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federal register

Monday
December 29, 1980

Highlights

Seminar on Principles of Regulations Writing—For details on seminar in Washington, D.C., see announcement in the Reader Aids section at the end of this issue.

85435 **National Patriotism Week** Presidential proclamation

85610 **Grant Programs** DOE/SOLAR proposes rules concerning administration of programs providing financial assistance for schools, hospitals, buildings owned by units of local government and public care institutions, comments by 1-28-81 (Part V of this issue)

85496 **Grant Programs** Commerce/NOAA announces programs of assistance for marine pollution research

85632 **Equal Employment Opportunity** EEOC revises Guidelines on Discrimination Because of National Origin; effective 12-29-80 (Part VI of this issue)

85604 **Air Traffic Control** DOT/FAA issues interim rule concerning persons operating aircraft under Visual Flight Rules to or from Flushing Airport, N.Y.; effective 1-8-81 (Part IV of this issue)

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Highlights

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Questions and requests for specific information may be directed to the telephone numbers listed under INFORMATION AND ASSISTANCE in the READER AIDS section of this issue.

85441 **Nuclear Non-Proliferation** Commerce/ITA revises rules to provide clarification; effective 12-29-80

85502 **Oil** DOE/ERA issues entitlements notice for October 1980 Domestic Crude Oil Allocation Program

85600 **Airplanes** DOT/FAA announces termination of the Light Transport Airplane Airworthiness Review Program (Part III of this issue)

85548 **Environmental Impact Statements** DOT/Office of Secretary proposes to revise its guidance on the format and content of environmental documents, comments by 2-27-81

85485 **Environmental Protection** CSA issues proposed rule establishing a new part covering environmental protection and implementing the procedural provisions of the National Environmental Policy Act, comments by 1-28-81

85437 **Food Relief Program** USDA/FNS amends Summer Food Service Program in regard to claims submissions; effective 12-29-80

85540 **Bridges** DOT/FHWA publishes notice concerning access ramps to public launching areas in connection with Federally funded bridge projects

85449 **Boats and Boating Safety** DOT/CG amends rules on electrical and fuel systems standards for recreational boats; effective 1-28-81

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85537 **Consumer Programs** Selective Service System issues statement of support for Executive Order No. 12160 which provides for the enhancement and cooperation of federal consumer programs

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Title 3—

The President

Proclamation 4810 of December 23, 1980

National Patriotism Week

By the President of the United States of America

A Proclamation

We are a Nation with many blessings. We have liberties enjoyed by no other Nation on Earth. We have a government admired by many. We have fought hard to preserve our independence and the independence of others, and to gain equal rights and responsibilities for all our citizens. We have much to be thankful for and much to be proud of.

Together we have built a great Nation, a Nation founded on freedom, a Nation forged by patriots. We have made America strong with our strength. We have made America a Nation at peace with our love of peace.

We live in a Nation we all care about deeply. It is important that we continue to care, that we continue to respect ourselves and each other, and that we honor our past and present by reaffirming our commitment to the greatness that is ours.

To recognize our freedoms and honor this great Nation, the Congress, by joint resolution of October 10, 1980 (P.L. 96-421), designated the week commencing with the third Monday in February of 1981 as "National Patriotism Week" and requested the President to issue a proclamation calling upon the people of the United States to commemorate that week with appropriate celebrations and observances.

NOW, THEREFORE, I, JIMMY CARTER, President of the United States of America, do hereby call upon the people of the United States to observe the week beginning with the third Monday in February 1981 as National Patriotism Week.

I call upon all primary and secondary schools to adopt an appropriate curriculum for that week which should include such elements as the study of the Pledge of Allegiance and the national anthem, national symbols, seals and mottos, and national monuments, heroes, and accomplishments.

I request each Federal agency recognize that week by taking such action as it may deem appropriate.

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

Jimmy Carter

[FR Doc. 80-40490
Filed 12-23-80; 3:27 pm]
Billing code 3195-01-M

Rules and Regulations

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

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 225

Summer Food Service Program; Claims Submissions; Fiscal Year 1980

AGENCY: Food and Nutrition Service, USDA.

ACTION: Emergency final rule.

SUMMARY: This emergency final rule amends Summer Food Service Program (SFSP) regulations to require that fiscal year 1980 claims for reimbursement be initially submitted prior to January 1, 1981 to be eligible for reimbursement. An amended claim submitted on or after January 1 as a result of an audit, investigation, or other relevant information available to the State agency may be reimbursed, provided that the original claim was submitted before this date. This rule also requires that the State agency submit its final Program Operations and Financial Status Report for fiscal year 1980 by March 1, 1981. It further provides for adjustments in payments to sponsors which are made after March 1. The rule implements a mandate of the 1980 Supplemental Appropriations Act which will result in timely completion of the fiscal year 1980 payment process and better fiscal management of the Program.

EFFECTIVE DATE: December 29, 1980.

FOR FURTHER INFORMATION CONTACT: Jordan Benderly or Beverly Walstrom, Child Care and Summer Programs Division, Food and Nutrition Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447-6509.
A Final Impact Statement has been prepared and is available on request from the persons named above.

SUPPLEMENTARY INFORMATION: This emergency final rule has been reviewed under USDA procedures established in Secretary's Memorandum 1955 to implement Executive Order 12044 and has been classified "not significant."

This rule implements for fiscal year 1980 the same provisions made effective for fiscal year 1979 by an amendment to SFSP regulations published on February 1, 1980 (45 CFR 7227). The preamble to that rule indicated that comments would be considered in rulemaking to implement the mandate of Pub. L. 96-108 which requires that fiscal year 1980 claims for reimbursement be submitted by January 1, 1981 in order to be eligible for reimbursement. Since comments supported the regulations of February 1, the Department does not solicit comments on the same provisions contained in this emergency final rule.

This rule must be finalized promptly in order that State agencies may provide for the expeditious payment of fiscal year 1980 claims for reimbursement and comply with year-end fiscal and reporting requirements. Therefore, pursuant to administrative procedure provisions of 5 USC 553, good cause is found for making this rule effective less than 30 days after publication in the Federal Register.

The provisions of this rule for fiscal year 1980 are applied to all following fiscal years in the proposed Summer Program regulations published on November 7, 1980 (45 FR 74384).

Background

On June 25, 1979, Congress enacted Pub. L. 96-38 (1979 Supplemental Agricultural Appropriations Act), which required that "* * * only claims for reimbursement for meals served during fiscal year 1979 submitted to State agencies prior to January 1, 1980, shall be eligible for reimbursement." A final rule was published on October 30, 1979 (44 FR 62279) to implement this mandate. The emergency final rule of February 1, 1980 clarified and expanded upon this rulemaking. On November 9, 1979, Congress enacted Pub. L. 96-108 (1980 Supplemental Appropriations Act), which required the 90-day claims submission provision for fiscal year 1980. As required by Pub. L. 96-108, final regulations regarding the submission of Fiscal Year 1980 claims for reimbursement are included in this rule.

Regulatory Analysis

This rule is based on the need to complete the fiscal year 1980 claims payment process and to establish Federal obligations for the year as expeditiously as possible. It addresses this need by requiring, first, that claims be initially submitted to the State agency before January 1, 1981 in order to be reimbursable and, second, that the State agency submit its final Program Operations and Financial Status Report for fiscal year 1980 by March 1, 1981. These requirements will result in tighter fiscal control over the Program and enable the Department to accurately assess its budget needs on a timely basis.

Within this framework of tighter control, the rule provides flexibility to State agencies in adjusting payments to sponsors. Providing that the original claim is submitted by the deadline, an amended claim submitted after this date as a result of audits, investigations, administrative reviews, or other information available to the State agency may be eligible for reimbursement. Thus the State agency has full opportunity to review and process all information relevant to Program reimbursement for the fiscal year.

All reimbursement adjustments to be paid from funds made available for fiscal year 1980 through the Letter of Credit process must be completed prior to submission of the final Program Operations and Financial Status Report for the year. However, the rule provides further flexibility in the payment adjustment process by permitting the State agency to request from the Food and Nutrition Service (FNS) additional funds needed as a result of corrective actions taken after submission of the final Report. If FNS approves such a request, it will make payment subject to the availability of funds.

Accordingly, 7 CFR Part 225, Summer Food Service Program for Children, is amended as follows: § 225.13 paragraph (a) is amended by deleting the last eight sentences and adding the following:

§ 225.13 Program payment procedures.

(a) * * * Claims for Reimbursement for meals served during fiscal year 1980 shall be filed with the State agency, or FNSRO where applicable, prior to January 1, 1981 in order to be eligible for reimbursement. The State agency, or FNSRO where applicable, shall, as determined necessary through its administrative review processes or otherwise, promptly take corrective

action with respect to any such claim. Such corrective action shall be completed in sufficient time to be reflected in the final Program Operations and Financial Status Reports for fiscal year 1980 if reimbursement for such claims is to be made from funds made available for fiscal year 1980 through the Letter of Credit process described under § 225.8(b) of this Part. The final Program Operations and Financial Status Reports for fiscal year 1980 shall be submitted by March 1, 1981. Any requested increase in reimbursement level for fiscal 1980, resulting from corrective action taken after submission of the final fiscal year 1980 Program Operations and Financial Status Reports, shall be submitted to FNS for approval. The request shall be accompanied by a written explanation of the basis for the adjustment and the actions taken to minimize the need for such adjustments in the future. If FNS approves of such increase, it shall make payments subject to the availability of funds. Any reduction in reimbursement level for fiscal year 1980 resulting from corrective action taken after submission of the final fiscal year 1980 Program Operations and Financial Status Reports shall be handled in accordance with the provisions of § 225.14 of this Part, except that amounts recovered may not be used to make Program payments.

* * * * *

(Catalog of Federal Domestic Assistance Programs Number 10.559, Summer Food Service Program for Children)

(Pub. L. 96-108, 93 Stat. 837 (42 U.S.C. 1752))

Dated: December 19, 1980.

Carol Tucker Foreman,

Assistant Secretary for Food and Consumer Services.

[FR Doc. 80-40203 Filed 12-24-80; 8:45 am]

BILLING CODE 3410-30-M

Federal Crop Insurance Corporation

7 CFR Part 419

Barley Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule; correction.

SUMMARY: This final rule corrects Amendment No. 2 to the Barley Crop Insurance Regulations as appearing in the Federal Register on Thursday, November 13, 1980 (45 FR 74898), by inserting a county which was inadvertently omitted and where barley crop insurance is available.

EFFECTIVE DATE: December 29, 1980.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C., 20250, telephone 202-447-3325.

SUPPLEMENTARY INFORMATION:

Correction to Appendix B of 7 CFR Part 419

Amendment No. 2 to the Barley Crop Insurance Regulations (7 CFR Part 419, Appendix B), appearing in the right column of page 74898, is corrected by inserting between the subheadings "Maryland" and "Minnesota", the following subheading and county:

Michigan

Tuscola

Done in Washington, D.C., on December 18, 1980.

Peter F. Cole,

Secretary, Federal Crop Insurance Corporation.

Approved by:

Everett S. Sharp,

Acting Manager.

Dated: December 18, 1980.

[FR Doc. 80-40309 Filed 12-24-80; 8:45 am]

BILLING CODE 3410-08-M

7 CFR Part 430

Sugar Beet Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule; correction.

