services proposed to be offered or expanded, and the extent to which all residents of the area, and in particular low income persons, racial and ethnic minorities, women, handicapped persons, and other underserved groups, and the elderly, are likely to have access to those services.

(ii) In cases, including those involving relocation of a facility or service, where a State determines that a reduction or elimination of a service is reviewable, the extent to which that need will be met adequately by the proposed relocation or by alternative arrangements, and the effect of the reduction, elimination or relocation of the service on the ability of low income persons, racial and ethnic minorities, women, handicapped persons, and other underserved groups, and the elderly, to obtain needed health care.

(6) The contribution of the proposed service in meeting the health related needs of members of medically underserved groups which have traditionally experienced difficulties in obtaining equal access to health services (for example, low income persons, racial and ethnic minorities, women, and handicapped persons), particularly those needs identified in the applicable health systems plan, annual implementation plan, and State health plan as deserving of priority. For the purpose of determining the extent to which the proposed service will be accessible, the State Agency shall consider:

(i) The extent to which medically underserved populations currently use the applicant's services in comparison to the percentage of the population in the applicant's service area which is medically underserved, and the extent to which medically underserved populations are expected to use the proposed services if approved;

(ii) The performance of the applicant in meeting its obligation, if any, under any applicable Federal regulations requiring provision of uncompensated care, community service, or access by minorities and handicapped persons to programs receiving Federal financial assistance (including the existence of any civil rights access complaints against the applicant);

(iii) The extent to which Medicare, Medicaid and medically indigent patients are served by the applicant; and

(iv) The extent to which the applicant offers a range of means by which a person will have access to its services (e.g., outpatient services, admission by house staff, admission by personal physician).

Note.—Where appropriate, the State Agency may also consider other access issues, such as: (1) The extent to which the applicant grants medical staff privileges to physicians who serve the medically underserved; and (2) the extent to which the applicant takes action necessary to remove barriers that limit access to the health services of the applicant. These barriers may include unavailability of public transportation; absence of translation services where a substantial portion of the population of the health service area does not speak English as its primary language; building designs that substantially hinder use of the facility; and financial barriers (e.g., preadmission deposits).

(7) The relationship of the services proposed to be provided to the existing health care system of the area in which the services are proposed to be provided.

(8) The availability of resources (including health personnel, management personnel, and funds for capital and operating needs) for the provision of the services proposed to be provided and the need for alternative uses of these resources as identified by the applicable health systems plan, annual implementation plan or State health plan.

(9) The effect of the means proposed for the delivery of health services on the clinical needs of health professional training programs in the area in which the services are to be provided.

(10) If proposed health serivces are to be available in a limited number of facilities, the extent to which the health professions schools in the area will have access to the services for training purposes.

(11) Special needs and circumstances of those entities which provide a substantial portion of their services or resources, or both, to individuals not residing in the health service areas in which the entities are located or in adjacent health service areas. These entities may include medical and other health professions schools, multidisciplinary clinics and specialty centers.

(12) The special needs and circumstances of HMOs. These needs and circumstances shall be limited to:

(i) The needs of enrolled members and reasonably anticipated new members of

the HMO for the health services proposed to by provided by the Organization; and

(ii) The availability of the new health services from non-HMO providers or other HMOs in a reasonable and cost-effective manner which is consistent with the basic method of operation of the HMO. In asssessing the availability of these health serivces from these providers, the agency shall consider only whether the services from those providers:

(A) Would be available under a contract of at least five years duration;

(B) Would be available and conveniently accessible through physicians and other health professionals associated with the HMO. (For example—whether physicians associated with the HMO have or will have full staff privileges at a non-HMO hosptial);

(C) Would cost no more than if the services were provided by the HMO; and

(D) Would be available in a manner which is administratively feasible to the HMO.

(13) In the case of a construction project—

(i) The costs and methods of the proposed construction, including the costs and methods of energy provision, and

(ii) The probable impact of the construction project reviewed on the costs of providing health services by the person proposing the construction project and on the costs and charges to the public of providing health services by other persons.

(14) The special circumstances of health care facilities with respect to the need for conserving energy.

(15) In accordance with section 1502(b) of the Act, the factors which affect the effect of competition on the supply of the health services being reviewed.

(16) Improvements or innovations in the financing and delivery of health services which foster competition, in accordance with section 1502(b) of the Act, and serve to promote quality assurance and cost effectiveness.

(17) In the case of health services or facilities proposed to be provided, the efficiency and appropriateness of the use of existing services and facilities similar to those proposed.

(18) In the case of existing services or facilities, the quality of care provided by those facilities in the past.

(19) When an application is made by an osteopathic or allopathic facility for a certificate of need to construct, expand, or modernize a health care facility, acquire major medical equipment, or add services, the need for that construction, expansion, modernization, acquisition of equipment, or addition of services shall be considered on the basis of the need for and the availability in the community of services and facilities for osteopathic and allopathic physicians and their patients. The State Agency shall consider the application in terms of its impact on existing and proposed institutional training programs for doctors of osteopathy and medicine at the student, internship and residency training levels.

Explanatory note.—This provision seeks to ensure that the need for and availiablity of services and facilities for osteopathic physicians and patients will be considered.

(b) State Agencies shall apply all applicable criteria based on the considerations listed at § 123.412. Criteria adopted for reviews in accordance with paragraph (a) of this section may vary according to the purpose for which a particular review is being conducted or the type of health service reviewed.

§ 123.413 Required findings on access.

(a) Under § 123.412 (a)(5) and (a)(6), the State Agency is required to develop criteria based on considerations relating to the need of the population to be served for the proposed project and the extent to which the residents of the area will have access to the project. For each project it approves, the State Agency shall make a written finding (which shall take into account the current accessibility of the facility as a whole) on the extent to which the project will meet the State Agency's criteria developed based on the considerations in § 123.412(a) (5) and (6), except in the following cases: (1) Where the project is one described in § 123.407(a) (projects to eliminate or prevent certain imminent safety hazards or to comply with certain licensure or accreditation standards); or (2) Where the project is a proposed capital expenditure not directly related to the provision of health services or to beds or major medical equipment; or (3) Where the project is proposed by or on behalf of an HMO or a health care facility which is controlled, directly or indirectly, by an HMO.

(b) In any case where the State Agency finds that an approved project does not satisfy the State Agency's criteria based on the considerations in § 123.412(a) (5) and (6), it may, if it approves the application, impose the condition that the applicant take affirmative steps to meet those criteria.

(c) When this written finding is required, the State Agency, in evaluating the accessibility of the project, must take into account the current accessibility of the facility as a whole. If the State Agency disapproves a project for failure to meet the need and access criteria, it must so state in its written findings under § 123.410(a)(6).

(d) In any case where the State Agency finds that a project does not satisfy the State Agency's criteria based on the considerations in § 123.412(a) (5) and (6), it shall so notify in writing the applicant and the appropriate Regional Office of the Department of Health and Human Services.

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Part IV

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

Bond and Insurance Requirements for Surface Coal Mining and Reclamation Operations Under Regulatory Programs; Self-Bonding; Final Rule

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 800 and 806

Bond and Insurance Requirements for Surface Coal Mining and Reclamation Operations Under Regulatory Programs; Self-Bonding

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

ACTION: Final rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is promulgating new rules on self-bonding pursuant to the Surface Mining Control and Reclamation Act of 1977. States are not required to adopt self-bonding rules. This rule establishes the minimum standards of financial eligibility to self-bond for States that wish to allow self-bonding. The applicant for a self-bond is required to demonstrate at least 5 years of continuous operation and: financial solvency demonstrated by an "A" or higher bond rating; or, a tangible net worth of at least $10 million, plus certain financial ratios; or, ownership of at least $20 million of tangible fixed assets, plus certain financial ratios. The amount of all self-bonds that regulatory authorities may accept would be limited to 25 percent of the applicant's tangible net worth. Several other criteria for self-bonding also are established. A regulatory authority may accept the guarantee of a qualifying parent corporation for its subsidiaries. These rules replace the previous rules which were suspended.

EFFECTIVE DATE: September 9, 1983.

FOR FURTHER INFORMATION CONTACT: Adele Merchant, Office of Surface Mining, U.S. Department of Interior, 1951 Constitution Ave., NW., Washington, D.C. 20240, 202–343–5587.

SUPPLEMENTARY INFORMATION:

I. Background

The Surface Mining Control and Reclamation Act of 1977 (the Act), Pub. L. 95–87, 30 U.S.C. 1201 *et seq.*, in Section 509(c) authorizes self-bonding for States that wish to allow self-bonding for the completion of reclamation work which an operator may fail to perform. The Act requires that an applicant for self-bonding demonstrate to the regulatory authority that it has a suitable agent to receive service of process and a history of financial solvency and continuous operation sufficient to self-insure. Pursuant to Section 501(b) of the Act, the Secretary of the Interior must promulgate rules to implement Title V of the Act, of which the self-bonding provision is a part. States wishing to allow self-bonding in their State programs are required to set standards based upon these rules which are no less effective than these rules.

A self-bonding rule, 30 CFR 806.11(b), was first proposed on September 18, 1978 (43 FR 41661 and 41869). The proposed rule would have established general criteria in order for a regulatory authority to accept an applicant's self-bond. Besides the provision required by the Act for an agent to receive service of process, the proposed rules required a demonstration of a history of compliance with the Act, the rules and the State or Federal program over a 10-year period. The criterion for financial solvency proposed was simply that the applicant have a net worth of no less than twice the total amount of bond obligations on all its surface coal mining and reclamation permits. This meant that the total amount of self-bond could not exceed one-half the applicant's net worth. In addition, all parties either owning or having a beneficial interest in the applicant were to execute an indemnity agreement under which each would be jointly and severally liable.

In the final rule of March 13, 1979 (44 FR 14901, 15114 and 15387), the ratio was decreased from one-half of the net worth to one-sixth so as to be more in line with the ratio used by the surety industry. A significant new requirement was added in the final rule. A mortgage or security interest in real or personal property valued at an amount at least equal to the bond was to be granted to the regulatory authority. Another requirement for submission of detailed financial information from an applicant was also added.

A petition to amend the bonding rules was received shortly after the final rules became effective (44 FR 28005, May 14, 1979). One of the sections with which the petitioners were concerned was § 806.11 on self-bonding. The petition was granted (44 FR 51098, September 6, 1979), and on January 24, 1980, a proposed rulemaking notice appeared (45 FR 6028) which dealt with the many comments received on self-bonding and which indicated the somewhat controversial nature of the subject (45 FR 6033). The rulemaking notice (45 FR 6040) proposed to make self-bonding a separate section, § 806.14. Most importantly, only one eligibility standard would have been retained—the applicant would have to have been in continuous operation for 10 years. The net worth to self-bond ratio would have been eliminated. Also, the requirement of a mortgage or security interest was proposed to be dropped.

The final rule, however, published on August 6, 1980 (45 FR 52306), retained the self-bonding rules as they were made final in March 1979. The failure to revise the self-bonding rules precipitated litigation by several groups contending that the rules unduly favored large operators. *National Coal Association and American Mining Congress* v. *Andrus*, Civ. No. 80–2530, and *Pennsylvania Coal Mining Association* v. *Department of the Interior*, Civ. No. 80–2544, both in the U.S. District Court, District of Columbia. A settlement agreement in these matters was entered into in December 1981.

While this litigation was pending, a proposed revision of all the bonding rules was published on September 9, 1981 (46 FR 45082). The proposed revision to self-bonding would have greatly simplified the rules, leaving the adoption of detailed requirements to the States in their programs. Public comments on the proposed revision called for more detailed requirements for self-bonding eligibility, which would have required a substantial change from the proposed rule. In response to the proposed September 9, 1981, self-bonding rule, some commenters requested more detailed Federal guidance for development of self-bonding in State programs. Some commenters believed OSM was doing a disservice to all parties by placing responsibilities on the States to establish self-bond criteria. Some felt that the previous rules should be adopted as the standard of compliance. Other commenters favored publishing minimum standards by which to evaluate State program submittals. Surety companies believed that loosely administered self-bonding programs may preclude surety industry involvement in surface coal mining reclamation bonding.

In light of comments received on the proposed rules and as a result of the agreement reached with the parties in the litigation, OSM suspended, in part, the then-existing self-bonding rules on December 7, 1981 (46 FR 59934). The self-bonding rules in § 806.14 were suspended except for certain general provisions in § 806 14(a), (a)(1), and parts of (a)(5) and (a)(7), which all tracked provisions in Section 509(c) of the Act.

OSM reproposed the self-bonding revisions separately from the other bonding rules on August 20, 1982 (47 FR 36570). Thus, the final revision of the

bonding rules published in a separate final rule consolidated Parts 800, 801, 805, 806, 807, 808 and 809 into one part—Part 800, but did not include provisions related to self-bonding, other than the definition of a self-bond. Under the revised bonding rules (48 FR 32932, July 19, 1983), a "self-bond" means an "indemnity agreement in a sum certain executed by the permittee or the parent guarantor and made payable to the regulatory authority, with or without separate surety."

This rulemaking, which adds the self-bonding rules to 30 CFR Part 800 as § 800.23, establishes more detailed requirements for self-bonding than under the September 1981 rulemaking, but not as many as under the March 1979 rules. The comments discussed in this rulemaking were received in response to the August 20, 1982, proposal.