SUMMARY: This final rule corrects Amendment No. 2 to the Sugar Beet Crop Insurance Regulations as appearing in the Federal Register on Thursday, November 13, 1980 (45 FR 74899-74900).

EFFECTIVE DATE: December 29, 1980.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C., 20250, telephone 202-447-3325.

SUPPLEMENTARY INFORMATION:

Correction to Appendix B of 7 CFR Part 430

Amendment No. 2 to the Sugar Beet Crop Insurance Regulations (7 CFR Part 430, Appendix B), appearing at 45 FR 74900, in the left column, is corrected in Appendix "B" listing those counties where sugar beet crop insurance is available under the subheading "Michigan", by inserting the word "Sanilac" beneath the word "Saginaw" and above the word "Tuscola".

Done in Washington, D.C., on December 18, 1980.

Peter F. Cole,

Secretary, Federal Crop Insurance Corporation.

Approved by:

Everett S. Sharp,

Acting Manager.

Dated: December 18, 1980.

[FR Doc. 80-40310 Filed 12-24-80; 8:45 am]

BILLING CODE 3410-08-M

Animal and Plant Health Inspection Service

9 CFR Part 92

Importation of Horses from Mexico; Corrections

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule, correction.

SUMMARY: This document corrects §§ 92.34(c) and 92.39(a) of Title 9 of the Code of Federal Regulations pertaining to the importation of horses from Mexico.

EFFECTIVE DATE: December 29, 1980.

FOR FURTHER INFORMATION CONTACT: Dr. D. E. Herrick, USDA, APHIS, VS, Federal Building, Room 819, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8170.

SUPPLEMENTARY INFORMATION: On Friday, April 18, 1980, a notice of correction and receipt of petition was published in the Federal Register (45 FR 26317-26318) pertaining to the importation of horses from Mexico. Due to revisions made in the regulations and a proofreading oversight an inaccurate section reference appears in § 92.39(a). § 92.34 has no heading and the only paragraph in § 92.34 is inappropriately designated as paragraph "(c)." In order to correct these errors, §§ 92.34(c) and 92.39(a) are amended as follows:

§ 92.34 [Corrected]

1. In § 92.34, a new heading is added to read: Detention at port of entry and period of quarantine.

§ 92.34 [Corrected]

2. In § 92.34, the designation of the only paragraph as "(c)" is removed.

§ 92.39 [Amended]

3. In § 92.39(a), the phrase following the second semicolon in the first sentence is amended to read: "and shall be quarantined and tested as provided in § 92.34."

Done at Washington, D.C. this 22nd day of December 1980.

Norvan L. Meyer,

Acting Deputy Administrator, Veterinary Services.

[FR Doc. 80-40395 Filed 12-24-80; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 80-AWA-19]

Revocation of Federal Airways

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment revokes Federal Airways V-13W between Des Moines, Iowa, and Lamoni, Iowa, and V-6S between Des Moines, Iowa, and Omaha, Nebr. Use of these airways has steadily declined since the commissioning of Des Moines radar in 1961. This action will simplify charting and lessen storage requirements for the ATC automation data base.

EFFECTIVE DATE: February 19, 1981.

FOR FURTHER INFORMATION, CONTACT: L. Jack Overman, Airspace Regulations and Obstructions Branch, (AAT-230), Airspace and Air Traffic Rules Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426-3715.

SUPPLEMENTARY INFORMATION:

History

On November 6, 1980, the FAA proposed to amend § 71.123 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to revoke V-13W between Des Moines, Iowa, and Lamoni, Iowa, and V-6S between Des Moines, Iowa, and Omaha, Nebr., (45 FR 73691). Interested persons were invited to participate in the rulemaking proceeding by submitting written comments on the proposal to the FAA. The comments received expressed no objections. This amendment is the same as that proposed in the notice. Section 71.123 of Part 71 was republished in the Federal Register on January 2, 1980, (45 FR 307).

The Rule

This amendment to § 71.123 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) revokes Federal Airways, V-13W between Des Moines, Iowa, and Lamoni, Iowa, and V-6S between Des Moines, Iowa, and Omaha, Nebr. These alternate airways had application when Des Moines was in a nonradar environment. They were used for the purpose of separating inbound and outbound aircraft. These airways have not been substantially utilized since commissioning the Des Moines radar in 1961. This action simplifies charting and lessens storage requirements for the air traffic automation data base.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 71.123 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as republished (45 FR 307) is amended, effective 0901 GMT, February 19, 1981, as follows:

1. Under V-13, after the words "Lamoni, Iowa, Des Moines, Iowa," delete the words ", including a W alternate"

2. Under V-6, after the words "Omaha, Nebr.; Des Moines, Iowa," delete the words ", including a S alternate"

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

The FAA has determined that this document involves a regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Since this regulatory action involves an established body of technical requirements for which frequent and routine amendments are necessary to keep them operationally current and promote safe flight operations, the anticipated impact is so minimal that this action does not warrant preparation of a regulatory evaluation.

Issued in Washington, D.C., on December 19, 1980.

B. Keith Potts,

Acting Chief, Airspace and Air Traffic Rules Division.

[FR Doc. 80-40394 Filed 12-24-80; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 80-ARM-10]

Establishment of V-383

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The amendment establishes low altitude Federal Airway V-383 between Akron, Colo., and Denver, Colo., via Byers intersection. This action provides a designated airway for pilot navigation to the Denver terminal arrival area, reduces radar vectoring required, and provides more efficient service to the users.

EFFECTIVE DATE: February 19, 1981.

FOR FURTHER INFORMATION CONTACT: L. Jack Overman, Airspace Regulations and Obstructions Branch (AAT-230), Airspace and Air Traffic Rules Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426-3715.

SUPPLEMENTARY INFORMATION:

History

On October 30, 1980, the FAA proposed to amend § 71.123 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish V-383 between Akron, Colo., and Denver, Colo. (45 FR 71810). Interested persons were invited to participate in the rulemaking proceeding by submitting written comments on the proposal to the FAA. The comments received expressed no objections. This amendment is the same as that proposed in the notice. Section 71.123 of Part 71 was republished in the Federal Register on January 2, 1980 (45 FR 307).

The Rule

This amendment to § 71.123 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) adds an additional airway between Akron, Colo., and Denver, Colo. This Airway is designated via the Akron VORTAC 242° and the Denver 094°. The action provides more efficient service to the users by designating a route from Akron into the Denver terminal arrival area.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 71.123 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as republished (45 FR 307) is amended, effective 0901 GMT, February 19, 1981, by adding a new Federal Airway V-383 as follows:

V-383 From Akron, Colo.; INT Akron 242° and Denver 094° radials; Denver, Colo.

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

The FAA has determined that this document involves a regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Since this regulatory action involves an established body of technical requirements for which frequent and routine amendments are necessary to keep them operationally current and

promote safe flight operations, the anticipated impact is so minimal that this action does not warrant preparation of a regulatory evaluation.

Issued in Washington, D.C., on December 19, 1980.

B. Keith Potts,

Acting Chief, Airspace and Air Traffic Rules Division.

[FR Doc. 80-40261 Filed 12-24-80; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 80-AAL-16]

Establishment of V-431

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes a new airway, Victor 431, between Sisters Island, Alaska, and Biorka Island, Alaska. The action designates another route to handle the increased traffic flow. This airway provides more efficient use of airspace and reduces delays in this area.

EFFECTIVE DATE: February 19, 1981.

FOR FURTHER INFORMATION CONTACT: L. Jack Overman Airspace Regulations and Obstructions Branch (AAT-230), Airspace and Air Traffic Rules Division; Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426-3715.

SUPPLEMENTARY INFORMATION:

History

On October 19, 1980, the FAA proposed to amend § 71.125 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish V-431 between Sisters Island, Alaska, and Biorka Island, Alaska (45 FR 67101). Interested persons were invited to participate in the rulemaking proceeding by submitting written comments on the proposal to the FAA. The comments received expressed no objections. This amendment is the same as that proposed in the notice. Section 71.125 of Part 71 was republished in the Federal Register on January 2, 1980 (45 FR 342).

The Rule

This amendment to § 71.125 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) establishes an additional airway between Sisters Island, Alaska, and Biorka Island, Alaska. This airway, V-431, is designated via the Sisters Island 204° radial and the Biorka Island 355° radial. Designation of this airway reduces delays and provides more efficient use of airspace in this area.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 71.125 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as republished (45 FR 342) is amended, effective 0901 GMT, February 19, 1981, by designating a new airway, V-431, as follows:

"V-431 From Sisters Island, Alaska, INT Sisters Island 204° and Biorka Island 355° radials; Biorka Island, Alaska."

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

The FAA has determined that this document involves a regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Since this regulatory action involves an established body of technical requirements for which frequent and routine amendments are necessary to keep them operationally current and promote safe flight operations, the anticipated impact is so minimal that this action does not warrant preparation of a regulatory evaluation.

Issued in Washington, D.C., on December 19, 1980.

B. Keith Potts,

Acting Chief, Airspace and Air Traffic Rules Division.

[FR Doc. 80-40263 Filed 12-24-80; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket Number 80-CE-10]

Designation of Transition Area—Harper, Kans.

AGENCY: Federal Aviation Administration (FAA), DOT

ACTION: Final rule.

SUMMARY: The nature of this federal action is to designate a 700-foot transition area at Harper, Kansas, to provide controlled airspace for aircraft executing a new instrument approach procedure to the Harper, Kansas, Municipal Airport, utilizing the Anthony, Kansas, OMNI directional range as a navigational aid. The intended effect of this action is to ensure segregation of aircraft using the new approach procedure under Instrument Flight Rules (IFR) and other aircraft operating under Visual Flight Rules (VFR).

EFFECTIVE DATE: February 19, 1981.

FOR FURTHER INFORMATION CONTACT: Charles A. Sears, Airspace Specialist, Operations, Procedures, and Airspace Branch, Air Traffic Division, ACE-532, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 374-3408.

SUPPLEMENTARY INFORMATION: An instrument approach procedure to the Harper, Kansas, Municipal Airport is being established utilizing the Anthony OMNI directional range as a navigational aid. The establishment of an instrument approach procedure based on this approach aid entails the designation of a transition area at Harper, Kansas, at and above 700 feet above the ground (AGL) within which aircraft are provided air traffic control service. The intended effect of this action is to ensure segregation of aircraft using the new approach procedure under Instrument Flight Rules (IFR) and other aircraft operating under Visual Flight Rules (VFR).

Discussion of Comments

On page 70281 of the Federal Register dated October 23, 1980, the Federal Aviation Administration published a Notice of Proposed Rule Making which would amend § 71.181 of Part 71 of the Federal Aviation Regulations so as to designate a transition area at Harper, Kansas. Interested persons were invited to participate in this rule making proceeding by submitting written comments on the proposal to the FAA. One comment was received. The commentator stated the transition area would overlie three private airports, one of which (Bob Park) has balloon and glider operations. He requested that the transition area be established during the hours of darkness or in the alternative that Bob Park be excluded from the transition area. The FAA determined that a part-time transition area would not be feasible. However, the FAA has also determined that Bob Park Airport and Kaypod Airport can be excluded from the transition area without compromising safety to aircraft arriving or departing the Harper, Kansas, Municipal Airport. Accordingly, the Harper, Kansas, transition area description has been reworded to exclude airspace east of longitude 98°00".

Accordingly, Federal Aviation Administration proposes to amend Subpart G, § 71.181 of the Federal Aviation Regulations (14 CFR 71.181) as republished on January 2, 1980, (45 FR 445) by adding the following new transition area:

Harper, Kansas

That airspace extending upwards from 700 feet above the surface within a 5 mile radius of the Harper, Kansas Municipal Airport (Latitude 37°16'45"N, Longitude 98°02'37"W) and within 2 miles each side of the Anthony, Kansas VORTAC (Latitude 37°09'32"N, Longitude 98°10'13"W) 040° radial extending from the 5 mile radius area to 11 miles southwest of the airport, excluding that airspace east of Longitude 98°00", and the airspace overlying the Anthony, Kansas transition area.

(Section 307(a), Federal Aviation Act of 1958 as amended (49 U.S.C. 1348); Section 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); § 11.65 of the Federal Aviation Regulations (14 CFR 11.65))

The FAA has determined that this document involves a proposed regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Since this regulatory action involves an established body of technical requirements for which frequent and routine amendments are necessary to keep them operationally current and promote safe flight operations, the anticipated impact is so minimal that this action does not warrant preparation of a regulatory evaluation.

Issued in Kansas City, Missouri, on December 15, 1980.

Paul J. Baker,

Director, Central Region.

[FR Doc. 80-40258 Filed 12-24-80; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Parts 71 and 75

[Airspace Docket No. 80-AGL-23]

Facility Name Change; Minneapolis, Minn.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The name of the Minneapolis, Minn., VORTAC has been changed to "GOPHER." These amendments substitute the name "GOPHER" in the description of all airways, jet routes, and compulsory reporting points currently named Minneapolis.

EFFECTIVE DATE: February 19, 1980.

FOR FURTHER INFORMATION, CONTACT: Lewis W. Still, Airspace Regulations and Obstructions Branch (AAT-230), Airspace and Air Traffic Rules Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426-8525.

SUPPLEMENTARY INFORMATION: The purpose of these amendments to Sections 71.123, 71.203, 71.207, 75.100 and 75.400 of Parts 71 and 75 of the Federal Aviation Regulations (14 CFR Parts 71 and 75) is to amend the description of several VOR Federal Airways, Jet Routes and Compulsory Reporting Points that have Minneapolis, Minn., in their text. Minneapolis VORTAC has been renamed GOPHER; therefore it is necessary to alter the text of all descriptions where the Minneapolis VORTAC name appears. Since these amendments are editorial in nature, they are minor matters on which the public would have no particular desire to comment. Therefore, notice and public procedure thereon is unnecessary.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, §§ 71.123 71.203, 71.207, 75.100 and 75.400 of Parts 71 and 75 of the Federal Aviation Regulations (14 CFR Parts 71 and 75) as republished (45 FR 307, 645, 653, 730, and 746) are amended, effective 0901 GMT, February 19, 1981, as follows:

Under § 71.123

In V-2 "Alexandria, Minn., including a N alternate, Minneapolis, Minn.;" is deleted and "Alexandria, Minn., including a N alternate, Gopher, Minn., is substituted therefor.

V-13 "via INT Mason City 349° and Minneapolis, Minn., 188° radials is Minneapolis," is deleted and "via INT Mason City 349° and Gopher, Minn., 188° radials; Gopher," is substituted therefor.

In V-78 "Minneapolis, Minn.;" is deleted and "Gopher, Minn.;" is substituted therefor.

In V-82 "Minneapolis, Minn.;" is deleted and "Gopher, Minn.;" is substituted therefor.

In V-97 "Minneapolis, Minn.;" is deleted and "Gopher, Minn.;" is substituted therefor.

In V-148 "including a S alternate, Minneapolis, Minn.;" is deleted and including a S alternate, Gopher, Minn.;" is substituted therefor.

In V-161 "INT Rochester 356° and Minneapolis, Minn., 116° radials; Minneapolis;" is deleted and "INT Rochester 356° and Gopher, Minn., 116° radials; Gopher;" is substituted therefor.

In V-218 "via Minneapolis, Minn.;" is deleted and "via Gopher, Minn.;" is substituted therefor.

Under § 75.100

In J-21 "Minneapolis, Minn.;" is deleted and "Gopher, Minn.;" is substituted therefor.

In J-25 "to Minneapolis, Minn.;" is deleted and "to Gopher, Minn.;" is substituted therefor.

In J-30 "From Minneapolis, Minn.;" is deleted and "From Gopher, Minn.;" is substituted therefor.

In J-36 "Minneapolis, Minn.;" is deleted and "Gopher, Minn.;" is substituted therefor.

In J-70 "Minneapolis, Minn.; INT of the Minneapolis 109°" is deleted and "Gopher, Minn.; INT Gopher 109°" is substituted therefor.

In J-106 "From Minneapolis, Minn.," is deleted and "From Gopher, Minn.," is substituted therefor.

In J-113 "to Minneapolis, Minn." is deleted and "to Gopher, Minn." is substituted therefor.

In J-114 "to Minneapolis, Minn." is deleted and "to Gopher, Minn." is substituted therefor.

Under § 75.400 Waypoint name

In J-883R "Minneapolis, Minn., to New York, N.Y." is deleted and "Gopher, Minn., to New York, N.Y." is substituted therefor.

Waypoint name

"Minneapolis, MN." is deleted and "Gopher, Minn." is substituted therefor.

Reference facility

"Minneapolis, MN." is deleted and "Gopher, Minn." is substituted therefor.

In J-884R "New York, N.Y., to Minneapolis, Minn." is deleted and "New York, N.Y., to Gopher, Minn." is substituted therefor.

Waypoint name

"Minneapolis, Minn." is deleted and "Gopher, Minn." is substituted therefor.

Reference facility

"Minneapolis, MN." is deleted and "Gopher, Minn." is substituted therefor.

In J-976R "Seattle, Wash., to Minneapolis, Minn." is deleted and "Seattle, Wash., to Gopher, Minn." is substituted therefor.

Waypoint name

"Minneapolis, MN." is deleted and "Gopher, Minn." is substituted therefor.

Reference facility

"Minneapolis, MN." is deleted and "Gopher, Minn." is substituted therefor.

Under § 71.203

"Minneapolis, Minn." is deleted and "Gopher, Minn." is substituted therefor.

Under § 71.207

"Minneapolis, Minn." is deleted and "Gopher, Minn." is substituted therefor.

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

The FAA has determined that this document involves a regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Since this regulatory action involves an established body of technical requirements for which frequent and routine amendments are necessary to keep them operationally current and promote safe flight operations, the anticipated impact is so minimal that this action does not warrant preparation of a regulatory evaluation.

Issued in Washington, D.C., on December 19, 1980.

B. Keith Potts,

Acting Chief, Airspace and Air Traffic Rules Division.

[FR Doc. 80-40262 Filed 12-24-80; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 73

[Airspace Docket No. 80-ASO-49]

Special Use Airspace; Alteration of Restricted Area; Salinas, Puerto Rico

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment alters the time of designation for the Salinas, Puerto Rico, Restricted Areas R-7103 A, B and C, from June 1 through August 31, to a period extending from May 1 through July 31. This change is necessary in order to coincide with the Army National Guard's new annual summer training schedule.

EFFECTIVE DATE: February 19, 1981.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Regulations and Obstructions Branch (AAT-230), Airspace and Air Traffic Rules Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426-8525.

SUPPLEMENTARY INFORMATION: On October 9, 1980, the FAA proposed to amend Part 73 of the Federal Aviation Regulations (14 CFR Part 73) to alter the time of designation for Restricted Areas R-7103 A, B and C, from June 1 through August 31 to a period extending from May 1 through July 31, to coincide with the Army National Guard's new annual summer training schedule (45 FR 67102). Interested persons were invited to participate in the rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. This amendment is the same as that proposed in the notice. Section 73.71 of Part 73 was republished in the Federal Register on January 2, 1980, (45 FR 729).

The Rule

This amendment to Part 73 of the Federal Aviation Regulations (14 CFR Part 73) alters the time of designation for the Salinas, Puerto Rico, Restricted Areas R-7103 A, B and C, from June 1 through August 31, to a new time of designation extending from May 1 through July 31. This action is necessary in order to coincide with the Army National Guard's annual summer training operations.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 73.71 of Part 73 of the Federal Aviation Regulations (14 CFR Part 73) as republished (45 FR 729) is amended, effective 0901 GMT, February 19, 1981, as follows:

Under R-7103 A, B and C Salinas, P.R. Time of designation. "June 1 through August 31," is deleted and "May 1 through July 31," is substituted therefor.

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

The FAA has determined that this document involves a regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Since this regulatory action involves an established body of technical requirements for which frequent and routine amendments are necessary to keep them operationally current and promote safe flight operations, the anticipated impact is so minimal that this action does not warrant preparation of a regulatory evaluation.

Issued in Washington, D.C., on December 19, 1980.

B. Keith Potts,

Acting Chief, Airspace and Air Traffic Rules Division.

[FR Doc. 80-40258 Filed 12-24-80; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 73

[Airspace Docket No. 80-ASO-11]

Special Use Airspace; Restricted Area, Townsend, Ga.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action designates a restricted area with five subdivisions in the vicinity of Townsend, Ga., for the purpose of containing the maneuvers of high performance military aircraft conducting flight operations associated with inert ordnance delivery upon the Townsend Bombing/Gunnery Range. Unauthorized flight by nonparticipating aircraft is prohibited within the restricted areas during its designated time of use.

EFFECTIVE DATE: February 19, 1981.

FOR FURTHER INFORMATION, CONTACT: George O. Hussey, Airspace Regulations and Obstructions Branch (AAT-230), Airspace and Air Traffic Rules Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue. SW., Washington, D.C. 20591; telephone: (202) 426-3715.

SUPPLEMENTARY INFORMATION:

History

On August 4, 1980, and subsequently corrected on September 2, 1980, the FAA proposed to amend Part 73 of the Federal Aviation Regulations (14 CFR Part 73) to designate a restricted area with five subdivisions identified as R-3007B, R-3007C, R-3007D, R-3007E, Townsend, Ga. (45 FR 51591 and 58142). The purpose of the area is to contain the maneuvers of high performance military aircraft conducting flight operations associated with inert ordnance delivery upon the Townsend Bombing/Gunnery Range. This hazardous activity necessitates the establishment of restricted area airspace wherein unauthorized flight by nonparticipating aircraft during the area's designated time of use will be prohibited. The use of existing restricted areas within a reasonable distance of military aircraft based in Georgia and South Carolina was thoroughly evaluated and found to be inadequate to satisfy existing and future military training requirements. The area will be designated as joint use to permit utilization of the airspace by the controlling agency for authorized nonparticipating aircraft when the area is not in use for its designated purpose. The United States Marine Corps has certified that the requirements of the National Environmental Policy Act (NEPA) have been met. Section 73.30 of Part 73 was republished in the Federal Register on January 2, 1980 (45 FR 695).