II. Discussion of Comments and Rules Adopted

General

All self-bonding rules are moved to new § 800.23 in this final rule. The previous suspended and unsuspended self-bonding rules in § 806.14 are deleted and replaced by new § 800.23.

New § 800.23 allows a State to develop a comprehensive self-bonding program to balance the risk of forfeiture versus the benefits to financially sound operators of a self-bonding program. The self-bonding rules establish minimum criteria for allowing an applicant for a surface coal mining and reclamation operation permit to self-bond. States are not required to adopt self-bond rules, but if States choose to allow self-bonding, these rules establish minimum criteria. States choosing to allow self-bonding may adopt more detailed rules that reflect the financial structures of the local industry, if necessary to provide the regulatory authority additional protection from risk of forfeiture.

These final rules establish the following four basic requirements for self-bonding: (1) Continuous operation over a period of 5 years; (2) financial soundness which may be demonstrated by either an "A" or higher bond rating, a tangible net worth of at least $10 million, plus certain financial ratios, or ownership of at least $20 million in tangible fixed assets plus certain financial ratios; (3) submission of a report containing certified financial information and an opinion of an independent certified public accountant based on the applicant's financial statement; and (4) execution of an indemnity agreement. These rules also allow a parent corporation having a controlling interest in a subsidiary which applies for a surface mining permit to guarantee the self-bond of the subsidiary if the parent corporation meets certain requirements.

The self-bonding rules in this rulemaking form the benchmark by which the States can build their own programs if they wish to allow self-bonding of surface coal mining operations. If they choose to allow self-bonding, States can add their own additional relevant criteria. These final rules contain standards general enough to take into account state-specific conditions. A detailed discussion of each of the provisions of the rules and comments received on proposed rules follows.

Section 800.23 Self-bonding

Section 800.23(a)

A new paragraph has been added at § 800.23(a) to define terms specific to the self-bonding rules. Definitions which appeared in various provisions of the proposed rule, and some additional definitions retained from previous rules, are adopted here. These terms are defined: current assets, current liabilities, fixed assets, liabilities, net worth, parent corporation, and tangible net worth. These definitions are necessary to clarify what is meant or required by certain other provisions of § 800.23. Subsequent paragraphs are accordingly redesignated.

The definitions for the terms "tangible net worth," "fixed assets," and "parent corporation" are adopted from proposed §§ 800.23(a)(3)(ii), 800.23(a)(3)(iii) and 800.23(a)(5), respectively, with clarifying changes. "Tangible net worth" means net worth minus intangibles such as goodwill and rights to patents or royalties. "Fixed assets" means plants and equipment but does not include land or coal in place. "Parent corporation" means a corporation which owns or controls the permit applicant.

Two commenters requested the deletion of the proposed phrase "the parent corporation shall have a controlling interest in the applicant." One said that no less liability would fall to that guarantor if it had a 50 percent interest than if it had a 51 percent interest in the subsidiary. Another commenter asked for a definition of "controlling interest."

The final definition of "parent corporation" uses the phrase "owns or controls the permit applicant" rather than the proposed phrase "has a controlling interest." There is no need to define or further specify what is meant by "own or control" because it is unlikely that a corporation will guarantee the self-bond of an applicant unless it assures itself that it can control the activities of the applicant. The assumption of the guarantee by the parent will ensure that the parent has a close direct interest in the success of the applicant.

The definitions for the terms "current assets" and "current liabilities" are retained from previous § 800.5 with clarifying changes. The previous definition of the term "current assets" included cash and assets that are reasonably expected to be realized in cash or sold or consumed within one year. The revised definition of the term expands the period to include conversion within the normal operating cycle of the business. The previous definition of the term "current liabilities" included debt or other obligations that must be paid within a short period of time, usually a year. It also explicitly included dividends payable within one year on preferred stock. The revised definition of the term "current liabilities" includes obligations which are reasonably expected to be paid or liquidated within one year or within the normal operating cycle of the business. With this general definition, there is no need to refer specifically to a particular type of payment, such as a dividend. The definitions of the terms "liabilities" and "net worth" are taken from standard accounting definitions. The word "liabilities" means obligations to transfer assets or provide services to other entities in the future as a result of past transactions. The revised definition of the term "net worth" includes total assets minus total liabilities and is equivalent to owners' equity. This is a more general definition than its predecessor which included preferred and common stock, all surplus accounts and retained earnings.

Section 800.23(b)

Section 800.23(b) was proposed at § 800.23(a). Proposed § 800.23(a) established conditions under which a regulatory authority may accept a self-bond from an applicant for a permit. The rule is based on Section 509(c) of the Act. It is adopted as proposed with some changes. Proposed § 800.23(a)(5) is redesignated § 800.23(c) for clarity as explained later in this preamble under that final rule section.

A commenter suggested changing the phrase in proposed § 800.23(a) "the regulatory authority may accept" to "a self-bond * * * will be accepted by the regulatory authority * * *." The commenter thought that Congress did not intend to allow arbitrary decisions

by the regulatory authority on a case-by-case basis, but only intended to allow regulatory authority discretion in deciding whether to adopt a self-bonding program. The commenter thought that once a program is adopted, the regulatory authority cannot arbitrarily exclude participants.

OSM agrees that the regulatory authority cannot act arbitrarily. However, the language of the Act gives discretion to the regulatory authority on this matter. The regulatory authority needs case-by-case discretion to consider factors particular to a case which may indicate, for instance, that even though the applicant meets the general qualifications of the self-bonding rules, past behavior tending to undercut the soundness of the applicant, or other factors, may dictate refusal. Additionally, under the Act a State regulatory authority is not required to accept self-bonds at all. Use of the word "may" in the final rule recognizes this discretion.

Proposed § 800.23(a) is adopted at § 800.23(b) with the clarification that it is sufficient for either the applicant or the parent corporation guarantor to satisfy the requirements of § 800.23(b)(1) through (b)(4).

Section 800.23(b)(1)

Proposed § 800.23(a)(1) required an applicant for self-bond to designate a suitable agent to receive service of process in the State where the proposed surface mining operation is to be conducted. It is based on Section 509(c) of the Act. No comments were received on this paragraph and it is adopted as proposed, and redesignated § 800.23(b)(1).

Section 800.23(b)(2)

Proposed § 800.23(a)(2) set standards for demonstrating a history of continuous operation as a business entity, as required by Section 509(c) of the Act. It required continuous operation of the entity over a period of 5 years immediately preceding the time of application. Proposed § 800.23(a)(2)(i) allowed consideration of joint ventures with less than 5 years continuous operation if each member had been in continuous operation for at least 5 years. Proposed § 800.23(a)(2)(ii) allowed the regulatory authority to exclude periods of interruption to the operation that were beyond the control of the applicant. Such exclusions were required to be related to the likelihood of continued operation. The provisions of proposed § 800.23(a)(2)–(a)(2)(ii) are adopted at final § 800.23(b)(2)–(b)(2)(ii) with the following changes. A phrase is added to § 800.23(b)(2)(i) to clarify that the 5 years of continuous operation of each member must immediately precede the time of application. Revisions have been made to § 800.23(b)(2)(ii) to clarify that any period of interruption cannot be excluded from the calculation of 5 years of continuous operation if it affects the likelihood of the applicant remaining in business.

Two commenters contended that the requirement for 5 years of continuous operation in proposed § 800.23(a)(2) was too long. One of these said that the 5 year period does not consider years spent planning and developing. The commenter stated that the rule does not make provision for self-bonding during this period and, consequently, the operator would encounter an additional "roadblock" of finding bond elsewhere. The other commenter suggested changing the requirement to 1 year, because this is sufficient time to determine the financial status of the applicant. The commenter felt that meeting the financial criteria, together with the requirement that alternate bond be posted if financial conditions change, assure that reclamation will be completed.

OSM does not agree that a period of less than 5 years would show a history of continuous operation sufficient to authorize self-bonding. This self-bonding program relies heavily on the likelihood that the operator will remain in operation long enough to complete the reclamation plan following mining operations. A period of at least 5 years of continuous operation is necessary to show the business entity's intent and ability to remain in operation and undertake subsequent mining and reclamation.

One commenter asked that the 5 year requirement be waived for subsidiaries with self-bonds guaranteed by the parent corporation. The commenter pointed out that, under Pennsylvania self-bonding rules, a subsidiary can qualify for a self-bond with no time restriction if the parent guarantor demonstrates 10 years of continuous operation.

In § 800.23 (b) and (c), OSM has allowed parent corporations to guarantee self-bonds for subsidiaries. These provisions clarify that this criterion is not applicable to the subsidiary of a parent guarantor if the parent meets the criterion.

One commenter objected to proposed § 800.23(a)(2) because the government in allowing self-bonding is acting as a surety for the public and should require the types of showings a surety would require. In order to establish a high probability that the operator will complete the work, the commenter asserted that the government should study the operator's past compliance history, especially since enactment of the Act. Evidence of a history of non-compliance of cessation orders in particular should be considered. The commenter also said that the 5 year period is arbitrary and that the rule should require continuous operation since August 3, 1976, one year before passage of the Act. The commenter said that the history of continuous operation should antedate the passage of the Act to reflect the ability to maintain operation through passage and implementation of the Act.

OSM agrees that the regulatory authority should consider the operator's past history of compliance and patterns of violation in deciding whether to allow an operator to self-bond. OSM does not intend to establish regulations which would detail how a history of compliance should be judged, however, and leaves this to the regulatory authority who has the final responsibility to accept or reject an application to self-bond.

OSM does not agree that an operator must have been in operation before passage of the Act to show that he or she can maintain operations under the requirements of the Act. The fact that an entity was not yet in existence during the passage and implementation of the Act has little or no bearing on the operator ability to maintain operations under requirements of the regulatory program if it can demonstrate to the regulatory authority a history of continuous operation. To accept such a suggestion would provide an unfair competitive advantage to certain firms that is not rationally related to the goals of the Act.

One commenter approved of the 5 year continuous operation criterion, stating that the previous 10 year requirement was unnecessary. The commenter said the 10 year requirement was based on outdated data from the Small Business Administration which reflected the experience of small, under-capitalized companies. Better indicators of survival are criteria such as capitalization and management.

OSM agrees that the 5 year criterion is sufficient and has adopted § 800.23(a)(2) as proposed, at new § 800.23(b)(2).

One commenter objected to proposed § 800.23(a)(2)(i), allowing joint ventures to self-bond but requiring each member of a joint venture to have five years continuus operation, because joint ventures are "informal amalgamations" of capital and skill combined for a single undertaking. The commenter said that joint ventures are speculative and are

often "the vehicle for circumvention of the provisions of SMCRA." The commenter requested that these applicants be scrutinized and that each entity be required to indemnify the venture.

Although OSM agrees that the regulatory authority should be circumspect when considering joint ventures for self-bonding, joint ventures may be given consideration under this provision. Provisions at § 800.23(e) do require joint and several liability under self-bond indemnity agreements for all who sign, and also that each partner or party with a beneficial interest in the joint venture must sign the indemnity agreement.

Another commenter suggested that the regulatory authority should not have the discretion to disqualify a joint venture under proposed § 800.23(a)(2)(i), each of whose members has been in continuous operation for 5 years.

OSM disagrees. The regulatory authority is in the best position to judge whether a business entity which has been in existence more than 5 years should be given special consideration based on the history of operation of the individual members. The regulatory authority should not accept a self-bond unless it is satisfied that successful reclamation is ensured.

A commenter stated that the standard in proposed § 800.23(a)(2)(ii), for excluding certain periods from consideration when determining the period of continuous operation, is too vague. The commenter cited labor relations problems, interruptions due to storm events, and coal marketing problems as possible obstacles to continuous operation that reflect on the operator's ability to plan and implement an operation. The commenter stated that all information that has a bearing on operator reliability should be studied and weighed according to extenuating circumstances.

OSM agrees that periods of inoperation beyond the applicant's control should be considered in view of the total operation's picture, and weighed according to merit. However, OSM has determined that these various types of interruptions will not be enumerated in the rule, since the list would be extensive and possibly incomplete. The periods of interruption beyond the operator's control may include interruptions due to natural disasters, employee strikes, railroad strikes, and others.

Shutdowns due to market conditions may or may not be beyond the control of the operator. The regulatory authority can assess whether such a shutdown is due in any respect to the applicant's failure to properly manage the operation and whether it relates to the likelihood of the firm remaining in business for a sufficient period to complete the required reclamation.

Another commenter asked that language be added at proposed § 800.23(a)(2)(ii) to allow a subsidiary of a parent guarantor with 5 years continuous operation to qualify for (corporate guaranteed) self-bonding even if the subsidiary has been in operation for less than 5 years. The commenter stated that the proposed rules are not clear on this point.

OSM has clarified this point in the final rules by redesignating proposed § 800.23(a)(5) as § 800.23(c) and by adding language to the introduction of § 800.23(b). The changes clarify that, if the regulatory authority approves, a parent corporation qualifying under § 800.23(b)(1) through (b)(4) may guarantee the self-bond of a subsidiary, even if the subsidiary does not qualify under those paragraphs.

The same commenter suggested that proposed § 800.23(a)(2)(ii) be changed to read: "Periods of interruption to the operation are excluded that were beyond the control. . . ." The commenter said that Congress did not intend to allow such case-by-case discretion to the regulatory authority.

OSM disagrees with this commenter. Section 509(c) of the Act gives discretion to the regulatory authority on whether to accept a self-bond.

Section 800.23(b)(3)

Proposed § 800.23(a)(3) (final § 800.23(b)(3)) established the third condition to be met before a self-bond may be accepted by the regulatory authority. This provision required the applicant to submit financial information in sufficient detail to show that the applicant met at least one of the three financial solvency criteria listed in proposed § 800.23(a)(3)(i), (ii) or (iii). Under the proposal, additional financial solvency tests, such as financial ratios, could have been required by the regulatory authority. The financial criterion at proposed § 800.23(a)(3)(i) allowed a current rating for the applicant's most recent bond issuance of "A" or higher as issued by Moody's Investor Service or Standard and Poor Corporation. Proposed Paragraph (a)(3)(ii) allowed a showing that the applicant had a tangible net worth of at least $10 million. The financial test at proposed § 800.23(a)(3)(iii) was a showing of tangible fixed assets of at least $20 million.

The provisions of proposed § 800.23(a)(3)(i)–(a)(3)(iii) are adopted as proposed at final § 800.23(b)(3)(i)–(b)(3)(iii) except that financial ratios are included in § 800.23(b)(3) (ii) and (iii) in order to provide an extra assurance of financial strength and a relatively easily implemented method of monitoring possible changes in the financial status of an entity. The financial ratios are explained below.

One commenter had numerous objections to the financial criteria requirements in proposed § 800.23(a)(3). The commenter called the proposed criteria "foolhardy" and contended that they avoided the key problem of assuring that the operator will have sufficient unencumbered or unrestricted assets to stand for the work. The commenter said the self-bond should be as effective as a surety bond and that the proposed rules "fail miserably" in this regard. The commenter said that the self-bond should be backed with a pledge of, or priority lien on, unencumbered real or personal property to assure available funds, or that the rule should at least allow this option to the regulatory authority. The commenter said that the criteria of high bond rating, $20 million tangible fixed assets or $10 million net worth have no relation to the existence of and timely access to unencumbered funds. The commenter suggested the use of Standard and Poor or Moody's ratings should be rejected "out of hand." The commenter cited the case of the *Blue Coal Company* discussed at 44 FR 15114–5, March 13, 1979. The commenter contends that Blue Coal Company probably would have qualified under these rules and yet the company went bankrupt. Bankruptcy proceedings can be lengthy and OSM would be an unsecured creditor without priority in such a case. The commenter said that such a potentially large failure can cause more environmental disturbance than numerous small ones.

Although OSM understands the commenter's concerns, the established financial criteria of these rules have a sound basis. OSM agrees that the self-bond should be effective, but does not agree that a pledge of unencumbered real or personal property must be obtained. A pledge of property to secure a bond amounts to a collateral bond which is another available alternative to a surety bond. The purpose of establishing a self-bond program is to recognize that there are companies that are financially sound enough that the probability of bankruptcy is small. A self-bond is allowed both because there are enough assets to allow reclamation in case of bankruptcy, and because there is little probability of bankruptcy. The company that self-bonds signs an indemnity agreement that is a pledge of performance with a promise to pay in

the event of nonperformance, and as such is comparable to a surety bond. The minimum tangible net worth to bond ratio of 4 to 1, required at final § 800.23(d), is intended to assure that where a company self-bonded under these rules becomes bankrupt, sufficient assets are available. This requirement gives some assurance that the regulatory authority would be able to recover funds owed under the indemnity agreement. OSM is aware that bankruptcy proceedings are lengthy and do not have great likelihood for successful total recovery by creditors. The criteria in final § 800.23(b)(3)(i)–(iii) are intended to avoid, to the extent reasonably possible, the acceptance of a self-bond from a company that would enter bankruptcy.

The financial showings required by these rules are such that only well-established, financially sound companies will qualify to self-bond. The Environmental Protection Agency (EPA), in its study of financial tests for owners and operators of hazardous waste facilities, mentions a National Association of Accountants report that found that the failure of firms with a tangible net worth of $10 million or more was "sharply lower" than for other firms (Backer and Gosman, 1978). To increase the likelihood that self-bonds are received only from financially sound firms, OSM is adding requirements for applicants to show certain ratios in order to qualify under the $10 million net worth criterion and under the $20 million fixed assets criterion. A ratio of total liabilities to net worth of 2.5 or less is required. This will assure that the entity is not over-extended, that is, that the debts of the entity are not disproportionate compared to the entity's assets. A ratio of current assets to current liabilities of 1.2 or more is added to assure reasonable liquidity of the company. (The derivation of these specific ratios is explained below.) The added requirement to show ratios will also provide an easily monitored indicator of financial changes in a self-bonded entity. The regulatory authority can thus be forewarned that a replacement bond may be necessary, before a company reaches a point where it is no longer bondable through conventional sources, such as a surety bond or a letter of credit. The ratios will be of particular significance for companies qualifying under the $20 million fixed assets criterion, since the ratios will indicate the asset position of the company.

A rating by Standard and Poor's or Moody's of "A" or higher under § 800.23(b)(3)(i) and a tangible net worth of at least four times the bond amount under § 800.23(d) together will assure a low risk of company bankruptcy for those companies choosing to qualify under § 800.23(b)(3)(i), rather than under § 800.23(b)(3) (ii) or (iii). In order to rate the bond issuance of a company, these ratings services do thorough studies of the financial records of the issuing firms to determine ability to repay the bonds. The services are relied upon heavily by creditors and maintain a high rate of predictive success.

This same commenter suggested two alternative approaches to self-bonding rules: 1) Require financial analysis of the applicant for 2 years prior to application to document equity sufficient to assure reclamation, and segregate assets and keep them unencumbered and liquid; or 2) require a security interest or property mortgage. The commenter suggested adding the requirement that the operator give full disclosure of other relevant financial obligations. The commenter said national holdings should not be considered because interstate bond forfeitures are often unsuccessful and costly. The commenter cited *Huntington v. Attrill*, 146 U.S. 65 (1892), stating that under this case it is "probable that penal judgments are not entitled to full faith and credit by sister states."

OSM in promulgating new self-bonding rules has attempted to establish a workable system that provides an acceptable degree of risk and a manageable degree of administrative requirements. The first alternative suggested above would add considerably to the paperwork and financial analysis expertise required to implement a self-bonding system. The second alternative would effectively reestablish previous self-bonding rules, that is, they would represent another type of collateral bond. The Act, at Section 509(c), intends that an unsecured self-bond should be an alternative available to the regulatory authority for consideration in a bonding program. OSM agrees with the commenter that full disclosure of other relevant obligations would be helpful, but does not intend to require this in rules. These other obligations will be figured into its liabilities when calculating the applicant's net worth. OSM believes it is sufficient to require at new § 800.23(d) that the applicant's net worth be represented by assets located in the United States and has added this requirement. A judgment obtained as a result of the indemnity agreement is not a penal judgment since the amount would only be commensurate with the actual costs involved in completing the reclamation. No penal sum is involved in executing on an indemnity agreement unless pre-existing State law provides otherwise.

The same commenter asked how the proposed rules would provide for reclamation in the event of bankruptcy, and what would be the status of the regulatory authority? The commenter asked how a corporation can be monitored in the case of a rapid decline in financial health and what can be done?

In the event of bankruptcy, the regulatory authority would probably be in the position of unsecured creditor. Typically, the regulatory authority would have to go through bankruptcy proceedings to secure payment on the indemnity agreement. Bankruptcy proceedings are often lengthy and involved, and the regulatory authority could have to settle on less than 100% payment on the indemnity agreement. The regulatory authority may be left with insufficient funds to complete the reclamation plan and may have to obtain funds elsewhere to do so. For these reasons, it is important for the regulatory authority to monitor the self-bonded entity closely, examining financial statements as necessary and requiring replacement bond when any of the conditions of self-bonding no longer hold. OSM has added a provision at § 800.23(f) to allow the regulatory authority to require that the self-bonded applicant or parent guarantor supply annual updates of financial information to the regulatory authority. OSM has added the requirement to show certain financial ratios at § 800.23(b)(3) (ii) and (iii) to give greater certainty of the financial soundness of the entity and to give the regulatory authority a method by which to monitor changes in the financial status of the self-bonded entity or parent guarantor.

Monitoring of these ratios should help to allow the regulatory authority sufficient warning so that the self-bonded entity can be required to find a suitable replacement bond while its financial condition is still strong enough to qualify the entity for a surety or other type of bond. The regulatory authority could get some signal of a financially troubled company if on-site inspections reveal that reclamation is not contemporaneous. Through the enforcement mechanism, the regulatory authority may be alerted to a decline in a company's financial health as it occurs and can act then to demand other bond.

A regulatory authority stated that the requirement of proposed § 800.23(a)(3) severely limited the number of qualifying operators and that OSM should consider lowering the required

net worth and tangible fixed assets requirements because proposed § 800.23(b) provided real protection by limiting bond amounts to 25 percent of the applicant's net worth.

OSM realizes that the criteria of final § 800.23(b)(3), particularly with the added financial ratios, limit somewhat the number of qualifying applicants, but has not received any information which would indicate that lower limits would provide an acceptable degree of risk against operator failure. Therefore, the requirements are adopted.

One commenter supported the proposed financial indicators as sound and believed they "will provide a workable and reliable approach for rating the creditworthiness and financial health of self-bond applicants." The commenter said that "applicants that satisfy these requirements are almost by definition on-going enterprises with sufficient financial capacity to assure performance of reclamation." Another commenter generally favored the proposed rules but said that "the determination of ability to self-bond should emphasize the financial strength of the applicant and not its size." The commenter said that criteria should include such items as the applicant's bond rating, liabilities to net worth ratio, and audited financial statements, and that the test for solvency should not be based solely on net worth or fixed assets as the rule would allow. A third commenter suggested that OSM adopt self-bonding rules similar to Pennsylvania's. Under Pennsylvania's rules the operator must submit audited financial statements for the three most recent years, the applicant cannot have defaulted on significant obligations for 3 years, and the applicant must demonstrate that forfeiture of bond amounts would not materially affect the ability to stay in business or endanger cash flow. The regulatory authority can also require collateral.

In response to comments, OSM has decided to add the requirement to show financial ratios, based on the requirements for EPA's financial assurance rules for closure and post-closure of hazardous waste facilities, and the background documents supporting those rules. EPA studied various ratios of bankrupt and non-bankrupt firms to determine which ratios have high predictive success for filing for bankruptcy. As a result of this study, in its rules published April 7, 1982, EPA requires that an owner or operator of a hazardous waste facility who wishes to pass a test for financial assurance have two of three listed ratios, among other financial qualifications (47 FR 15032). OSM has adopted two of these ratios in these final rules, with modifications based on industry ratio averages for the coal industry which were supplied by Dun & Bradstreet (Dun & Bradstreet, 1983).

For applicants qualifying by meeting the $10 million net worth or $20 million fixed assets criteria, a current assets to current liabilities ratio of 1.2 or greater is required, and a total liabilities to net worth ratio of 2.5 or less is required. These are slightly less restrictive than EPA requirements because OSM is not allowing a choice of 2 out of 3 ratios as does EPA, and also because the Dun & Bradstreet industry ratios indicate that these figures better reflect industry norms for coal mining companies with $10 million net worth or $20 million fixed assets.

OSM is attempting to provide self-bond rules which will allow unsecured self-bonds without requiring that the regulatory authority employ experts in financial analysis to determine which parties should be allowed to self-bond. Although the suggested Pennsylvania plan may be a viable plan in some States, OSM does not wish to impose such a plan nationwide since it would seem to require such expertise in financial analysis as mentioned above. These final rules, although they do not require collateral, allow the regulatory authority to require collateral if it wishes. Also, at final § 800.23(b)(4) OSM is requiring the financial statements described below.

One commenter objected to proposed § 800.23(a)(3)(i) and stated that, although this criterion may have been aimed at operators with net worth less than $10 million and fixed assets less than $20 million, the bond rating criterion is not applicable for most independent mine owners.

OSM realizes that most independent mine operators that are not heavily capitalized will not issue bonds and will not be rated by Moody's or Standard and Poor's and that they will probably not qualify for a self-bond under these rules. However, OSM believes that its self-bond program must be workable and must provide for unsecured self-bond only for qualified entities which provides a high degree of risk protection to the regulatory authority. These rules promulgated today provide such a system.

A regulatory authority asked that proposed § 800.23(a)(3)(i) make clear that an operator who does not qualify under the bond rating criterion can be underwritten by a State reclamation fund; or OSM should make clear that State alternative bonding systems established under Section 509(c) of the Act are exempt from these self-bonding standards.

An alternative bonding system proposed under Section 509(c) of the Act, and reviewed by the Secretary for approval or disapproval, is judged on its own merit and in light of the State's total bonding program. An alternative bonding system must meet the requirements of Section 509(c) of the Act and 30 CFR 800.11(e) in order to be approved by the Secretary.

A commenter felt that at proposed § 800.23(a)(3)(ii), intangible net worth should be allowed to be included in this test since it offers a "valid and appropriate" indication of net worth. Also, the proportion of intangible worth to tangible property is "fairly insignificant." The commenter also wanted clarification of the meaning of assets minus liabilities in determining net worth, since the commenter calculates this to be zero.