The Rule

This amendment to Part 73 of the Federal Aviation Regulations (14 CFR Part 73) establishes a restricted area with five subdivisions in the vicinity of Townsend, Ga., identified as R-3007A, R-3007B, R-3007C, R-3007D, R-3007E. Unauthorized flights by nonparticipating aircraft are prohibited within the restricted area airspace during its designated time of use. Townsend Airport is provided relief by excluding the airspace 1,200 feet AGL and below within 1 nautical mile (NM) radius of the airport west of the Seaboard Coastline Railroad tracks and all of the restricted area 1,200 feet AGL and below east of the tracks. The airspace 3,000 feet AGL and below within 1½ nautical mile radius of the town of Ludowici, Ga., is excluded. The using agency will provide aerial access to private and/or public use land that underlies the restricted area.

The activities to be conducted will consist of inert ordnance delivery upon

the Townsend Bombing/Gunnery Range limited to practice bombs, 2.75 Zuni rockets and 20MM/50MM cannon fire, and the maneuvers of high performance military aircraft conducting the associated flight operations.

Discussion of Comments

Of the comments received in response to the notice of proposed rulemaking, six commenters objected to the proposed restricted area. One commenter objected on the basis that the restricted area would limit access to the Liberty County Airport only to approaches from over the Atlantic Ocean. The northeastern boundary of the restricted area has been changed to allow access to the airport traffic pattern from the north, east, west and southeast. One commenter expressed concern for restrictions upon aerial fire detection and suppression activities within the restricted area. The using agency has pledged full cooperation with fire protection officials that will ensure unencumbered fire detection and suppression activities. One commenter objected on the basis that the proposed restricted area would limit the planned NDB instrument approach procedure to the Liberty County Airport. The changes to the northeastern boundary of the restricted area will allow the instrument approach procedure to be established without restriction because of the restricted area. In addition to his concern for limitations upon access to the Liberty County Airport discussed above, one commenter objected on the basis of adverse effect upon the timber industry in Liberty County. The using agency has assured timber industry representatives that the military will fully cooperate with them as required to support timber interests. A stipulation for this rule is that the using agency will provide aerial access to private and/or public use land that underlies the restricted area. One commenter objected on the basis of the area prohibiting development of a county airport and/or private airports in Long County. As stated above, aerial access to private and/or public use land is assured. One commenter responded with concerns over environmental aspects of the restricted area activities. This comment was referred to the United States Marine Corps as the lead agency for compliance with the National Environmental Policy Act (NEPA). The Marine Corps has certified and the FAA concludes that the requirements of NEPA have been met.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, Part 73 of the Federal Aviation Regulations (14 CFR Part 73) as republished (45 FR 695) is amended, effective 0901 G.m.t., February 19, 1981, as follows: In § 73.30, after "R-3005B Fort Stewart, Ga.," by adding the following new restricted areas:

"R-3007A Townsend, Ga.

Boundaries. Beginning at Lat. 31°43'00"N., Long. 81°54'00"W.; to Lat. 31°47'15"N., Long. 81°50'00"W.; to Lat. 31°48'15"N., Long. 81°43'00"W.; to Lat. 31°46'00"N., Long. 81°41'50"W.; to Lat. 31°45'30"N., Long. 81°41'00"W.; to Lat. 31°44'40"N., Long. 81°40'00"W.; to Lat. 31°38'00"N., Long. 81°47'00"W.; thence west along the Altamaha River to point of beginning.
Designated altitudes. 1,500 feet AGL to 5,000 feet MSL, excluding that airspace below 3,000 feet AGL within 1½ NM radius circle centered on Lat. 31°42'30"N., Long. 81°45'00"W.
Time of designation. Mon-Fri, 0800-1700 local time. Other times by NOTAM at least 24 hours in advance.
Controlling agency. Federal Aviation Administration, Jacksonville ARTCC.
Using agency. Savannah Air National Guard Training Site, Garden City, Ga.

R-3007B Townsend, Ga.

Boundaries. Beginning at Lat. 31°38'00"N., Long. 81°47'00"W.; to Lat. 31°44'40"N., Long. 81°40'00"W.; to Lat. 31°44'20"N., Long. 81°36'20"W.; to Lat. 31°42'30"N., Long. 81°34'00"W.; to Lat. 31°33'15"N., Long. 81°42'00"W.; thence west along the Altamaha River to point of beginning.
Designated altitudes. 500 feet AGL to 5,000 feet MSL.
Time of designation. Mon-Fri, 0800-1700, local time. Other times by NOTAM at least 24 hours in advance.
Controlling agency. Federal Aviation Administration, Jacksonville ARTCC.
Using agency. Savannah Air National Guard Training Site, Garden City, Ga.

R-3007C Townsend, Ga.

Boundaries. Beginning at Lat. 31°33'15"N., Long. 81°42'00"W.; to Lat. 31°42'30"N., Long. 81°34'00"W.; to Lat. 31°38'00"N., Long. 81°29'00"W.; to Lat. 31°33'15"N., Long. 81°31'15"W.; thence along a 1 NM radius arc counterclockwise of a point centered at Lat. 31°32'25"N., Long. 81°31'50"W.; to Lat. 31°31'15"N., Long. 81°32'00"W.; to Lat. 31°27'25"N., Long. 81°33'40"W.; to Lat. 31°25'30"N., Long. 81°36'00"W.; thence west along the Altamaha River to point of beginning excluding R-3007E.
Designated altitudes. 100 feet AGL to 13,000 feet MSL.
Time of designation. Mon-Fri, 0800-1700 local time. Other times by NOTAM at least 24 hours in advance.
Controlling agency. Federal Aviation Administration, Jacksonville ARTCC.
Using agency. Savannah Air National Guard Training Site, Garden City, Ga.

R-3007D Townsend, Ga.

Boundaries. Beginning at Lat. 31°38'00"N., Long. 81°29'00"W.; to Lat. 31°37'30"N., Long. 81°28'15"W.; to Lat. 31°32'30"N., Long. 81°27'30"W.; to Lat. 31°26'15"N., Long. 81°31'30"W.; to Lat. 31°25'30"N., Long. 81°36'00"W.; to Lat. 31°27'25"N., Long. 81°33'40"W.; to Lat. 31°31'15"N., Long. 81°32'00"W.; thence along a 1 NM radius arc clockwise of a point centered at Lat. 31°32'25"N., Long. 81°31'50"W.; to Lat. 31°33'15"N., Long. 81°31'15"W.; to point of beginning.
Designated altitudes. 1,200 feet AGL to 13,000 feet MSL.
Time of designation. Mon-Fri, 0800-1700 local time. Other times by NOTAM at least 24 hours in advance.
Controlling agency. Federal Aviation Administration, Jacksonville ARTCC.
Using agency. Savannah Air National Guard Training Site, Garden City, Ga.

R-3007E Townsend, Ga.

Boundaries. A circular area with a 1½ statute mile radius centered at Lat. 31°33'15"N., Long. 81°34'45"W.
Designated altitudes. Surface to 13,000 feet MSL.
Time of designation. Mon-Fri, 0800-1700 local time. Other times by NOTAM at least 24 hours in advance.
Controlling agency. Federal Aviation Administration, Jacksonville ARTCC.
Using agency. Savannah Air National Guard Training Site, Garden City, Ga.

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

Note.—The FAA has determined that this document involves a regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Copies of the regulatory evaluation are in the Washington, D.C., and Southern Region dockets, and may be obtained by application in writing to the person identified above under the caption "For Further Information Contact . . ."

Issued in Washington, D.C., on December 22, 1980.

B. Keith Potts,

Acting Chief, Airspace and Air Traffic Rules Division.

[FR Doc. 80-40034 Filed 12-24-80; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 75

[Airspace Docket No. 80-ASW-30]

Establishment of Jet Routes and Area High Routes; Establishment of Jet Routes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes new Jet Route J-141 from El Paso, Tex., to Delicias, Mexico. This route coincides with a departure procedure for operations from El Paso International Airport that remains clear of the Cuidad Juarez, Mexico, terminal area. Jet Route

J-141 from El Paso, Tex., to Delicias, Mexico, improves air operations between the United States and Mexico and enhances traffic flow in the El Paso and Cuidad Juarez, Mexico, teminal areas. Realignment of Jet Route J-13, also proposed, did not flight check satisfactorily and is not being implemented at this time.

EFFECTIVE DATE: February 19, 1981.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Regulations and Obstructions Branch (AAT-230), Airspace and Air Traffic Rules Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426-8525.

SUPPLEMENTARY INFORMATION: On August 7, 1980, the FAA proposed to amend Part 75 of the Federal Aviation Regulations (14 CFR Part 75) to establish new Jet Route J-141 from El Paso, Tex., to Delicias, Mexico, and realign Jet Route J-13 between Truth or Consequences, N. Mex., and Delicias, Mexico, (45 FR 52396). J-141 improves air operations between the United States and Mexico and enhances traffic flow in the El Paso and Cuidad Juarez, Mexico, terminal areas. The proposed realignment of J-13 is not included in this action because it failed to flight check. Also, the intersection described in J-141 as the Fort Stockton, Tex., VORTAC 273° has been changed to the Hudspeth, Tex., 187° radial, because Fort Stockton is too far away. The Hudspeth VORTAC has been flight checked and approved for the jet route structure. Subpart B of Part 75 was republished in the Federal Register on January 2, 1980 (45 FR 732).

Discussion of Comments

The Air Transport Association (ATA) stated that J-141 would impose substantial mileage penalty for southbound flights and create delays for aircraft en route to La Paz or San Jose Del Cabo, Mexico. However, J-141 will not be used for flights to those locations. They will be routed direct to Choix, Mexico, or by current airways in Mexico.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, Part 75 of the Federal Aviation Regulations (14 CFR Part 75) as republished (45 FR 732) is amended, effective 0901 GMT, February 19, 1981, as follows:

Under Section 75.100

"Jet Route No. 141 From El Paso, Tex., via INT El Paso 137° and Hudspeth, Tex., 187° radials; to Delicias, Mexico. The airspace within Mexico is excluded." is added.

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

The FAA has determined that this document involves a regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Since this regulatory action involves an established body of technical requirements for which frequent and routine amendments are necessary to keep them operationally current and promote safe flight operations, the anticipated impact is so minimal that this action does not warrant preparation of a regulatory evaluation.

Issued in Washington, D.C., on December 22, 1980.

B. Keith Potts,

Acting Chief, Airspace and Air Traffic Rules Division.

[FR Doc. 80-40393 Filed 12-24-80; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 97

[Docket No. 21213; Amdt. No. 1180]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

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

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

For Examination

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, D.C. 20591;
2. The FAA Regional Office of the region in which the affected airport is located; or
3. The Flight Inspection Field Office which originated the SIAP.

For Purchase

Individual SIAP copies may be obtained from:

1. FAA Public Information Center (AAPA-430), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, D.C. 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription

Copies of all SIAP, mailed once every 2 weeks, may be ordered from Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. The annual subscription prices is $135.00.

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

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

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

SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

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

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

Adoption of the Amendment

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

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

. . . Effective February 19, 1981

Anchorage, AK—Anchorage Intl, VOR Rwy 6R, Amdt. 11
Albany, GA—Albany-Dougherty County, VOR Rwy 16 (TAC), Amdt. 23
Lyons, KS—Lyons-Rice County Muni, VOR/DME-A, Original
Anoka, MN—Gateway North Industrial, VOR Rwy 34, Amdt. 2
Buffalo, MN—Buffalo Muni, VOR-B, Amdt. 1
Minneapolis, MN—Anoka County-Blaine Airport (Janes Field), VOR Rwy 8, Amdt. 8
Minneapolis, MN—Anoka County-Blaine Airport (Janes Field), VOR/DME Rwy 26, Original
Minneapolis, MN—Crystal, VOR-A, Amdt. 7
Greenville, MS—Greenville Muni, VOR Rwy 17L, Amdt. 10
Greenville, MS—Greenville Muni, VOR Rwy 17R, Amdt. 3
Ocean Springs, MS—Gulfpark, VOR-B, Original
Akron, NY—Akron, VOR/DME Rwy 24, Amdt. 1
Akron, NY—Akron VOR Rwy 6, Original
Albany, NY—Albany County, VOR Rwy 19, Amdt. 17
Galeton, PA—Cherry Springs, VOR-A, Amdt. 5
Sevierville, TN—Sevier-Gatlinburg, VOR/DME Rwy 10, Amdt. 2

. . . Effective February 5, 1981

Marion, IN—Marion Muni, VOR Rwy 4, Amdt. 7
Marion, IN—Marion Muni, VOR Rwy 15, Amdt. 4
Marion, IN—Marion Muni, VOR Rwy 22, Amdt. 10
Nappanee, IN—Nappanee, Muni, VOR-B, Amdt. 1
Nappanee, IN—Nappanee, Muni, VOR/DME-A, Amdt. 2
Urbana, IL—Illini, VOR-A, Amdt. 9
Urbana, IL—Illini, VOR/DME-B, Amdt. 3
Clearfield, PA—Clearfield-Lawrence, VOR Rwy 30, Amdt. 2
Erie, PA—Erie Intl, VOR Rwy 6, Amdt. 12
Erie, PA—Erie Intl, VOR/DME Rwy 24, Amdt. 6
Johnstown, PA—Johnstown-Cambria County, VOR Rwy 15, Amdt. 7
Johnstown, PA—Johnstown-Cambria County, VOR Rwy 23, Amdt. 5
Johnstown, PA—Johnstown-Cambria County, VOR/DME Rwy 15, Amdt. 3
Lancaster, PA—Lancaster, VOR Rwy 8, Amdt. 14
Lancaster, PA—Lancaster, VOR Rwy 31, Amdt. 11
Lancaster, PA—Lancaster, VOR/DME Rwy 26, Amdt. 3

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

. . . Effective February 19, 1981

Albany, GA—Albany-Dougherty County, LOC BC Rwy 22, Amdt. 4

. . . Effective February 5, 1981

Racine, WI—Horlick-Racine, LOC Rwy 4, Original, cancelled

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

. . . Effective February 19, 1981

Albany, GA—Albany-Dougherty County, NDB Rwy 4, Amdt. 8
Lyons, KS—Lyons-Rice County Muni, NDB Rwy 17R, Amdt. 3
Winston Salem, NC—Smith Reynolds, NDB Rwy 33, Amdt. 19
Athens, TN—McMinn County, NDB Rwy 2, Amdt. 3
Athens, TN—McMinn County, NDB Rwy 20, Amdt. 2

. . . Effective February 5, 1981

Monticello, KY—Wayne County, NDB Rwy 21, Original
Erie, PA—Erie Intl, NDB Rwy 24, Amdt. 13
Lake Jackson, TX—Brazoria County, NDB Rwy 17, Amdt. 1

. . . Effective January 22, 1981

Rochester, MN—Rochester Muni, NDB Rwy 31, Amdt. 17

Note.—The FAA published an amendment in docket No. 21021, amdt. No. 1177 to part 97 of the Federal Aviation regulations (vol. 45 FR No. 226 page 76660; dated November 20, 1980) under section 97.27 effective December 25, 1980, which is hereby amended as follows: Junction City, KS—Junction City Muni., NDB-B, original is rescinded.

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

. . . Effective February 19, 1981

Albany, GA—Albany-Dougherty County, ILS Rwy 4, Amdt. 7
Greenville, MS—Greenville Muni, ILS Rwy 17L, Amdt. 7
Kansas City, MO—Kansas City Intl. ILS Rwy 19, Amdt. 5
Albany, NY—Albany County, ILS Rwy 19, Amdt. 16
Winston Salem, NC—Smith Reynolds, ILS Rwy 33, Amdt. 18
Crossville, TN—Crossville Memorial, ILS Rwy 25, Amdt. 5

. . . Effective February 5, 1981

Marion, IN—Marion Muni, ILS Rwy 4, Amdt. 1
Erie, PA—Erie Intl, ILS Rwy 6, Amdt. 11
Erie, PA—Erie Intl, ILS Rwy 24, Amdt. 2
Lancaster, PA—Lancaster, ILS Rwy 8, Amdt. 6
Lake Jackson, TX—Brazoria County, ILS Rwy 17, Amdt. 1
Racine, WI—Horlick-Racine, ILS Rwy 4, Original

. . . Effective February 22, 1981

Rochester, MN—Rochester Muni, ILS Rwy 31, Amdt. 15

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

. . . Effective February 19, 1981

Tampa, FL—Tampa Intl. RADAR-1, Amdt. 8
Albany, NY—Albany County, RADAR-1, Amdt. 12

. . . Effective February 5, 1981

Erie, PA—Erie Intl, RADAR-1, Amdt. 4
Green Bay, WI—Austin-Straubel Field, RADAR-1, Amdt. 4

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

. . . Effective February 19, 1981

Albany, GA—Albany-Dougherty County, RNAV Rwy 34, Amdt. 1
Bradford, PA—Bradford Regional, RNAV Rwy 23, Original
Bradford, PA—Bradford Regional, RNAV Rwy 5, Original

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

Note.—The FAA has determined that this document involves a regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

Since this regulatory action involves an established body of technical requirements for which frequent and routine amendments are necessary to keep them operationally current and promote safe flight operations, the anticipated impact is so minimal that this action does not warrant preparation of a regulatory evaluation.

Issued in Washington, D.C., on December 19, 1980.

John S. Kern,

Chief, Aircraft Programs Division.

Note.—The incorporation by reference in the preceding document was approved by the Director of the Federal Register on May 12, 1969.

[FR Doc. 80-40259 Filed 12-24-80; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Parts 378 and 399

Clarification of Nuclear Non-Proliferation Controls

AGENCY: Office of Export Administration, International Trade Administration, Commerce.

ACTION: Final rule.

SUMMARY: The Export Administration Regulations are revised to clarify that any commodity controlled for national security reasons that is proposed for export for a nuclear related end-use or end-user is also subject to review for nuclear non-proliferation reasons.

DATE: Final rule effective December 29, 1980.

FOR FURTHER INFORMATION CONTACT: Archie Andrews, Director, Exporters' Service Staff, Office of Export Administration, Room 1617M, U.S. Department of Commerce, Washington, D.C. 20230, Telephone (202) 377-5247 or 377-4811.

SUPPLEMENTARY INFORMATION: This rule revises the Export Administration Regulations to clarify the scope of export controls for nuclear non-proliferation reasons. Parts 378 and 399 state that those Commodity Control List entries identified by a "4" in the "Reason for Control" column and exports described in § 378.3 are subject to nuclear non-proliferation review procedures. The interagency review procedures established June 9, 1978 (43 FR 25330), and reprinted as Supplement No. 1 to Part 378 provide for nuclear non-proliferation review of "any other applications which may involve possible nuclear uses * * *."

Some commodities controlled for national security reasons may also be intended for nuclear end-uses or end-users. However, Parts 378 and 399 do not explicitly state that these commodities will be subject to review under both nuclear non-proliferation and national security procedures. To avoid ambiguity, the regulations are being revised to provide specifically that applications for any commodities subject to national security export controls may also be subjected to review under nuclear non-proliferation procedures if destined for nuclear related end-users or end-uses.

In addition to the interagency review procedures, this is authorized by section 17(d) of the Export Administration Act of 1979 (Pub. L. 96-72, 50 U.S.C. App. 2401, *et seq.*) (the "Act") which provides that nothing in the national security controls or foreign policy controls sections of the Act shall be construed to supercede the procedures established by the President pursuant to section 309(c) of the Nuclear Non-Proliferation Act of 1978.

Section 13(a) of the Act exempts regulations promulgated under it from the public participation in rulemaking procedures of the Administrative Procedure Act. Because they relate to a foreign affairs function of the United States, it has been determined that these regulations are not subject to Department of Commerce Administrative Order 218-7 (44 FR 2082, January 9, 1979) and the International Trade Administration Administrative Instruction 1-6 (44 FR 2093, January 9, 1979) which implement Executive Order 12044 (43 FR 12661, March 23, 1978, 3 CFR 132 (1979)), "Improving Government Regulations."

For the reasons set forth above, the Export Administration Regulations (15 CFR Parts 378 and 399) are amended as follows:

1. Paragraphs (a) and (b) of § 378.2 are revised to read as follows:

§ 378.2 Nuclear-related commodities and technical data (The Nuclear Referral List).

(a) *Commodities controlled for nuclear reasons.* Section 309(c) of the Nuclear Non-Proliferation Act of 1978 required the President to publish procedures regarding the control by the Department of Commerce over export items under its jurisdiction that could be, if used for purposes other than for which the export is intended, of significance for nuclear explosive purposes. The commodities listed on the Commodity Control List (§ 399.1) that have the number 4 in the column titled "Reason for Control" have been identified as those that could be of significance for nuclear explosive purposes, and hence are subject to validated licensing and the procedures established under this part and under section 309(c) of the Nuclear Non-Proliferation Act of 1978. These commodities are referred to as "The Nuclear Referral List." The procedures established pursuant to section 309(c), which originally appeared at 43 FR 25330 (June 9, 1978), are reprinted as Supplement No. 1 to this Part 378. In addition, any item not on the Nuclear Referral List that requires a validated export license for national security reasons and is intended for a nuclear related end-use or end-user is subject to these procedures. Also, described in § 379.4(c), are certain related technical data that are subject to nuclear non-proliferation controls. The Commodity Control List indicates the countries to which validated licenses are required. Some commodities are controlled for nuclear reasons to all Country Groups, and in certain instances to Canada. For other commodities, the nuclear controls apply to a country only when it is excluded from the list of countries contained in Supplements 2 and 3 of Part 373 of this chapter.

(b) *Processing of applications.* Applications for the export of commodities and technical data described in paragraph (a) of this section will be processed in accordance with the interagency review procedures established pursuant to section 309(c) of the Nuclear Non-Proliferation Act reprinted as Supplement No. 1 to this Part, and the applicable provisions of these Regulations.

2. In § 399.1, paragraph (g)(3) is revised to read as follows:

§ 399.1 The Commodity Control List and how to use it.

* * * * *

(g) * * *

(3) *Reason for control.* The reason for control for each entry is specified in the last column,[1] using the following number code—

Code number	Reason for control
1	National security.[1]
2	Short supply.[2]
3	Foreign policy.[3]
4	Nuclear non-proliferation.[4]
5	Crime control (foreign policy.[5]

[1] In accordance with sections 5(c)(1) and 6(k) of the Export Administration Act of 1979.

[2] Export Administration Act of 1979, section 5, Pub. L. 96-72, 93 Stat. 507, 50 U.S.C. app. § 2404.