Intangible items include goodwill, patents and royalties, and trademarks, are difficult to evaluate and liquidate, and therefore will not be allowed in the calculation of net worth, except when figuring ratios that consider net worth. These intangibles are not allowed in the calculation of the $10 million net worth criterion or in the calculation for the net worth to bond amount ratio. These criteria become important in the event of a default on a self-bond. The definition of "tangible net worth" is moved to final § 800.23(a)(7).

As to the calculation for net worth, the basic accounting equation is: Assets equals liabilities plus owners' equity. Therefore, net worth is equivalent to owners' equity. As described earlier, a definition of net worth is included in final § 800.23(a).

One commenter stated that the fixed assets measure at proposed § 800.23(a)(3)(iii) provides no assurance of the applicant's financial strength and does not assure any net worth. Secured parties would claim collateral, leaving little for bond payment.

Fixed assets of $20 million assures lender confidence in the applicant's business ability or that the applicant is well-capitalized. Besides this qualification, the applicant would need to have a net worth of at least four times the applicant's total self-bond obligations to qualify. Also, the above-described requirements for financial ratios provide an acceptable degree of risk from bankruptcy and, in the case of bankruptcy, help to assure that assets, when liquidated, will provide funds sufficient to cover bonded amounts.

Three commenters, including two regulatory authorities, recommended that the restrictions on land and coal in place be deleted from proposed § 800.23(a)(3)(iii). They said that these items have significant value and can be easily appraised. One of the commenters said that only land and coal under permit should be deleted.

Unimproved land will not be allowed in the fixed assets calculations because values are subject to great variation and appraised values are often unreliable. Coal in place is not easily liquidated and its value depends on mining and market conditions, and therefore it is not included. The definition of "fixed assets" has been moved to final § 800.23(a)(3).

Section 800.23(b)(4)

Proposed § 800.23(a)(4) (final § 800.23(b)(4)) established requirements for financial reports based on the applicant's financial statements for the latest completed fiscal year and would have required an independent certified public accountant (CPA) to provide an opinion of the applicant's ability to meet all obligations under the reclamation plan. The changes made to the proposed rule are discussed below with the relevant comments.

Several commenters felt that the requirement for an independent CPA's opinion on the applicant's ability to meet future obligations should be deleted. One of these commenters spoke for the American Institute of Certified Public Accountants (AICPA). This commenter's concerns were generally repeated by the others. This commenter said that CPA's are required by the AICPA's Code of Professional Ethics to adhere to generally accepted accounting standards when preparing an audit of a company's records. The audit does not predict the outcome of future events, but only establishes an opinion as to whether the financial statements give a fair assessment of a company's financial picture at the time of the opinion.

Another of the commenters suggested that language be added to read "* * * and the accountant's opinion of the applicant's ability *on the date of the opinion*, to meet * * *"

OSM recognizes the merit of these comments and has revised the language of final § 800.23(b)(4) to delete the requirement for a certified public accountant's opinion on the applicant's ability to meet future obligations. Instead, the independent CPA's audit or review opinion is required on the accuracy of the information in the financial statement.

One commenter said that the requirement in proposed § 800.23(a)(4) to include any specific information requested by the regulatory authority was "vague, unreasonable and arbitrary." The commenter suggested this language: "The report shall include all of the specific financial information set forth above in these self-bonding regulations." Another commenter suggested changes to clarify what would be required in a CPA report. The language could read: "The applicant submits a statement of net worth or tangible fixed assets that is certified by an independent certified public accountant * * *." A third commenter suggested that the rule should require a standard audited report and that any additional information requested by the regulatory authority not contained in the audited certified financial report could be submitted unaudited. The commenter said that for large firms, audited statements are easily obtainable since they are filed with the Securities and Exchange Commission (SEC), but it is unreasonable to require that additional specific information be audited separately. This commenter suggested that proposed § 800.23(a)(4) be changed to read:

> The applicant submit[s] a report prepared by an independent certified public accountant in conformity with generally accepted accounting principles, examining the applicant's financial statements for the latest completed fiscal year. Any additional specific financial information requested by the regulatory authority, which is not contained in the certified financial report, may be submitted unaudited.

OSM realizes that the language of the proposed paragraph was lacking and that it was unclear. OSM has clarified final § 800.23(b)(4) with editorial changes and by adding language. Proposed § 800.23(a)(4) has been divided into separate paragraphs in final § 800.23(b)(4) (i), (ii), and (iii). Final § 800.23(b)(4)(i) requires that the applicant submit a financial statement for the latest complete fiscal year accompanied by a report by an independent certified public accountant and containing the accountant's audit opinion or review opinion. The audit opinion is required in certain reports filed with the SEC by many large corporations. The review opinion is allowed to save the expense of an audit opinion to those companies that do not submit annual reports to the SEC. The review opinion gives equivalent protection to the regulatory authority. If either opinion contains an adverse opinion, the self-bond application must be denied.

Final § 800.23(b)(4)(ii) requires that for current fiscal year quarters that have ended and for which a CPA opinion has not yet been obtained because the fiscal year has not yet ended, unaudited financial statements must be submitted to the regulatory authority along with the opinion required in § 800.23(b)(4)(i). This will provide the regulatory authority with a current picture of the financial state of a company that is in the middle of a fiscal year.

Final § 800.23(b)(4)(iii) requires the applicant to submit additional information required by the regulatory authority, but allows this additional information to be submitted unaudited.

Section 800.23(c) (proposed § 800.23(a)(5))

Proposed § 800.23(a)(5) would have given the regulatory authority the option to allow a parent corporation guarantor to guarantee the self-bond of a subsidiary, if the parent qualified under the self-bonding rules. This paragraph has been adopted as final § 800.23(c), and the language changed to clarify that an applicant need not qualify under new § 800.23 (b)(1) through (b)(4) if the self-bond is guaranteed by a qualifying parent corporation guarantor. Proposed § 800.23(a)(5) (i), (ii) and (iii) are adopted as final § 800.23(c) (1), (2), and (3), respectively, and establish the terms of the corporate guarantee. The parent corporation is required in these final rules to meet all self-bonding qualifications of § 800.23 (b)(1) through (b)(4). A self-bond guaranteed by a parent corporation guarantor is subject to all requirements of § 800.23.

One commenter suggested that proposed § 800.23(a)(5) be redesignated as § 800.23(b) and revised to make clear that a corporation guarantee is not always required, but is an available alternative. OSM agrees that this provision should appear in a separate paragraph for clarity, and has changed the rule accordingly from the proposed, and redesignated it § 800.23(c).

A commenter suggested a change at proposed § 800.23(a)(5) to read "the guarantor *and not the applicant* meets the conditions" to clarify that the tests apply to the guarantor and not the subsidiary. Another commenter said that the rules should allow self-bonding for subsidiaries if the parent meets the qualifications and guarantees the subsidiary's self-bond.

OSM agrees that if the parent corporation qualifies and is willing to guarantee the subsidiary's self-bond, the subsidiary need not pass the financial tests in § 800.23(b)(3). OSM has clarified this in the final rules.

Three commenters recommended allowing "third party" guarantees rather than just parent corporation guarantees.

One felt that requiring a corporate guarantee is arbitrary and unreasonable. Another said OSM gives no reason for restricting such guarantees only to the parent corporation. Another said that the guarantor may not be a corporation. A regulatory authority said that utility companies should be allowed to guarantee permittees with whom they have contractual agreements.

OSM does not agree that a third party guarantee will give sufficient assurance of a strong, direct interest in the successful mining and reclamation operations of the guaranteed party. Only a parent corporation that actually owns or controls the applicant has the necessary influence to affect management decisions of the operator and is able to supply quickly needed capital, labor or expertise in case of problems. For this reason the requirement that a guarantor be a parent corporation has been retained. Other forms of bonds by third parties must meet the surety requirements for surety bonds.

Section 800.23(c)(1)

Proposed § 800.23(a)(5)(i) provided that, if the applicant failed to complete the reclamation plan, the guarantor would do the reclamation or would be liable under the indemnity agreement to provide the funds for the regulatory authority to do so. There were no comments on this paragraph but language is added to clarify that the parent guarantor is liable to complete the reclamation plan or provide funds sufficient to complete the reclamation, but "not to exceed the bond amount." Otherwise, it is promulgated as proposed as final § 800.23(c)(1).

Section 800.23(c)(2)

Proposed § 800.23(a)(5)(ii) provided for cancellation of the corporate guarantee of the applicant's self-bond if notice was sent to the applicant and to the regulatory authority at least 90 days before cancellation, and the regulatory authority accepts the cancellation. The paragraph is adopted as proposed in final § 800.23(c)(2).

One commenter suggested changing "corporate guarantee" to "third-party guarantee" consistent with the commenter's suggested change to proposed § 800.23(a)(5). OSM has rejected this request consistent with the explanation under new § 800.23(c) above.

Section 800.23(c)(3)

Proposed § 800.23(a)(5)(iii) established the condition under which the regulatory authority could accept the cancellation of the corporate guarantee. Suitable replacement bond was required to be in place before the cancellation date.

No comments were received on this paragraph. However, language has been added, consistent with new bonding rules for surety bonds at § 800.20(b) (48 FR 32932, July 19, 1983), to allow for cancellation of a corporate guarantee if the bonded area has not yet been disturbed and the regulatory authority approves. Otherwise, it is promulgated as proposed as final § 800.23(c)(3).

Section 800.23(d) (proposed § 800.23(b))

Proposed § 800.23(b) is adopted as § 800.23(d). The proposed paragraph required that the total amount of self-bonds posted and/or guaranteed by a firm cannot exceed 25 percent of tangible net worth of the firm. The proposal has been adopted with the change discussed below.

Several commenters thought the required net worth to bond ratio was too high. One said that independent small operators would not qualify "without having to financially involve others."

Two commenters thought that a 50 percent requirement was better. One commenter suggested 100 percent, or a 1 to 1 ratio of net worth to bond amount. One commenter requested deletion of this requirement altogether because proposed § 800.23 (a)(1) through (a)(4) establish the applicant's financial well-being. The commenter called the requirement "arbitrary, unreasonable and capricious."

One commenter thought the proposed net worth to bond ratio was not high enough, and that it was arbitrary. This commenter suggested retaining the previous requirement of a 6:1 ratio of net worth to bond amount, to be more in keeping with the rates used by the surety industry.

Although the requirements of these rules are such that only well-established, financially solvent business entities will qualify for self-bonding, there is always an element of risk involved in underwriting the obligations of such companies. The 25 percent restriction provides a financial cushion, in the event that a self-bonded entity should fail, to allow the regulatory authority to attempt to recoup self-bonded amounts from the assets of the bankrupt entity. A 6 to 1 ratio is considered overly restrictive, especially in light of other required financial tests.

Two commenters asked for clarification of whether all self-bonds of the applicant are considered in determining the net worth to bond ratio. One asked whether the paragraph meant only the self-bonds written to the regulatory authority in the State, and the other commenter questioned whether it meant just those for surface coal mining operations.

OSM has modified the language of the paragraph to clarify that all self-bonds of the applicant for surface coal mining and reclamation operations shall be considered and that, to facilitate recovery of self-bonded amounts in the event of bankruptcy, net worth must be net worth in the United States. Self-bonds for other types of operations are not considered because they will be included as liabilities on the applicant's balance sheet.

One commenter asked that a ratio of 4 to 1 tangible net assets to bond amount be allowed instead of a 4 to 1 net worth to bond amount. The commenter said this gives greater opportunity to self-bond at no added risk to the regulatory authority.

OSM disagrees. A tangible net assets to bond amount ratio of 4 to 1 could allow a company with a low net worth to qualify, which would afford less protection to the regulatory authority.

One commenter said that OSM should specify that a company which does not qualify for self-bonding would not have to pass a net worth test to use a collateral bond, surety bond or letter of credit.

Although a company need not pass a net worth test to use a collateral bond, surety bond or letter of credit under the federal bonding rules, OSM does not agree that language is needed in § 800.23 to clarify this. Separate requirements are established in 30 CFR Part 800 for each of these bonding options which do not include a showing of net worth to bond amount ratio.

Section 800.23(e) (proposed § 800.23(c))

Final § 800.23(e), which was proposed as § 800.23(c), establishes the requirement for submittal of, and sets terms for, an indemnity agreement. Section 800.23(e) specifies who is required to sign the indemnity agreement and what rights the regulatory authority acquires by its acceptance. The indemnity agreement specifies the amount of the bond and specifies the applicant's and other parties' liability in the event of forfeiture.

No comments were received on the introductory provision of proposed § 800.23(c), which required an indemnity agreement to be submitted, and it is adopted as proposed as the introductory language in final § 800.23(e).

Section 800.23(e)(1)

Proposed § 800.23(c)(1) required that the indemnity agreement must be executed by all parties who are bound

by it. Such an agreement would be a joint and several obligation of the parties. This provision is derived from previous § 806.14(a)(6) (iii).

A commenter suggested a language change to read: "The indemnity agreement shall be executed by all persons and parties who are bound by it and where two or more persons or parties are involved, the regulatory authority shall allow each party to provide separate financial assurance for its proportionate share of the reclamation obligation, provided that the total of such assurance is sufficient to accomplish reclamation."

The commenter said that joint and several liability should not be imposed on joint ventures, since that would amount to one participant underwriting the bond of another.

To achieve the goals of these rules, joint and several liability should be imposed on joint ventures. A joint venture is often established for the purpose of a single business undertaking and OSM needs assurance that all the participants will have an incentive to hold the venture together through all surface coal mining operations on a self-bonded permit.

Proposed § 800.23(c)(1) is adopted as proposed as final § 800.23(e)(1), with one change to clarify that the parent corporation guarantor is required to sign the indemnity agreement.

Section 800.23(e)(2)

Proposed § 800.23(c)(2) pertained to corporations and parent corporation guarantors entering into an indemnity agreement. It required that the indemnity agreement be signed by two corporate officers and supported by the corporation's board of directors. It was taken from previous § 806.14(a)(6)(i)(A).

One commenter recommended deletion of proposed § 800.23(c)(2) since OSM would not lose much protection because the requirements are contained in § 800.23(c)(1). The commenter said also that it is impractical to obtain the consent of the board of directors and suggested that the provision, if retained, be changed to read "* * *" and supported by documentation of such authority acceptable to the regulatory authority." Two other commenters suggested similar changes.

OSM has adopted the requirement for signature by two authorized corporate officers. However, OSM agrees with the commenters that documentation of the corporate officers' authority to bind the corporation is sufficient and the corporation's board of directors need not sign an individual letter of consent. The paragraph is revised accordingly.

Two commenters recommended that an indemnity agreement be accepted with only one signature by an authorized corporate officer.

OSM does not consider it a burden on the corporation to obtain the signatures of two corporate officers on the indemnity agreement. For such an infrequent and important action, the approval of two corporate officers will better assure that the corporation and OSM are protected from possible unauthorized actions of an individual. This requirement is retained. The paragraph is revised as explained above and included as final § 800.23(e)(2).

Section 800.23(e)(3)

Proposed § 800.23(c)(3), adopted as § 800.23(e)(3), specified requirements for applicants which are partnerships, joint ventures and syndicates. Each partner and each member of a joint venture of syndicate with a direct or indirect beneficial interest in the applicant was required to be bound by the agreement. The provision was based on previous § 806.14(a)(6)(i)(C) and (iv). It is adopted as proposed.

A commenter recommended deletion of this provision because proposed § 800.23(c)(1) contained everything in proposed Paragraph (c)(3).

OSM has rejected this suggestion because this provision clarifies who is to be bound by the indemnity agreement.

Another commenter considered this provision too broad because it binds persons who do not necessarily have control in the company.

The purpose of the provision is to bind persons who do not necessarily have total control. In the types of ventures listed, it is not uncommon that no one person has controlling capability.

Section 800.23(e)(4)

Proposed § 800.23(c)(4) established the requirement for the applicant or parent corporation guarantor to pay the regulatory authority, upon forfeiture, the sum necessary to complete the reclamation plan. The provision required that, if permitted under State law, the indemnity agreement when under forfeiture would operate as a judgment against the liable parties. It is adopted in § 800.23(e)(4) with the changes described below.

Two commenters suggested adding a provision to allow the applicant or guarantor to complete the reclamation plan to avoid being required to pay, consistent with proposed § 800.23(a)(5)(i) and previous § 808.11. Two commenters suggested limiting the amount of bond forfeiture, not to exceed the face amount, or "not to exceed the bond amount . . . pursuant to § 800.14 . . ." necessary to complete the reclamation plan. This would clarify the limit of liability under a self-bond, consistent with limitations on liability for other bond types.

OSM agrees with these commenters and has revised final § 800.23(e)(4) accordingly. The reference to previous § 808.13 in the first sentence of the proposed paragraph is changed to new § 800.50 in the final rule.

Two commenters requested deletion of the last sentence of proposed § 800.23(c)(4). They said that confession of judgment is supported by law only in some States, and since it cannot be applied uniformly, it must be deleted. One added that it is prohibited in some States and that a permittee might contest an order of forfeiture.

OSM disagrees with these commenters. With this provision, States which are permitted to do so can obtain funds more expeditiously, especially in case of a bankruptcy.

Section 800.23(f)

A new paragraph is added at § 800.23(f) in response to a comment, and to assure regulatory authorities the means by which to monitor the continued financial health of a self-bonded applicant or a parent guarantor.

A regulatory authority asked how it will know that the financial conditions under which the self-bond was approved have changed. The commenter suggested requiring annual submission of proposed § 800.23(a)(4) requirements and immediate notification of a change in conditions, since permit review may only be required at mid-term.

OSM agrees that the regulatory authority could need annual updates of the financial information of the self-bonded applicant or parent guarantor and has added a new paragraph at § 800.23(f) to give regulatory authorities flexibility to require this. It is important that the regulatory authority have access to these financial data in order to monitor the financial health of the entity. The commenter's suggestion for immediate notification of a change in conditions is addressed in new § 800.23(g).

Section 800.23(g) (proposed § 800.23(d))

Proposed § 800.23(d) is adopted as final § 800.23(g). Proposed § 800.23(d) required that, if the financial conditions of the applicant or guarantor changed at any time during the period the self-bond was posted, so that they did not meet required conditions, the permittee must, within 90 days, post an alternate form of bond. If suitable substitute bond was not obtained, provisions of § 800.16(e)

would apply. The provision is adopted as proposed with an addition which requires that the self-bonded firm notify the regulatory authority of a change in financial conditions where the self-bonded applicant of parent guarantor no longer meets the required conditions.

A commenter suggested changing "parent corporation guarantor" to "third party guarantor" consistent with the commenter's suggestion to allow a guarantee by a party other than a parent corporation. OSM has denied this request as explained in the discussion of final § 800.23(c).

The requirement to notify the regulatory authority immediately of a change in conditions whereby financial criteria are no longer met, has been added in response to the comment discussed under § 800.23(f) above and consistent with requirements at new § 800.16(e)(1) of the permanent bonding program.

General Comments

Comments that do not relate to any specific section of the rule are summarized and discussed below.

One commenter suggested a change to the definition of self-bonding to allow for an indemnity agreement executed by a third party since proposed § 800.23(a)(5) allowed a parent corporation guarantor. The commenter also suggests deletion of "with or" from "with or without separate surety" to reflect the true meaning of self-bond.

OSM agrees with the first suggestion and has made a change to the definition of self-bond to reference the parent guarantor. Since the definition was not included in this proposed rulemaking notice, the change has been incorporated in the final rulemaking notice for the bonding rules. However, OSM will not adopt the second suggestion because the regulatory authority has the discretion to require separate surety on a self-bond even though these rules do not require such separate surety.

Several commenters were generally opposed to the proposed new self-bonding rules, for various reasons. Two commenters said that the rules favor large operators and do not consider small and medium-size operators who may have a sound financial footing.

OSM realizes that some small and medium-size operators who are financially sound will be excluded from the self-bonding option under these rules. In order to allow such companies to be considered for self-bonding, detailed rules would have to be established and an elaborate review system would have to be used to study financial statements on a case-by-case basis. Expert financial analysts would have to be retained for this purpose in each regulatory authority office that adopted self-bonding. OSM has determined that, at this time, these final rules which establish simpler, although rather stringent, criteria are preferable.

One commenter felt that earlier self-bonding rules are appropriate and that the proposed rules do not contain enough disincentive to avoid non-compliance or enough protections against insolvency. If insolvency occurs, the commenter asserted, taxpayers would have to pay for reclamation. The commenter said that State-specific conditions, local industry structure, and consideration of small companies should have little bearing on self-bonding rules. The Act was meant to establish national standards to assure mined land reclamation.

The rules promulgated today establish national standards which allow only well-established, financially sound companies to qualify for self-bonding. While there is still some degree of risk since the self-bonds are no longer required to be backed by secured property interests, there are controls established to warn of changes in the financial position of self-bonded parties. The degree of risk of self-bonded operator insolvency is considered small. In the event a self-bonded operator becomes bankrupt, there is a chance that the regulatory authority would not be able to collect sufficient funds on the indemnity agreement to complete the reclamation plan. In such cases, the burden could ultimately fall on taxpayers to supply funds for reclamation. However, the potential savings to operators by allowing self-bonding, and, by the establishment of stringent eligibility criteria, the small risk of operator default may make it worthwhile to consider taking such a risk.

The regulatory authority in deciding whether to allow an applicant to self-bond should bear in mind that the reclamation plan must be completed, even if funds are unavailable from the self-bonded applicant under the indemnity agreement.

One commenter opposed the proposed rules because they ignore historic dialogue on the impact of self-bonding on the surety industry, on the States' ability to make good the reclamation on such bonds, and on the quality of the mining environment. The commenter said that the net result of the rules could be that the surety industry will withdraw from coal operation reclamation bonding.

While OSM is aware of the previous dialogue on the possible impact of self-bonding rules on the surety industry's willingness to bond coal mine operations, OSM has weighed the stringency of eligibility criteria versus surety industry unwillingness to write reclamation bonds for only those companies which would not qualify for self-bonding. OSM has struck a reasonable balance in the eligibility criteria adopted here. It is the intent of Section 509(c) of the Act to allow for self-bonds under financially safe circumstances and only if the regulatory authority wishes to allow self-bonding. OSM is obliged to establish regulations in line with the intent of Section 509(c). At the same time OSM has amended its overall bonding program to consider the concerns of the surety industry and to allay, where possible, surety objections to certain of the requirements of the bonding regulations. For example, the new bonding regulations allow separate bonds to be posted for separate phases of bonding, so that an operator can obtain surety bonding for backfilling, regrading and drainage control requirements, and can post other types of bond for the long term phases of reclamation. Therefore, while some of the larger coal mine companies may be withdrawn from the pool of possible surety-bonded operations, more flexible general bonding provisions will allow sureties to consider bonding for some companies that would not have qualified for surety bonding under previous rules.

Several commenters generally favored the proposed new rules, with some changes suggested which are discussed with the specific provisions. One called the proposed rules a great improvement over "needlessly detailed" previous rules and "preferable to the lack of direction" in the proposed September 9, 1981, self-bonding rules. One said the proposed rules present a "viable and effective self-bonding mechanism" and go a long way toward assuring a "realistically and reasonably available" system to qualified operators.

OSM agrees that these rules are preferable to previous rules and proposals. However, States wishing to strengthen these rules by requiring a security interest in property for example, or States not wishing to allow self-bonding at all, may do so.

Two commenters objected to the amount of flexibility that the proposed rules would give to the States. One said that the discretion afforded the States contravenes congressional intent for nationwide standards so that States cannot use concessions to operators to attract them to the State. The other commenter said that this flexibility ignores the fact that self-bonding is

unpopular among the States and the surety industry. The commenter called the rules unacceptably lax with potentially disastrous economic and environmental impacts. This commenter stated that the regulatory authority does not really have the discretion to deny self-bond to a qualified applicant in States where laws can be "no more stringent than" OSM rules. The commenter said that bonding is of national significance and needs national standards, and urged OSM to retain previous standards or strengthen proposed ones. The commenter said that political pressure on the States to provide the flexibility of self-bonding is contrary to Section 101(g) of the Act because it may result in competition in interstate commerce. The commenter called OSM's claim of rules that form a benchmark "legally erroneous since OSM must fully implement Title V."

The self-bonding rules promulgated today set standards that are based on observations of the national business and mining community. They set criteria which are realistically restrictive and which allow the regulatory authority to judge on a case-by-case basis, and using regional experience, whether to accept an individual self-bond. The standards contained in these rules are not lax, but represent low-risk standards which, when properly implemented, will provide an opportunity for financially sound and well-established companies to self-bond some or all of their coal mine reclamation obligations. As explained above, with these rules and the revised overall bonding program OSM has established rules which it believes represent a reasonable compromise in response to surety concerns.

These self-bond rules are entirely optional and the regulatory authority is under no obligation to adopt self-bonding rules in a bonding program. The States are not under any pressure from OSM to adopt self-bonding rules, nor does the Act require it. A State program is not deficient if it does not adopt a self-bonding program. Even in States where standards must be adopted which are no more stringent than Federal standards, the regulatory authority maintains the ultimate discretion over whether to adopt a self-bonding program or to accept the unsecured self-bond of the applicant. That is, a State must decide for itself within the framework of its laws, whether it may choose not to adopt self-bonding rules.

One commenter endorsed the objective of allowing more State flexibility and felt the proposed rules achieve this.

OSM agrees that States should have the flexibility to consider regional conditions within the framework of national standards.

A State regulatory authority questioned the Secretary's authority to propose self-bonding regulations under Section 509(c) of the Act. The regulatory authority quoted this Section to emphasize that it gives discretion to the *regulatory authority* to accept the self-bond when the "applicant demonstrates to the satisfaction of the regulatory authority" the required tests. The regulatory authority also said that Section 501(b) of the Act does not explicitly or implicitly mandate the Secretary to formulate self-bonding rules.

Section 501(b) of the Act requires the Secretary to promulgate regulations implementing Title V of the Act. These regulations are promulgated today in accordance with Section 509(c) of the Act. They establish usable standards for self-bonding that are applicable nationwide. Full discretion is given to the regulatory authority to adopt or not adopt these rules, or if adopted, to deny or accept an applicant for self-bond who qualifies under these rules.