[3] Export Administration Act of 1979, section 7, Pub. L. 96-72, 93 Stat. 515, 50 U.S.C. app. § 2406. Other statutes controlling petroleum and other commodities include: Energy Policy and Conservation Act, section 103, Pub. L. 94-163, 89 Stat. 877, 42 U.S.C. 6212; Trans-Alaska Pipeline Authorization Act, section 101, Pub. L. 93-153, 87 Stat. 576, amending 30 U.S.C. 185; Naval Petroleum Reserves Production Act of 1976, section 201(10), Pub. L. 94-258, 90 Stat. 309, amending 10 U.S.C. § 7430.

[3] Export Administration Act of 1979, section 6, Pub. L. 96-72, 93 Stat. 513, 50 U.S.C. app. § 2405.

[4] Export Administration Act of 1979, section 5, 6, and 17(d), Pub. L. 96-72, 93 Stat. 507, 50 U.S.C. app. § 2416(d); Nuclear Non-Proliferation Act of 1978, section 309(c), Pub. L. 95-242, 92 Stat. 141, 42 U.S.C. 2139a.

[5] Export Administration Act of 1979, section 6(j), Pub. L. 96-72, 93 Stat. 515, 50 U.S.C. app. 2405(j).

In some cases, more than one reason for control is given for one entry. If an entry is controlled for more than one reason, but not to an identical list of countries, the lesser degree of control is explained in a footnote. Also, all entries (except those showing "none" in the "Validated License "Required" column) are controlled for foreign policy reasons to Country Groups S and Z due to certain embargo programs, and all entries having both a "V" in the "Validated License Required" column and a "1" in the Reason for Control" column are controlled for foreign policy reasons to Syria, Iraq, Libya, and the People's Democratic Republic of Yemen. Applications involving entries having a "1" but not having a "4" in the "Reason for Control" column are subject to nuclear non-proliferation controls if the end-use or end-user is nuclear related. (See § 378.2) In some cases, sub-entries of a CCL entry are controlled for different reasons. In these cases, a dash (—) will be shown in the first line of the entry, and the code number is shown in the "Reason for Control" column exactly opposite each sub-entry (a), (b), etc. (For example, see CCL entry No. 1110.)

* * * * *

(Secs. 13, 15, 17, and 21, Pub. L. 96-72, 50 U.S.C. App. 2401, *et seq.*; E.O. 12214 (45 FR 29783, May 6, 1980); sec. 309(c), Pub. L. 95-242, 42 U.S.C. 2139(a); Department Organization Order 10-3 (45 FR 6141, January 25, 1980), and International Trade Admininstration Organization and Function Orders 41-1 (45 FR 11862, February 22, 1980) and 41-4, effective August 26, 1980)

Dated: December 18, 1980.

Kent N. Knowles,

Director, Office of Export Administration, International Trade Administration.

[FR Doc. 80-40331 Filed 12-24-80; 8:45 am]

BILLING CODE 3510-23-M

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15 CFR Part 389

Revision of Appeals Provisions of the Export Administration Regulations

AGENCY: International Trade Administration, Commerce.

ACTION: Interim rule with request for comments.

SUMMARY: The agency is revising the Appeals provisions of the Export Administration Regulations to include new sections on the procedures to follow when an informal hearing is requested or conducted as part of the appeal process and to conform the language of Part 389 with the current organizational structure.

DATES: Interim rule effective December 29, 1980; comments must be received on or before February 27, 1981.

ADDRESS: Written comments (six copies when possible) should be sent to: Richard J. Isadore, Acting Director, Operations Division; Office of Export Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Room 1617M, Washington, D.C. 20230.

FOR FURTHER INFORMATION CONTACT: Richard J. Isadore, Acting Director, Operations Division, Office of Export Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Room 1617M, Washington, D.C. 20230; (202) 377-4738.

SUPPLEMENTARY INFORMATION: Substance of the Regulations: This rule revises the Export Administration Regulations to clarify and improve appeals procedures and to reflect organizational changes within the International Trade Administration.

As revised, Part 389 formalizes the present practice of holding informal meetings on an *ad hoc* basis during an appeal. The new regulations provide uniform procedures available to all appellants. Any increased burden on the appellate process would be limited by the flexible procedures established. For example, the request for an informal hearing can be denied, and the conduct of the hearing and length of time allotted to it can be easily controlled by the official conducting the informal meeting.

The revisions permit "any person directly and adversely affected" by an administrative action to appeal. Under former § 389.1(c), a person could appeal from an administrative action only where such action "works an exceptional and unreasonable hardship upon him, or improperly discriminates against him."

The revisions require the filing of an appeal within 45 days after the date appearing on a written notice of administrative action. The regulations were formerly unclear whether mailing or receipt of notice triggers the beginning of the time period for filing.

Although the Assistant Secretary for Trade Administration may designate another Department official to conduct an informal hearing, the Assistant Secretary shall decide the appeal.

The scope of review will be a "reconsideration" of the administrative action. This standard will give the Assistant Secretary for Trade Administration discretion in deciding an appeal yet focus the determination upon materials submitted by the appellant and the Department in connection with the appeal, or made available to the Department in connection with the administrative action. Existing regulations do not delineate the scope of review on appeal.

As revised, Part 389 provides procedures for appeals from an administrative action only. However, requests to issue, amend or revoke a regulation may be submitted to the Department at any time.

Rulemaking procedure and invitation to comment: Section 13(a) of the Export Administration Act of 1979 ("the Act") exempts regulations promulgated under the Act from the public participation in rulemaking procedures of the Administrative Procedure Act. Section 13(b) of the Act, which expresses the intent of Congress that where practicable "regulations imposing controls on exports" be published in proposed form, is not applicable because these regulations do not impose controls on exports. It has been determined that these regulations are not "significant" within the meaning of Department of Commerce Administrative Order 218-7 (44 FR 2082, January 9, 1979) and International Trade Administration Administrative Instruction 1-6 (44 FR 2093, January 9, 1979) which implement Executive Order 12044 (43 FR 12661, March 23, 1978, 3 CFR 132 (1979)), "Improving Government Regulations."

However, consistent with the intent of Congress set forth in Section 13(b) of the Act, these regulations are issued in interim form and comments will be considered in developing final regulations.

The period for submission will close February 27, 1981. All comments received before the close of the comment period will be considered by the Department in the development of final regulations. While comments received after the end of the comment period will be considered if possible, their consideration cannot be assured. Public comments that are accompanied by a request that part or all of the material be treated confidentially because of its business proprietary nature or for any other reason will not be accepted. Such comments and materials will be returned to the submitter and will not be considered in the development of final regulations.

All public comments on these regulations, whenever submitted, will be a matter of public record and will be available for public inspection and copying. In the interest of accuracy and completeness, comments in written form are preferred. If oral comments are received, a written summary will be prepared by the person receiving the oral comments. That written summary

will also be a matter of public record and will be available for public review and copying. Communications from agencies of the United States Government or foreign governments will not be made available for public inspection.

The public record concerning these regulations will be maintained in the International Trade Administration Freedom of Information Records Inspection Facility, Room 3102, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230. Records in this facility, including written public comments and memoranda summarizing the substance of oral communications, may be inspected and copied in accordance with regulations published in Part 4 of Title 15 of the Code of Federal Regulations. Information about the inspection and copying of records at the facility may be obtained from Mrs. Patricia L. Mann, the International Trade Administration Freedom of Information Officer, at the above address or by calling (202) 377-3031.

Drafting Information: The principal authors of these rules are Cecil Hunt, Assistant General Counsel for International Trade; Kent Knowles, Director, Office of Export Administration; and Donald Zarin, Attorney Advisor.

Accordingly, Part 389 of the Export Administration Regulations is revised as follows:

Issued in Washington, D.C., on December 19, 1980.

Eric L. Hirschhorn,

Deputy Assistant Secretary for Export Administration.

PART 389—APPEALS

Sec.
389.1 General provisions.
389.2 Appeal from an administrative action.
389.3 Request to issue, amend or revoke a regulation.

Authority: Secs. 4, 5, 6, 7, 8, 10, 11, 13, 15, 16 and 21, Pub. L. 96-72, 50 U.S.C. app. 2401, *et seq.*; Executive Order No. 12214 (45 FR 29783, May 6, 1980); Department Organization Order 10-3 (45 FR 6141, January 25, 1980); International Trade Administration Organization and Function Orders 41-1 (45 FR 11862, February 22, 1980) and 41-4 (effective August 26, 1980).

§ 389.1 General provisions.

(a) *Purpose.* This Part 389 sets forth the procedures applicable to appeals from administrative actions taken under the Export Administration Act of 1979 ("the Act") or the Export Administration Regulations (the "Regulations").

(b) *Definitions.* The following are definitions of terms used in this Part 389:

Administrative action. Any action taken by the U.S. Department of Commerce under the Act or the Regulations with respect to a particular person including denial of an export license application, return without action of a license application for other than procedural deficiencies or additional information, or classification of an applicant's commodity. Administrative actions do not include enforcement activities under Parts 387 and 388.

Appeal. A request for relief from an administrative action taken by the U.S. Department of Commerce.

Appellant. A person requesting relief from an administrative action taken by the U.S. Department of Commerce.

Assistant Secretary. The Assistant Secretary of Commerce for Trade Administration.

Person. Any individual, partnership, corporation, or other form of association.

Presiding official. The Assistant Secretary or any Department official who may be designated by the Assistant Secretary to conduct informal hearings.

§ 389.2 Appeal from an administrative action.

(a) *Grounds for appeal and scope of review.* Any person directly and adversely affected by an administrative action (excluding denial or probation orders, civil penalties, sanctions, or other actions under Parts 387 and 388) taken by the U.S. Department of Commerce may appeal to the Assistant Secretary for reconsideration of that administrative action. Regulations may not be appealed under this part. (*See* § 389.3.)

(b) *Appeal procedure*—(1) *Filing.* An appeal under this part must be received by the Office of the Assistant Secretary for Trade Administration, International Trade Administration, 14th Street and Constitution Ave., N.W., Room 3826, U.S. Department of Commerce, Washington, D.C 20230, not later than 45 days after the date appearing on the written notice of administrative action. (2) *Content of appeal.* A full written statement in support of the appeal, including a precise statement of why the appellant believes the administrative action has a direct and adverse effect and should be reversed or modified, must be filed with the appeal. The presiding official may request any further submissions deemed helpful in resolving the appeal. At his discretion, the presiding official may accept additional submissions, but will not ordinarily accept those submissions filed more than 30 days after the filing of the appeal or of any requested submission. (3) *Request for informal hearing.* In addition to the written statement submitted in support of an appeal, an appellant may request, in writing, at the time of filing an appeal, an opportunity for an informal hearing. However, the Assistant Secretary may grant or deny a request for an informal hearing. All hearings, if granted, will be held in Washington unless the presiding official determines, based upon good cause shown, that another location would better serve the interests of justice. (4) *Informal hearing procedures.* (i) *Presentation.* The presiding official shall provide an opportunity for the appellant and/or representative to make an oral presentation based on the materials previously submitted by the appellant or made available by the Department in connection with the administrative action and may require that any facts in controversy be covered by affidavit or testimony given under oath or affirmation. (ii) *Evidence.* The rules of evidence prevailing in courts of law shall not apply, and all evidentiary material deemed by the presiding official to be relevant and material to the proceeding and not unduly repetitious will be received and given appropriate weight.