One commenter discussed the 1979 Mining and Reclamation Council (MARC) petition to rewrite the self-bonding rules to require only that information required by the Act. At that time, The National Coal Policy Project Mining Task Force recommended that the proposal be rejected because 1) the self-bonding language of the Act closely resembles that of Alabama's surface mining law which is virtually unuseable, and 2) if large companies self-bond, the surety industry will probably pull out of the bonding market. The commenter urged OSM not to consider going back to just the language of the Act.

OSM agrees that the language of the Act should be supplemented with more detailed regulations to judge whether a State self-bonding program could be acceptable, and is therefore promulgating these final self-bonding rules. OSM believes that the surety industry will find these rules, coupled with the revised bonding program, to represent a reasonable compromise.

One commenter urged OSM to recommit to a study to the scope and focus proposed by OSM in August, 1980, and to restore the rules of August 6, 1980 (45 FR 52306) pending the study.

OSM intends to pursue resolution of the problem of providing a self-bond program which maximizes the number of eligible participants while minimizing the risk to the regulatory authority. The rules promulgated today minimize risk and administrative burden to the regulatory authority, but may deny entities that are potentially excellent business risks the opportunity to self-bond. Such a study as that proposed will take time and need additional resources. In the meantime, OSM is adopting rules which provide more flexibility than the suspended ones, yet still minimize the risk of accepting self-bonds from operators who will default in reclamation.

One commenter said that the factor which provides the greatest amount of protection to the regulatory authority is its power to choose not to grant a self-bond or to "revoke self-bond status once granted." The commenter pointed out that self-bonding is a privilege and not a right.

OSM agrees that regulatory authority discretion to allow or disapprove a self-bond application on a case-by-case basis is an important part of the self-bonding program. These final rules provide needed guidance, and establish a solid foundation on which to make a judgment. The regulatory authority should consider its own experience with local operations when making a final decision on whether to allow a self-bond.

Deletions

Provisions of previous § 806.14(a), (a)(1), part of (a)(5) and (a)(7) which were not suspended in the December 7, 1981, notice are removed. In this rulemaking, § 800.23 (b), (b)(1), (b)(2) and (g) retain the intent of these paragraphs.

Reference Materials

Reference materials used to develop these rules are as follows:

Backer, M. and M.L. Gosman. 1978. *Financial Reporting and Business Liquidity.* New York: National Association of Accountants. pp. 143–179.

Dun and Bradstreet. 1982. *Prospect Reports, April, 1982.*

Dun and Bradstreet. 1983 *Special Industry Norm Report.*

Environmental Protection Agency. 1981. *Background Document for the Financial Test & Municipal Revenue Test for Financial Assurance for Closure and Post-Closure Care.* EPA. 149 pp. Standard and Poor's Corporation. 1979. *Standard and Poor's Rating Guide.* New York: McGraw Hill, Inc. p. 6.

III. Procedural Matters

Paperwork Reduction Act

The information collection requirements in 30 CFR Part 800 were approved by the Office of Management and Budget (OMB) under 44 U.S.C. 3507 and assigned clearance number 1029–

0043. This approval is codified under § 800.10.

The information required will be collected and used by regulatory authorities in implementing the bonding responsibilities for surface and underground mining activities to ensure that companies have adequate financial ability to qualify for self-bonding. The information required by § 800.23 is mandatory of an operator who elects to self-bond its reclamation obligation in those States which choose to allow self-bonding.

Executive Order 12291 and Regulatory Flexibility Act

The Department of the Interior (DOI) examined the proposed rules according to the criteria of Executive Order 12291 (February 17, 1981). OSM determined that these were not major and did not require a regulatory impact analysis because they would impose only minor costs on the coal industry and coal consumers. These rules may allow some cost savings to companies which are allowed to self-bond and would therefore not have to pay surety-bond premiums.

The DOI has also determined, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, that these rules would not have a significant economic impact on a substantial number of small entities. Small entities will continue to obtain surety bonds or to post collateral to insure performance reclamation.

National Environmental Policy Act

OSM has prepared an environmental assessment (EA) on this rule and has found that it would not significantly affect the quality of the human environment. The EA is on file in the OSM Administrative Record, Room 5315, 1100 L Street, NW., Washington, D.C.

List of Subjects

30 CFR Part 800

Administrative practices and procedure, Coal mining, Insurance, Reporting and recordkeeping requirements, Surety bonds, Surface mining, and Underground mining.

30 CFR Part 806

Coal mining, Insurance, Reporting and recordkeeping requirements, Surety bonds, Surface mining, and Underground mining.

Accordingly, 30 CFR Parts 800 and 806 are amended as set forth herein.

Dated: August 4, 1983.

Wilbert L. Dare,

Acting Deputy Assistant Secretary, Energy and Minerals.

PART 800—BOND AND INSURANCE REQUIREMENTS FOR SURFACE COAL MINING AND RECLAMATION OPERATIONS UNDER REGULATORY PROGRAMS

1. Section 800.23 is added to read as follows:

§ 800.23 Self-bonding.

(a) *Definitions.* For the purposes of this section only:

Current assets means cash or other assets or resources which are reasonably expected to be converted to cash or sold or consumed within one year or within the normal operating cycle of the business.

Current liabilities means obligations which are reasonably expected to be paid or liquidated within one year or within the normal operating cycle of the business.

Fixed assets means plants and equipment, but does not include land or coal in place.

Liabilities means obligations to transfer assets or provide services to other entities in the future as a result of past transactions.

Net worth means total assets minus total liabilities and is equivalent to owners' equity.

Parent corporation means corporation which owns or controls the applicant.

Tangible net worth means net worth minus intangibles such as goodwill and rights to patents or royalties.

(b) The regulatory authority may accept a self-bond from an applicant for a permit if all of the following conditions are met by the applicant or its parent corporation guarantor:

(1) The applicant designates a suitable agent to receive service of process in the State where the proposed surface coal mining operation is to be conducted.

(2) The applicant has been in continuous operation as a business entity for a period of not less than 5 years. Continuous operation shall mean that business was conducted over a period of 5 years immediately preceding the time of application.

(i) The regulatory authority may allow a joint venture or syndicate with less than 5 years of continuous operation to qualify under this requirement, if each member of the joint venture or syndicate has been in continuous operation for at least 5 years immediately preceding the time of application.

(ii) When calculating the period of continuous operation, the regulatory authority may exclude past periods of interruption to the operation of the business entity that were beyond the applicant's control and that do not affect the applicant's likelihood of remaining in business during the proposed surface coal mining and reclamation operations.

(3) The applicant submits financial information in sufficient detail to show that the applicant meets one of the following criteria:

(i) The applicant has a current rating for its most recent bond issuance of "A" or higher as issued by either Moody's Investor Service or Standard and Poor's Corporation;

(ii) The applicant has a tangible net worth of at least $10 million, a ratio of total liabilities to net worth of 2.5 times or less, and a ratio of current assets to current liabilities of 1.2 times or greater; or

(iii) The applicant's fixed assets in the United States total at least $20 million, and the applicant has a ratio of total liabilities to net worth of 2.5 times or less, and a ratio of current assets to current liabilities of 1.2 times or greater.

(4) The applicant submits;

(i) Financial statements for the most recently completed fiscal year accompanied by a report prepared by an independent certified public accountant in conformity with generally accepted accounting principles and containing the accountant's audit opinion or review opinion of the financial statements with no adverse opinion;

(ii) Unaudited financial statements for completed quarters in the current fiscal year; and

(iii) Additional unaudited information as requested by the regulatory authority.

(c) The regulatory authority may accept a written guarantee for an applicant's self-bond from a parent corporation guarantor, if the guarantor meets the conditions of paragraphs (b)(1) through (b)(4) of this section as if it were the applicant. Such a written guarantee shall be referred to as a "corporate guarantee." The terms of the corporate guarantee shall provide for the following:

(1) If the applicant fails to complete the reclamation plan, the guarantor shall do so or the guarantor shall be liable under the indemnity agreement to provide funds to the regulatory authority sufficient to complete the reclamation plan, but not to exceed the bond amount.

(2) The corporate guarantee shall remain in force unless the guarantor sends notice of cancellation by certified mail to the applicant and to the regulatory authority at least 90 days in advance of the cancellation date, and

the regulatory authority accepts the cancellation.

(3) The cancellation may be accepted by the regulatory authority if the applicant obtains suitable replacement bond before the cancellation date or if the lands for which the self-bond, or portion thereof, was accepted have not been disturbed.

(d) For the regulatory authority to accept an applicant's self-bond, the total amount of the outstanding and proposed self-bonds of the applicant for surface coal mining and reclamation operations shall not exceed 25 percent of the applicant's tangible net worth in the United States. For the regulatory authority to accept a corporate guarantee, the total amount of the parent corporation guarantor's present and proposed self-bonds and guaranteed self-bonds for surface coal mining and reclamation operations shall not exceed 25 percent of the guarantor's tangible net worth in the United States.

(e) If the regulatory authority accepts an applicant's self-bond, an indemnity agreement shall be submitted subject to the following requirements:

(1) The indemnity agreement shall be executed by all persons and parties who are to be bound by it, including the parent corporation guarantor, and shall bind each jointly and severally.

(2) Corporations applying for a self-bond or parent corporations guaranteeing a subsidiary's self-bond shall submit an indemnity agreement signed by two corporate officers who are authorized to bind the corporation. A copy of such authorization shall be provided to the regulatory authority.

(3) If the applicant is a partnership, joint venture or syndicate, the agreement shall bind each partner or party who has a beneficial interest, directly or indirectly, in the applicant.

(4) Pursuant to § 800.50, the applicant or parent corporation guarantor shall be required to complete the approved reclamation plan for the lands in default or to pay to the regulatory authority an amount necessary to complete the approved reclamation plan, not to exceed the bond amount. If permitted under State law, the indemnity agreement when under forfeiture shall operate as a judgment against those parties liable under the indemnity agreement.

(f) A regulatory authority may require self-bonded applicants and parent guarantors to submit an update of the information required under paragraphs (b)(3) and (b)(4) of this section within 90 days after the close of each fiscal year following the issuance of the self-bond or corporate guarantee.

(g) If at any time during the period when a self-bond is posted, the financial conditions of the applicant or the parent corporation guarantor change so that the criteria of paragraphs (b)(3) and (d) of this section are not satisfied, the permittee shall notify the regulatory authority immediately and shall within 90 days post an alternate form of bond in the same amount as the self-bond. Should the permittee fail to post an adequate substitute bond, the provisions of § 800.16(e) shall apply.

PART 806—FORMS, CONDITIONS, AND TERMS OF PERFORMANCE BONDS AND LIABILITY INSURANCE [REMOVED]

2. 30 CFR Part 806 and remaining § 806.14 are removed.

(Pub. L. 95-87; 30 U.S.C. 1201 *et seq.*)

[FR Doc. 83-21742 Filed 8-9-83; 8:45 am]

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federal register

Wednesday
August 10, 1983

Part V

Department of Energy

Office of the Secretary

Safeguarding of Restricted Data; Redesignation of Part

DEPARTMENT OF ENERGY

Office of the Secretary

10 CFR Parts 795 and 1016

Safeguarding of Restricted Data; Redesignation of Part

AGENCY: Department of Energy (DOE).

ACTION: Final rule.

SUMMARY: In reviewing DOE's regulations, the regulations on the requirements for safeguarding of Restricted Data is being removed from Part 795 of 10 CFR Chapter III and redesignated under the "General Provisions" category in 10 CFR Chapter X to a new Part 1016.

EFFECTIVE DATE: August 10, 1983.

FOR FURTHER INFORMATION CONTACT: Martin J. Dowd, Director, Division of Security, U.S. Department of Energy, Washington, D.C. 20545, (301) 353–4642.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Energy is redesignating 10 CFR Part 795—Safeguarding of Restricted Data to a new Part 1016 so that all regulations of DOE-wide impact will be codified in 10 CFR Chapter X—General Provisions.

The changes made in this part reflect updating of organizational references, addition of subject topics, including numerical designations to effect comparability of this part with the provisions set forth in 10 CFR Parts 25 and 95, whenever applicable and some editorial changes wherever necessary.

II. Other Matters

A. DOE Act and Administrative Procedure Act

Section 501(c)(1) of the DOE Organization Act (Pub. L. 95–91; 42 U.S.C. 7191) provides that if DOE determines that no substantial legal or factual issue exists as to a rule, and determines that the amendment is unlikely to have a substantial impact on the Nation's economy or on large numbers of individuals or businesses, that rule may be promulgated in accordance with the Administrative Procedure Act.

DOE has determined that there are no substantial issues of law or fact in this amendment because it reflects only administrative changes in the rule.

Under the Administrative Procedure Act, notice and comment are not required where unnecessary or contrary to the public interest. DOE has determined that prior notice and comment with respect to this rule are unnecessary because of the rule's uncontroversial and limited nature, and that the public interest would best be served by adopting these administrative changes as soon as possible.

For the foregoing reasons, the normal requirement for a delayed effective date under 5 U.S.C. 553(d) does not apply.

B. Executive Order 12291

Section 3 of Executive Order (E.O.) 12291 (46 FR 13193, February 19, 1981) requires that DOE determine whether a rule is a "major rule", as defined by section 1(b) of E.O. 12291, and prepare a regulatory impact analysis for each major rule. Since the amendment is administrative, DOE has determined that it does not meet the E.O. 12291 definition of a major rule as one likely to result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Accordingly, a regulatory impact analysis is not required.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 Pub. L. 96–354, (5 U.S.C. 601–612) requires, in part, that an agency prepare an initial regulatory flexibility analysis for any rule, unless it determines that the rule will not have a "significant economic impact" on a substantial number of small entities. The amendment would not impose any additional burdens on small entities. Accordingly, as required by section 605(b), DOE certifies that the amendment will not have a significant economic impact on a substantial number of small entities.

D. Paperwork Reduction Act

The collection of information requirements contained in this rule fall within the terms of 5 CFR 1320.14, implementing the Paperwork Reduction Act, and will be submitted to the Office of Management and Budget in accordance with that section.

E. Environmental Review

These amendments are merely administrative and thus DOE has determined that promulgation of the amendments is not a major Federal action with significant environmental impact, and therefore does not require preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 and following).

List of Subjects in 10 CFR Part 1016.

Classified information, Nuclear materials, Security measures.

For the reasons set out in the preamble, Part 795 of Chapter III of the Code of Federal Regulations is transferred to Chapter X and redesignated as Part 1016 as set forth below:

(Sec. 161i, 68 Stat. 948, 42 U.S.C. 2201)

Issued in Washington, D.C., April 20, 1983.

Herman E. Roser,

Assistant Secretary for Defense Programs.

In consideration of the foregoing, Part 795 of 10 CFR Chapter III is transferred to 10 CFR Chapter X, redesignated as Part 1016, and revised.

PART 1016—SAFEGUARDING OF RESTRICTED DATA

General Provisions

Physical Security

Control of Information

Authority: Sec. 161i, 68 Stat. 948, 42 U.S.C 2201.

General Provisions

§ 1016.1 Purpose.

The regulations in this part establish requirements for the safeguarding of Secret and Confidential Restricted Data received or developed under an access permit. This part does not apply to Top Secret information since no such information may be forwarded to an access permittee within the scope of this regulation.

§ 1016.2 Scope.

The regulations in this part apply to all persons who may require access to Retricted Data used, processed, stored, reproduced, transmitted, or handled in connection with an access permit.

§ 1016.3 Definitions.

(a) *Access Authorization or Security Clearance.* An administrative determination by the DOE that an individual who is either a DOE employee, applicant for employment, consultant, assignee, other Federal department or agency employee (and other persons who may be designated by the Secretary of Energy), or a DOE contractor or subcontractor employee and an access permittee is eligible for access to Restricted Data. Access authorizations or security clearances granted by DOE are designated as "Q," "Q(X)," "L," "L(X)," "Top Secret," or "Secret." For the purpose of this chapter only "Q," "Q(X)," "L," and "L(X)" access authorizations or clearances will be defined.

(1) "Q" access authorizations or clearances are based upon full field investigations conducted by the Federal Bureau of Investigation, Office of Personnel Management, or another Government agency which conducts personnel security investigations. They permit an individual to have access, on a "need to know" basis, to Top Secret, Secret, and Confidential Restricted Data, Formerly Restricted Data, National Security Information, or special nuclear material in Category I or II quantities as required in the performance of duties.

(2) "Q(X)" access authorizations or clearances are based upon the same full field investigations as described in § 1016.3(a)(1), above. When "Q" access authorizations or clearances are granted to access permittees they are identified as "Q(X)" access authorizations or clearances and authorize access only to the type of Secret Restricted Data as specified in the permit and consistent with Appendix A, 10 CFR Part 725, "Categories of Restricted Data Available."

(3) "L" access authorizations or clearances are based upon National Agency Checks and Inquiries (NACI) for Federal employees, or National Agency Checks (NAC) for non-Federal employees, conducted by the Office of Personnel Management. They permit an individual to have access, on a "need to know" basis, to Confidential Restricted Data, Secret and Confidential Formerly Restricted Data, or Secret and Confidential National Security Information, required in the performance of duties, provided such information is not designated "CRYPTO" (classified cryptographic information), other classified communications security ("COMSEC") information, or intelligence information.

(4) "L(X)" access authorizations or clearances are based upon the same National Agency Checks as described in paragraph (a)(3), of this section. When "L" access authorizations or clearances are granted to access permittees, they are identified as "L(X)" access authorizations or clearances and authorize access only to the type of Confidential Retricted Data as specified in the permit and consistent with Appendix A, 10 CFR Part 725, "Categories of Restricted Data Available."

(b) *Act.* The Atomic Energy Act of 1954 (68 Stat. 919) as amended.

(c) *Authorized Classifier.* An individual authorized in writing by appropriate DOE authority to classify, declassify, or downgrade the classification of information, work, projects, documents, and materials.

(d) *Classified Mail Address.* A mail address established for each access permittee approved by the DOE to which all Restricted Data for the permittee is to be sent.

(e) *Classified Matter.* Documents and material containing classified information.

(f) *Combination Lock.* A built-in combination lock on a security container which is of tempered steel alloy hard plate, at least ¼" in thickness and Rockwell hardness of C–63 to C–65, of sufficient size and so located as to sufficiently impede access to the locking mechanism by drilling of the lock or container.

(g) *DOE.* The United States Department of Energy or its duly authorized representatives.

(h) *Document.* Any piece of recorded information regardless of its physical form or characteristics.

(i) *Formerly Restricted Data.* Classified information jointly determined by the DOE and the Department of Defense to be related primarily to the military utilization of atomic weapons and removed by the DOE from the Restricted Data category pursuant to Section 142(d) of the Atomic Energy Act of 1954, as amended.

(j) *Infraction.* An act or omission involving failure to comply with DOE safeguards and security orders or directives, and may include a violation of law.

(k) *Intrusion Alarm.* A tamper-indicating electrical, electro-mechanical, electro-optical, electronic or similar device which will detect unauthorized intrusion by an individual into a building or security area, and alert protective personnel by means of actuated visible and audible signals.

(l) *Material.* A chemical substance without regard to form; fabricated or processed item; or assembly, machinery, or equipment.

(m) *Matter.* Documents or material.

(n) *National Security.* The national defense and foreign relations of the United States.

(o) *National Security Information.* Information that has been determined pursuant to Executive Order 12356 of April 2, 1982, "National Security Information" or any predecessor order to require protection against unauthorized disclosure and that is so designated.

(p) *"Need to Know."* A determination by persons having responsibility for classified information or mattter, that a proposed recipient's access to such classified information or matter is necessary in the performance of official, contractual, or access permit duties of employment under cognizance of the DOE.

(q) *Permittee.* The holder of an Access Permit issued pursuant to the regulations set forth in 10 CFR Part 725, "Permits For Access to Restricted Data."

(r) *Person.* Any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, Government agency other than DOE, any State or any political subdivision of, or any political entity within a State, or other entity; and any legal successor, representative, agency, or agency of the foregoing.

(s) *Protective Personnel.* Guards or watchmen or other persons designated responsibility for the protection of classified matter.

(t) *Restricted Data.* All data concerning design, manufacture, or utilization of atomic weapons; the production of special nuclear material; or the use of special nuclear material in the production of energy, but shall not include data declassified or removed from the Restricted Data category pursuant to Section 142 of the Act.

(u) *Security Area.* A physically defined space containing classified matter and subject to physical protection and personnel access controls.

(v) *Security Clearance.* See access authorization.

(w) *Security Facility.* Any facility, including an access permittee, which has been approved by the DOE for using, processing, storing, reproducing, transmitting, or handling classified matter.

(x) *Security Facility Approval.* A determination by the DOE that a facility, including an access permittee, is eligible to use, process, store, reproduce, transmit, or handle classified matter.

(y) *Security Plan.* A written plan by the access permittee, and submitted to the DOE for approval, which outlines the permittee's proposed security procedures and controls for the protection of Restricted Data and which includes a floor plan of the area in which the matter is to be used, processed, stored, reproduced, transmitted, or handled.

(z) *Security Survey.* An onsite examination by a DOE representative of all devices, equipment, and procedures employed at a security facility to safeguard classified matter.

§ 1016.4 Communications.

Communications concerning rulemaking, i.e., petition to change Part 1016, should be addressed to the Assistant Secretary for Defense Programs (DP–1), U.S. Department of Energy, Washington, D.C. 20545. All other communications concerning the regulations in this part should be addressed to U.S. Department of Energy Operations Offices as listed in Appendix "B" of 10 CFR Part 725, administering access permits for the geographical area.

§ 1016.5 Submission of procedures by access permit holder.

No access permit holder shall have access to Restricted Data until he shall have submitted to the DOE a written statement of his procedures for the safeguarding of Restricted Data and for the security education of his employees, and DOE shall have determined and informed the permittee that his procedures for the safeguarding of Restricted Data are in compliance with the regulations in this part and that his procedures for the security education of his employees, who will have access to Restricted Data, are informed about and understand the regulations in this part.

§ 1016.6 Specific waivers.

DOE may, upon application of any interested party, grant such waivers from the requirements of this part as it determines are authorized by law and will not constitute an undue risk to the common defense and security.

§ 1016.7 Interpretations.

Except as specifically authorized by the Secretary of Energy in writing, no interpretation of the meaning of the regulations in this part by any officer or employee of DOE other than a written interpretation by the General Counsel will be recognized to be binding upon DOE.

Physical Security

§ 1016.8 Approval for processing access permittees for security facility approval.

(a) An access permittee who has a need to use, process, store, reproduce, transmit, or handle Restricted Data at any location in connection with its permit shall promptly request a DOE security facility approval.

(b) The request shall include the following information: The name and address of the permittee; the extent and scope of the classified activity and the highest classification of Restricted Data to be received; a written statement in the form of a security plan which outlines the permittee's proposed security procedures and controls for the protection of Restricted Data, including a floor plan of the areas(s) in which the classified matter is to be used, processed, stored, reproduced, transmitted, and handled.

(c) The DOE will promptly inform the permittee of the acceptability of the request for further processing and will notify the permittee of its decision in writing.

§ 1016.9 Processing security facility approval.

The following receipt of an acceptable request for security facility approval, the DOE will perform an initial security survey of the permittee's facility to determine that granting a security facility approval would be consistent with the national security. If DOE makes such a determination, security facility approval will be granted. If not, security facility approval will be withheld pending compliance with the security survey recommendations or until a waiver is granted pursuant to § 1016.6 of this part.

§ 1016.10 Grant, denial, or suspension of security facility approval.

Notification of the DOE's grant, denial, or suspension of security facility approval will be furnished the permittee in writing, or orally with written confirmation. This information may also be furnished to representatives of the DOE, DOE contractors, or other Federal agencies having a need to transmit Restricted Data to the permittee.

§ 1016.11 Cancellation of requests for security facility approval.

When a request for security facility approval is to be withdrawn or cancelled, the DOE Operations Office will be notified by the requester immediately by telephone and confirmed in writing so that processing of this approval may be terminated.

§ 1016.12 Termination of security facility approval.

Security facility approval will be terminated when:

(a) There is no longer a need to use, process, store, reproduce, transmit, or handle Restricted Data at the facility; or

(b) The DOE makes a determination that continued security facility approval is not in the interest of national security.

In such cases the permittee will be notified in writing of the determination, and the procedures outlined in § 1016.39 of this part will apply.

§ 1016.21 Protection of Restricted Data in storage.

(a) Persons who possess Restricted Data pursuant to an Access Permit shall store Secret and Confidential documents and material when not in use in accordance with one of the following methods:

(1) In a locked vault, safe, or safe-type steel file cabinet having a 3-position dial-type combination lock; or

(2) In a dual key, bank safety deposit box; or

(3) In a steel file cabinet secured by a steel lock bar and a 3-position dial-type changeable combination padlock; or

(4) In a locked steel file cabinet when located in a security area established under § 1016.23 or when the cabinet or the place in which the cabinet is located is under DOE-approved intrusion alarm protection.

(b) Changes of combination: Each permittee shall change the combination on locks of his safekeeping equipment whenever such equipment is placed in use, whenever an individual knowing the combination no longer requires access to the repository as a result of

change in duties or position in the permittee's organization, or termination of employment with the permittee or whenever the combination has been subjected to compromise, and in any event at least once a year. Permittees shall classify records of combinations no lower than the highest classification of the documents and material authorized for storage in the safekeeping equipment concerned.

(c) The lock on safekeeping equipment of the type specified in paragraph (a)(4) of this section shall be replaced immediately whenever a key is lost.

§ 1016.22 Protection while in use.

While in use, documents and material containing Restricted Data shall be under the direct control of an appropriately cleared individual, and the Restricted Data shall be capable of being removed from sight immediately.

§ 1016.23 Establishment of security areas.

(a) When, because of their nature or size, it is impracticable to safeguard documents and material containing Restricted Data in accordance with the provisions of §§ 1016.21 and 1016.22, a security area to protect such documents and material shall be established.

(b) The following controls shall apply to security areas:

(1) Security areas shall be separated from adjacent areas by a physical barrier designed to prevent entrance into such areas, and access to the Restricted Data within the areas, by unauthorized individuals.

(2) During working hours, admittance shall be controlled by an appropriately cleared individual posted at each unlocked entrance.