(iii) *Procedural questions.* The presiding official shall have the authority to limit the number of people attending the hearing, to impose any time or other limitations deemed reasonable, and to determine all procedural questions. (iv) *Transcript.* A transcript of an informal hearing shall not be made, unless the presiding official determines that the national interest or other good cause warrants it, or the appellant requests a transcript. If the appellant requests a transcript, the appellant shall pay all expenses. (v) *Report.* When the presiding official is other than the Assistant Secretary, that official shall submit a written report containing a summary of the hearing and recommended action to the Assistant Secretary.

(c) *Decisions*—(1) *Determination of appeal.* In addition to the documents specifically submitted in connection with the appeal, the Assistant Secretary shall consider any recommendations, reports, or relevant documents available to the Department of Commerce in determining the appeal, but shall not be bound by any such recommendation, nor prevented from considering any other information, or consulting with any other person or groups, in making a determination. The Assistant Secretary may adopt any other procedures deemed necessary and reasonable for considering an appeal. The Assistant Secretary shall decide an appeal within

a reasonable time after receipt of the appeal. If the Assistant Secretary cannot act on the appeal for any reason, the Under Secretary for International Trade may designate another Department of Commerce official to receive and act on the appeal. The decision shall be issued to the appellant in writing and shall contain a statement of the reasons for the action. (2) *Effect of the determination.* The decision of the Assistant Secretary shall be final.

(d) *Effect of appeal.* The taking of an appeal shall not stay the operation of any administrative action unless the Assistant Secretary, upon application by the appellant and with opportunity for response, shall grant a stay.

§ 389.3 Request to issue, amend or revoke a regulation.

Requests to issue, amend or revoke a regulation are not subject to the appeals process, but may be submitted to the Department at any time.

[FR Doc 80-40332 Filed 12-24-80; 8:45 am]
BILLING CODE 3510-25-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 771

Environmental Impact and Related Procedures; Technical Corrections

AGENCY: Federal Highway Administration, (FHWA), DOT.

ACTION: Technical corrections to final rule.

SUMMARY: This document makes minor technical corrections to a previously published final rule on the preparation of environmental statements and other related documents and procedures. An erroneous cross-reference and two typographical errors are corrected.

EFFECTIVE DATE: December 29, 1980.

FOR FURTHER INFORMATION CONTACT: Thomas P. Holian, Office of the Chief Counsel, 202-426-0761, Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590.

In FR Document 80-33714, in the issue of Thursday, October 30, 1980, please make the following corrections:

§ 771.117 [Corrected]

1. On page 71981 (second column), in § 771.117(b), the reference now reading "§ 771.115(a)" should read "§ 771.115(b)";

§ 771.131 [Corrected]

2. On page 71984 (second column), in § 771.131, remove the last four words of the paragraph and place a period after the citation reading "40 CFR 1506.11."; and

§ 771.133 [Corrected]

3. On page 71984 (second column), in § 771.133(a), the third sentence should read "Approval of the environmental document by the Administration constitutes approval of any required findings and determinations that are contained therein."

(23 U.S.C. 315; 49 CFR 1.48(b))

Issued on: December 16, 1980.

Cheryl S. McMurry,
Chief Counsel, Federal Highway Administration.

[FR Doc. 80-40048 Filed 12-24-80; 8:45 am]
BILLING CODE 4910-22-M

Coast Guard

33 CFR Part 165

[CGD11-80-12]

Safety Zone—San Pedro Bay, Los Angeles, California

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This amendment to the Coast Guard's safety zone regulations establishes a safety zone in San Pedro Bay. This safety zone is established to protect recreational boaters and commercial shipping during construction of the landfill site for the Los Angeles Harbor Main Channel dredging project.

EFFECTIVE DATE: This amendment becomes effective on December 1, 1980.

FOR FURTHER INFORMATION CONTACT: Lt. N. S. Porter, Assistant Port Operations Officer, Coast Guard Marine Safety Office LA-LB, 165 N. Pico Ave, Long Beach, CA 90802 at telephone No. (213) 590-2315.

SUPPLEMENTARY INFORMATION: On October 2, 1980, the Coast Guard published an Interim Rule in the Federal Register for these regulations (45 FR 65208). Interested persons were requested to submit comments. No comments were received.

Drafting Information:

The principal persons involved in drafting this rule are Lt. N. S. Porter, Project Officer, Marine Safety Office LA-LB and CDR. R. N. Roussel, Project Attorney, Eleventh Coast Guard District (dl).

Summary of Final Evaluation

These regulations are considered to be of an emergency nature in accordance with guidelines set out in the Policies and Procedures for Simplification, Analysis and Review of Regulations (DOT order 2100.5 of 5-22-80). An economic evaluation of the rule has not been conducted since its impact is expected to be minimal.

Final Regulations

In consideration of the foregoing, Part 165 of Title 33, Code of Federal Regulations, is amended by adding a new § 165.1108 to read as follows:

§ 165.1108 San Pedro Bay, Los Angeles, California.

(a) The area enclosed by the following boundary is a safety zone—the waters of San Pedro Bay enclosed by a line beginning at Fish Harbor Channel Light 4 (latitude 33-43-51.0N, longitude 118-15-50.0W); thence southeasterly to latitude 33-43-43.5N, longitude 118-15-45.8W; thence northeasterly to latitude 33-44-03.6N, longitude 118-14-36.4W; thence northwesterly to latitude 33-44-43.8N, longitude 118-14-56.0W; thence southeasterly along the Terminal Island shoreline to the beginning point.

(b) No vessel may enter or remain in the safety zone except: (1) Vessels engaged in the construction of the landfill site for the Los Angeles Harbor dredging project; (2) vessels operated by or under contract to the U.S. Army Corps of Engineers or the City of Los Angeles; and (3) any other vessels specifically authorized to be in the zone by the Captain of the Port Los Angeles-Long Beach.

Note.—The southerly and easterly sides of the safety zone will be clearly marked by white buoys displaying the orange diamond cross daymark.

(92 Stat. 1475, 33 U.S.C. 1225; 46 CFR 1.46(n)(4); 33 CFR 165.10)

Dated: November 20, 1980.

J. H. Guest,
Captain, U.S. Coast Guard, Captain of the Port, Los Angeles-Long Beach.

[FR Doc. 80-40400 Filed 12-24-80; 8:45 am]
BILLING CODE 4910-14-M

33 CFR Part 183

[CGD 80-047 and CGD 80-046]

Electrical and Fuel Systems Standards for Recreational Boats

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This rule amends the Coast Guard regulations on electrical and fuel systems standards for recreational boats by adopting more recent versions of industry standards incorporated by reference in the regulations. IEEE Standard 45 lists insulated electrical cables which meet certain water absorption and flame retardancy

requirements. Adoption of the more recent version of the standard allows changes made in cable types and designations to be reflected in the Coast Guard's requirements for electrical systems on recreational boats. UL Standard 1114 prescribes performance requirements for USCG Type A fuel hose. Adoption of the more recent version of the standard allows changes made in performance testing of this hose to be reflected in the Coast Guard's requirements for fuel systems on recreational boats.

EFFECTIVE DATE: This regulation is effective on: January 28, 1981.

FOR FURTHER INFORMATION CONTACT: Mr. Lysle B. Gray, Office of Boating, Public and Consumer Affairs (G-BBT/42), U.S. Coast Guard Headquarters, Washington, D.C. 20593, (202/426-4027).

SUPPLEMENTARY INFORMATION: Notices of Proposed Rulemaking concerning these amendments were published as separate documents in the Federal Register on June 9, 1980. (45 FR 38417 and 38418). Interested persons were invited to submit relevant comments on these proposals by July 24, 1980. Only one comment was received. The commenter felt that because the preamble of the document on fuel systems [CGD 80-046] did not mention alternative standards, the public might be misled into believing that only UL listed hose tested in accordance with UL Standard 1114 is acceptable as USCG Type A hose. As stated in 33 CFR 183.505, SAE Standard J30C, when used in conjunction with the fire test described in 33 CFR 183.590, provides alternative performance requirements for USCG Type A hose. This alternative was not mentioned in the proposal to avoid confusion, since only the UL standard required updating.

After the proposal was issued for this rulemaking the Coast Guard published notice in the Federal Register (45 FR 43704, June 30, 1980) of editorial changes that were being made to all sections in Chapter I of Title 33 of the Code of Federal Regulations that contain incorporations by reference. As a result of this action, the volume numbers and publication dates of all materials incorporated by reference have been removed from the text of the regulations and inserted in a table that appears at the end of Title 33, Chapter I. A copy of this table was published in the Federal Register on June 30, 1980 (45 FR 44101). The reader should revise this table to reflect the changes that are being made throught this rulemaking.

The materials incorporated by reference under this rulemaking are IEEE Standard 45-1977, dated June 30, 1977 and UL Standard 1114, dated October 22, 1979. The IEEE standard may be purchased from the Institute of Electrical and Electronic Engineers, Inc., 345 East 47th Street, New York, New York 10017. The UL standard may be purchased from Underwriters' Laboratories, Inc., 333 Pfingsten Road, Northbrook, Illinois 60062. Both of these standards are available for inspection at the Office of the Federal Register Information Center, Room 8301, 1100 "L" Street NW, Washington, D.C. 20408. Notice will be published in the Federal Register of any future changes in these standards incorporated by reference. Approval to incorporate this material by reference was obtained from the Director of the Federal Register on October 24, 1980.

Drafting Information: The principal persons involved in drafting this rule are: Mr. Alston Colihan, Project Manager, Office of Boating, Public and Consumer Affairs and Mr. Coleman Sachs, Project Attorney, Office of the Chief Counsel.

§ 183.435 [Amended]

In consideration of the foregoing, the Coast Guard is amending Part 183 of Title 33, Code of Federal Regulations by incorporating by reference into § 183.435(a)(3) Institute of Electrical and Electronic Engineers, Inc. (IEEE) Standard 45-1977, dated June 30, 1977, and by incorporating by reference into § 183.505 definition for "USGC Type A Hose" paragraph (2) Underwriters' Laboratories, Inc. (UL) Standard 1114, dated October 22, 1979. As a reader's aid, the Office of the Federal Register publishes a table of approved incorporations by reference. The reader may want to make appropriate changes to this table as follows:

1. By removing from the Institute of Electrical and Electronic Engineers, Inc. (IEEE) Standard 45 the publication number 45-1971 and the publication date 1970 and inserting 45-1977 and 1977 respectively in their places.

2. By removing from Underwriters' Laboratories, Inc. (UL) Standard 1114 the publication date 1976 and inserting 1979 in its place.

(46 U.S.C. 1454 and 1488; 49 CFR 1.46(n)(1))

Dated: December 15, 1980.

H. W. Parker,

Rear Admiral, U.S. Coast Guard, Chief, Office of Boating, Public and Consumer Affairs.

[FR Doc. 80-39734 Filed 12-24-80; 8:45 am]

BILLING CODE 4910-14-M

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 1-21; Notice 5]

Federal Motor Vehicle Safety Standards; Theft Protection

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: This notice extends the performance requirements of Standard No. 114 *Theft Protection*, to light trucks and vans. At present, the standard only applies to passenger cars. The effect of the extension will be to reduce the incidence of light truck and van thefts and subsequent disproportionate involvement of those stolen vehicles in injury-producing accidents. The notice also upgrades the performance requirements of the standard to prevent the driver from inadvertently locking up the steering wheel of a moving vehicle by removing the ignition key or shutting off the engine.