(3) During nonworking hours, admittance shall be controlled by protective personnel on patrol, with protective personnel posted at unlocked entrances, or by such intrusion alarm system as DOE may approve.

(4) Each individual authorized to enter a security area shall be issued a distinctive badge or pass when the number of employees assigned to the area exceeds thirty.

§ 1016.24 Special handling of classified material.

When the Restricted Data contained in material is not ascertainable by observation or examination at the place where the material is located and when the material is not readily removable because of size, weight, radioactivity, or similar factors, DOE may authorize the permittee to provide such lesser protection than is otherwise required by §§ 1016.21 to 1016.23 inclusive, as DOE determines to be commensurate with the difficulty of removing the material.

§ 1016.25 Protective personnel.

Whenever protective personnel are required by § 1016.23, such protective personnel shall:

(a) Possess a "Q" or "L" security clearance or access authorization or "Q(X)" or "L(X)" access authorization if the Restricted Data being protected is classified Confidential, or a "Q" security clearance or access authorization or "Q(X)" access authorization if the Restricted Data being protected is classified Secret.

(b) Be armed with sidearms of not less than .38 caliber.

Control of Information

§ 1016.31 Access to Restricted Data.

(a) Except as DOE may authorize, no person subject to the regulations in this part shall permit any individual to have access to Secret or Confidential Restricted Data in his possession unless the individual has an appropriate security clearance or access authorization granted by DOE, or has been certified by DOD or NASA through DOE, and:

(1) The individual is authorized by an Access Permit to receive Restricted Data in the categories involved and, in the case of Secret Restricted Data, the permittee determines that such access is required in the course of his duties, or

(2) The individual needs such access in connection with such duties as a DOE employee or DOE contractor employee, or as certified by DOD or NASA.

(b) Inquiries concerning the clearance status of individuals, the scope of Access Permits, or the nature of contracts should be addressed to the DOE Operations Office administering the permit as set forth in Appendix "B" of Part 725.

§ 1016.32 Classification and preparation of documents.

(a) *Classification.* Restricted Data generated or possessed by an Access Permit holder must be appropriately marked. CG–UF–3, "Guide to the Unclassified Fields of Research," will be furnished each permittee. In the event a permittee originates classified information which falls within the definition of Restricted Data or information which he is not positive is not within that definition and CG–UF–3 does not provide positive classification guidance for such information, he shall designate the information as Confidential, Restricted Data and request classification guidance from the DOE through the Classification Officer at the Operations Office administering the Permit, who will refer the request to the Director, Office of Classification, U.S. DOE, Washington, D.C. 20545 if he does not have authority to provide the guidance.

(b) *Classification consistent with content.* Each document containing Restricted Data shall be classified Secret or Confidential according to its own content.

(c) *Document which custodian believes improperly classified or lacking appropriate classification markings.* If a person receives a document which, in his opinion, is not properly classified, or omits the appropriate classification markings, he shall communicate with the sender and suggest the classification which he believes appropriate. Pending final determination of proper classification, such documents shall be safeguarded with the highest classification in question.

(d) *Classification markings.* Unless otherwise authorized below, the assigned classification of a document shall be conspicuously marked or stamped at the top and bottom of each page and on the front cover, if any, and the document shall bear the following additional markings on the first page and on the front cover:

Restricted Data

This document contains Restricted Data as defined in the Atomic Energy Act of 1954. Its transmittal or the disclosure of its contents in any manner to an unauthorized person is prohibited.

(e) *Documentation.* (1) All Secret documents shall bear on the first page a properly completed documentation stamp such as the following: This document consists of — pages. Copy No. — of — Series —.

(2) The series designation shall be a capital letter beginning with the letter "A" designating the original set of copies prepared. Each subsequent set of copies of the same documents shall be identified by the succeeding letter of the alphabet.

(f) *Letter of transmittal.* A letter of transmitting Restricted Data shall be marked with a classification at least as high as its highest classified enclosure. When the contents of the letter of transmittal warrant lower classification or requires no classification, a stamp or marking such as the following shall be used in the letter:

When separated from enclosures handle this document as ——.

(g) *Permanently fastened documents.* Classified books or pamphlets, the pages of which are permanently and securely fastened together, shall be

conspicuously marked or stamped with the assigned classification in letters at least one-fourth (¼) inch in height at the top and bottom on the outside front cover, on the title page, on the front page, and on the inside and outside of the back cover. The additional markings referred to in paragraph (d) of this section shall be placed on the first page and on the front cover.

(h) *Physically connected documents.* The classification of a file or group of physically connected documents shall be at least as high as that of the most highly classified document therein. It shall bear only one overall classification, although pages, paragraphs, sections, or components thereof may bear different classifications. Each document separated from the file or group shall be handled in accordance with its individual classification.

(i) *Attachment of security markings.* Documents which do not lend themselves to marking or stamping shall have securely affixed or attached a tag, sticker, or similar device bearing the appropriate security markings.

§ 1016.33 External transmission of documents and material.

(a) *Restrictions.* (1) Documents and material containing Restricted Data shall be transmitted only to persons who possess appropriate clearance or access authorization and are otherwise eligible for access under the requirements of § 1016.31.

(2) In addition, such documents and material shall be transmitted only to persons who possess facilities for their physicial security consistent with this part. Any person subject to the regulations in this part who transmits such documents or material shall be deemed to have fulfilled his obligations under this subparagraph by securing a written certification from the prospective recipient that such recipient possesses facilities for its physical security consistent with this part.

(3) Documents and material containing Restricted Data shall not be exported from the United States without prior authorization of DOE.

(b) *Preparation of documents.* Documents containing Restricted Data shall be prepared for transmission outside an individual installation in accordance with the following:

(1) They shall be enclosed in two sealed, opaque envelopes or wrappers.

(2) The inner envelope or wrapper shall be addressed in the ordinary manner and sealed with tape, the appropriate classification shall be placed on both sides of the envelope, and the additional marking referred to in § 1016.32(d) shall be placed on the side bearing the address.

(3) The outer envelope or wrapper shall be addressed in the ordinary manner. No classification, additional marking, or other notation shall be affixed which indicates that the document enclosed therein contains classified information or Restricted Data.

(4) A receipt which identifies the document, the date of transfer, the recipient, and the person transferring the document shall accompany the document and shall be signed by the recipient and returned to the sender whenever the custody of a Secret document is transferred.

(c) *Preparation of material.* Material, other than documents, containing Restricted Data shall be prepared for shipment outside an individual installation in accordance with the following:

(1) The material shall be so packaged that the classified characteristics will not be revealed.

(2) A receipt which identifies the material, the date of shipment, the recipient, and the person transferring the material shall accompany the material, and the recipient shall sign such receipt whenever the custody of Secret material is transferred.

(d) *Methods of transportation.* (1) Secret matter shall be transported only by one of the following methods:

(i) By messenger-courier system specifically created for that purpose.

(ii) Registered mail.

(iii) By protective services provided by United States air or surface commercial carriers under such conditions as may be preserved by the DOE.

(iv) Individuals possessing appropriate DOE security clearance or access authorization who have been given written authority by their employers.

(2) Confidential matter may be transported by one of the methods set forth in paragraph (d)(1) of this section or by U.S. first class, express, or certified mail.

(e) *Telecommunication of classified information.* There shall be no telecommunication of Restricted Data unless the secure telecommunication system has been approved by the DOE.

(f) *Telephone conversations.* Classified information shall not be discussed over the telephone.

§ 1016.34 Accountability for Secret/Restricted Data.

Each permittee possessing documents containing Secret Restricted Data shall establish a document accountability procedure and shall maintain records to show the disposition of all such documents which have been in his custody at any time.

§ 1016.35 Authority to reproduce Restricted Data.

Secret Restricted Data will not be reproduced without the written permission of the originator, his successor, or high authority. Confidential Restricted Data may be reproduced to the minimum extent necessary consistent with efficient operation without the necessity for permission.

§ 1016.36 Changes in classification.

Documents containing Restricted Data shall not be downgraded or declassified except as authorized by DOE. Requests for downgrading or declassification shall be submitted to the DOE Operations Office administering the permit; or U.S. DOE, Washington, D.C. 20545, Attention: Office of Classification. If the appropriate authority approves a change of classification or declassification, the previous classification marking shall be canceled and the following statement, properly completed, shall be placed on the first page of the document:

Classification canceled (or changed to) _____

(Insert appropriate classification)

by _____

(Person authorizing change in classification)

by _____

(Signature of person making change and date thereof)

Any persons making a change in classification or receiving notice of such a change shall forward notice of the change in classification to holders of all copies as shown in their records.

§ 1016.37 Destruction of documents or material containing Restricted Data.

Documents containing Restricted Data may be destroyed by burning, pulping, or another method that assures complete destruction of the information which they contain. If the document contains Secret Restricted Data, a permanent record of the subject, title, report number of the document, its date of preparation, its series designation and copy number, and the date of destruction shall be signed by the person destroying the document and shall be maintained in the office of the last custodian. Restricted Data contained in material, other than documents, may be destroyed only by a method that assures complete obliteration, removal, or destruction of the Restricted Data.

§ 1016.38 Suspension or revocation of access authorization.

In any case where the access authorization of an individual subject to the regulations in this part is suspended or revoked in accordance with the procedures set forth in 10 CFR Part 710, such individual shall, upon due notice from DOE of such suspension or revocation and demand by DOE, deliver to DOE any and all Restricted Data in his possession for safekeeping and such further disposition as DOE determines to be just and proper.

§ 1016.39 Termination, suspension, or revocation of security facility approval.

(a) If the need to use, process, store, reproduce, transmit, or handle classified matter no longer exists, the security facility approval will be terminated. The permittee may deliver all Restricted Data to the DOE or to a person authorized to receive them; or the permittee may destroy all such Restricted Data. In either case, the facility must submit a certification of nonpossession of Restricted Data to the DOE.

(b) In any instance where security facility approval has been suspended or revoked based on a determination of the DOE that further possession of classified matter by the permittee would endanger the common defense and national security, the permittee shall, upon notice from the DOE, immediately deliver all Restricted Data to the DOE along with a certificate of nonpossession of Restricted Data.

§ 1016.40 Termination of employment or change of duties.

Each permittee shall furnish promptly to DOE written notification of the termination of employment of each individual who possesses an access authorization under his Permit or whose duties are changed so that access to Restricted Data is no longer needed. Upon such notification, DOE may (a) terminate the individual's access authorization, or (b) transfer the individual's access authorization to the new employer of the individual to allow continued access to Restricted Data where authorized, pursuant to DOE regulations.

§ 1016.41 Continued applicability of the regulations in this part.

The expiration, suspension, revocation, or other termination of a security clearance or access authorization or security facility approval shall not relieve any person from compliance with the regulations in this part.

§ 1016.42 Reports.

Each permittee shall immediately report to the DOE office administering the permit any alleged or suspected violation of the Atomic Energy Act of 1954, as amended, Espionage Act, or other Federal statutes related to Restricted Data. Additionally, the permittee shall report any infractions, losses, compromises, or possible compromise of Restricted Data.

§ 1016.43 Inspections.

The DOE shall make such inspections and surveys of the premises, activities, records, and procedures of any person subject to the regulations in this part as DOE deems necessary to effectuate the purposes of the Act, E.O. 12356, and DOE orders and procedures.

§ 1016.44 Violations.

An injunction or other court order may be obtained prohibiting any violation of any provision of the Act or any regulation or order issued thereunder. Any person who willfully violates, attempts to violate, or conspires to violate any provision of the Act or any regulation or order issued thereunder, including the provisions of this part, may be guilty of a crime and upon conviction may be punished by fine or imprisonment, or both, as provided by law.

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The following agencies have agreed to publish all documents on two assigned days of the week (Monday/Thursday or Tuesday/Friday). This is a voluntary program. (See OFR NOTICE 41 FR 32914, August 6, 1976.) Documents normally scheduled for publication on a day that will be a Federal holiday will be published the next work day following the holiday.

Monday	Tuesday	Wednesday	Thursday	Friday
DOT/SECRETARY	USDA/ASCS		DOT/SECRETARY	USDA/ASCS
DOT/COAST GUARD	USDA/FNS		DOT/COAST GUARD	USDA/FNS
DOT/FAA	USDA/REA		DOT/FAA	USDA/REA
DOT/FHWA	USDA/SCS		DOT/FHWA	USDA/SCS
DOT/FRA	MSPB/OPM		DOT/FRA	MSPB/OPM
DOT/MA	LABOR		DOT/MA	LABOR
DOT/NHTSA	HHS/FDA		DOT/NHTSA	HHS/FDA
DOT/RSPA			DOT/RSPA	
DOT/SLSDC			DOT/SLSDC	
DOT/UMTA			DOT/UMTA	

Note: On August 9, 1983, the Office of the Federal Register announced termination of the formal program of agency publication on assigned days of the week, effective August 22, 1983. See 48 FR 36197.

List of Public Laws

Last Listing August 9, 1983

This is a continuing list of public bills from the current session of Congress which have become Federal laws. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 (phone 202–275–3030).

S.J. Res. 56/Pub. L. 98–68 To designate the month of August 1983 as "National Child Support Enforcement Month". (Aug. 5, 1983d 97 Stat. 399) Price: $1.50