DATES: The effective date for passenger cars is September 1, 1982. The final rule is effective for multipurpose passenger vehicles and trucks having a gross vehicle weight rating of 10,000 pounds or less on September 1, 1983.

ADDRESS: Petitions for reconsideration should refer to the docket number and be submitted to: Docket Section, Room 5108, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590 (Docket hours: 8:00 a.m. to 4:00 p.m.).

FOR FURTHER INFORMATION CONTACT: Nelson Erickson, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590 (202-426-2720).

SUPPLEMENTARY INFORMATION: On May 1, 1978, the NHTSA published a notice of proposed rulemaking to extend the applicability of Standard No. 114, *Theft Protection* (49 CFR 571.114), to trucks with a gross vehicle weight rating (GVWR) of 10,000 pounds or less and all multipurpose passenger vehicles (43 FR 18577). The standard currently only applies to passenger cars. The proposal would have also upgraded some of the performance requirements of the standard and clarified others.

Consumers, safety organizations, insurance companies, police departments, locksmiths, vehicle manufacturers, and others submitted comments on the proposed standard. The final rule is based on a thorough evaluation of the data obtained in

NHTSA research, data and views submitted in the comments and data obtained from other pertinent documents and reports. The most significant comments are discussed below.

Extending the Applicability

In recent years, the sale and use of light trucks and multipurpose passenger vehicles (MPV's), such as passenger vans and on-off road vehicles, has substantially increased. The rise in sales and use has been accompanied by an increase in the number of thefts of those vehicles. To reduce the incidence of light truck and MPV thefts and subsequent disproportionate involvement of those stolen vehicles in injury-producing accidents, the May 1978 notice proposed extending the requirements of Standard No. 114 to light trucks and MPV's. The extension was supported by such organizations as Allstate Insurance Company, American Automobile Association (AAA), Center for Auto Safety (CAS) and Chrysler Corporation. Several other motor vehicle manufacturers and the Motor Vehicle Manufacturers Association did not oppose the extension of the standard, but did object to some of the newly-proposed performance requirements. GM said that while more data were needed to justify the extension, it had voluntarily applied some anti-theft features to some of its light trucks and was considering using theft protection equipment on all its light trucks and vans. American Motors Corporation (AMC) also argued that a safety need had not been established. AMC and others also requested that if the extension were adopted, then open-body vehicles, such as some on-off road vehicles, should be exempt from the standard.

The agency is adopting the extension as proposed. The data cited by the agency in the May 1978 notice clearly establish that there is a safety need for reducing the number of motor vehicle thefts. That data showed that stolen cars are from 47 to 200 times more likely than non-stolen cars to be involved in accidents. Stolen cars are involved in one out of every 350 accidents and account for approximately 5,600 disabling injuries and 150 fatalities annually. Data available from the States and the Federal Bureau of Investigation indicate that the theft rate for light trucks and MPV's, especially vans, is increasing and is similar to the rate for passenger cars. At present, many light trucks and MPV's use the type of anti-theft devices that were unsuccessfully used on pre-1970 passenger cars, i.e., before adoption of Standard No. 114. Because of the disproportionate association of stolen vehicles with accidents, injuries and fatalities, the agency concludes the number of light truck and MPV thefts should be reduced by requiring those vehicles to have certain minimum anti-theft features currently found on passenger cars.

The agency is not adopting the exemption for open body-type vehicles sought by some manufacturers. This action by the agency will not pose any problems for those manufacturers.

The concerns that they expressed about those vehicles' ability to comply with the proposed standard dealt with performance requirements that, as explained below, the agency has decided not to adopt. However, because of the accessibility of these vehicles' interiors, it is important to reduce their vulnerability to theft by requiring them to comply with the rest of the proposed requirements.

The notice proposed to extend the applicability of Standard No. 114 to all MPV's. The agency has decided, however, that the rule should apply only to MPV's whose GVWR is 10,000 pounds or less. NHTSA has decided not to extend the standard to MPV's with a GVWR greater than 10,000 pounds because these vehicles are generally not subject to joyrider theft.

Inadvertent Locking

To prevent the accidental locking of the steering system while the vehicle is in motion, the May 1978 notice proposed that the steering and the forward mobility of the vehicle not be impeded when the key is removed from the ignition or when the key is moved from one position to another in the steering wheel lock, such as from on "on" to "off." The proposed requirements would have allowed the driver to shut off the engine in an emergency situation, such as when the vehicle suddenly accelerated due to a stuck throttle cable, without activating the vehicle's steering lock and losing control of the vehicle's steering or forward mobility. The proposal would have also prevented the steering lock from activating if the driver removed the ignition key from the steering lock while the vehicle was in motion. NHTSA proposed the requirements in response to a petition from R. L. Bean.

Almost all manufacturers supported the intent of the proposal to prevent inadvertent actuation of the steering lock. The manufacturers argued, however, that they currently have steering lock systems that would prevent inadvertent actuation. Many manufacturers have a system which requires the driver to stop the vehicle's forward motion and take a separate physical action in order to turn the key to the "lock" position and engage the steering wheel lock. For example, in vehicles that have a column-mounted transmission shifter and a steering column lock, the shifter must be moved into "park" or "reverse" before the key can be turned to "lock" and the steering lock engaged. The agency agrees that such systems effectively prevent a driver from activating the steering wheel lock while the vehicle is in forward motion.

The agency is concerned about other current systems which allow the driver to activate the steering lock while the vehicle is still in forward motion. For example, some manufacturers use a system which allows a driver to push a key release button or lever and move the key to the "lock" position, which engages the steering lock, while the vehicle is moving forward. The purpose of the key release system is to require the driver to perform a sequence of acts before locking the steering to reduce the possibility of activating the lock while the vehicle is in motion. However, some of those systems are designed in such a way that the driver can push the key release lever or button, hold it in place and then simultaneously turn the key to the "lock" position with the same hand. Thus, rather than requiring the driver to perform a sequence of separate and distinct acts before the steering wheel lock can be engaged, those systems allow the driver to simultaneously perform the two actions (pushing the key release device and turning the key to the "lock" position) necessary to engage the steering wheel lock.

To prevent the danger of activating the steering lock while the vehicle is in motion, the agency is prohibiting the use of systems which allow drivers to activate the key release device and simultaneously turn the key to the "lock" position with one hand. Manufacturers will still be permitted to use key release devices which are positioned in such a way that two hands must be used to activate the key release and then turn the key (e.g., a system where the key release device is on one side of the steering column and the ignition lock is on the other side) since those systems minimize the possibility of locking the steering while the vehicle is in motion by requiring a distinct sequence of separate acts that must be performed by two hands.

Several commenters, such as Mercedes-Benz and the Japan Automobile Manufacturers Association (JAMA), requested the agency to pattern its requirement on inadvertent

activation of locking systems on the Economic Commission for Europe (ECE) regulation. The ECE regulation specifies that anti-theft devices which impede the steering or forward mobility of the vehicle cannot activate until the engine is off and the driver has performed another separate action other than turning the engine off, such as withdrawing the key. The agency has decided not to adopt the ECE regulation. The NHTSA believes that this rule does not effectively minimize the possibility of accidental lock-up, because it does not require the driver to perform a sequence of separate and distinct acts in order to activate the steering wheel lock.

Stronger Ignition Locking System

Manufacturers, such as GM, Ford, Mercedes and VW, supported a requirement that the ignition lock be designed to resist removal. However, they criticized the agency's proposal that the ignition system become inoperative if any part of the lock were removed. For example, Ford argued that the proposal would require the ignition to be inoperative even if only a small portion of the lock were removed and the remaining portion of the lock still performed satisfactorily. The manufacturers argued that the agency needs to more specifically define the proposed performance requirements and establish an objective test procedure before issuing a final rule.

Requiring stronger ignition and steering locking systems is potentially one of the most promising ways to effectively reduce vehicle thefts. Even if a thief gains entry to a vehicle, the ignition and steering lock must be circumvented in order to drive the vehicle. Although some manufacturers voluntarily have taken steps to strengthen their ignition locks, it is too easy to remove the ignition lock and start the engine in many vehicles.

To develop an improved ignition lock requirement, NHTSA contracted with the National Bureau of Standards to do tensile, torque and extraction testing on current ignition lock systems (NHTSA Contract HS-9-02150). The report was completed this fall and is presently being evaluated by the agency. Upon completion of this evaluation, NHTSA will consider new rulemaking to propose specific performance requirements for ignition lock retention and ignition system operation.

Audible Warning

Passenger cars are currently equipped with a warning device to remind the driver to remove the key. The device activates when the key is left in the ignition lock and the car door is opened. The agency's proposal to require an audible warning and to require the warning device to sound for so long as the key is not removed after the door had been opened met with substantial opposition from consumers and vehicle manufacturers. They argued that the proposed sound level required for the warning device would be too loud and therefore irritating to vehicle occupants. MVMA and others also argued that the proposals would require a continual warning in many situations, such as parking lots, service areas and car washes, where keys are legitimately left in the ignition after the driver has left the vehicle. In addition, they argued that the power necessary to continually operate the warning device could cause battery failure.

Based on its evaluation of the comments, the agency has decided to retain the current warning requirement and not adopt the proposed requirement for a continuous, louder audible warning. The current requirement, which has reduced the incidence of theft due to keys left in the vehicle, will continue to have the beneficial effect of altering the driver that he or she has left the key in the ignition lock.

Door Locking Systems

To make it more difficult for a thief to break into a vehicle, the May 1978 notice proposed that the door lock be shielded so that it cannot be released by external manipulative devices. The notice also proposed that the door lock buttons be tapered or of uniform thickness to prevent them from being easily opened by manipulative devices and that keys which operate an exterior lock not be able to operate the ignition lock. Vehicle manufacturers, AAA, locksmiths and others criticized these proposals because of the inconvenience and expense they would pose to drivers who inadvertently locked their keys in their vehicles and needed a locksmith to get into their vehicles. AAA noted that 340,000 out of the 17.2 million emergency road calls it responded to in 1977 involved drivers inadvertently locking their keys in their vehicles. AAA argued that the proposed requirements would prevent legitimate service personnel from entering locked vehicles without breaking the windows or otherwise damaging the vehicle.

The Arthritic Society and some consumers were particularly critical of the proposal to require tapered or uniform size door lock buttons. They argued that such buttons would present problems to drivers and passengers with impaired movement of their fingers.

Some consumers and manufacturers also critized the agency's two key proposal, i.e., the one that would prevent a key which operates any exterior vehicle lock from operating the ignition lock. (GM currently uses a two key system.) The commenters argued that using two keys to enter and start the vehicle would be inconvenient. In addition, manufacturers argued that the requirement was design restrictive and might impede the development of other innovative means of locking the door and ignition.

The agency has decided not to adopt these rulemaking proposals. As mentioned previously, using improved ignition/steering locks rather than increasing the amount of time needed to gain entry to the vehicle appears to be the best potential way to reduce vehicle thefts without inconveniencing vehicle users. Further, even in the absence of rulemaking, improvements are anticipated. Manufacturers are currently developing and using new door locking systems to improve vehicle security. The agency will contine to monitor the different door locking systems used by manufacturers to determine if rulemaking is needed.

Interior Hood Release and Shielded Wires

To delay the theft of a vehicle, the May 1978 notice proposed that the hood release be located inside the vehicle. Delaying access to the engine compartment would potentially make it more difficult to "hot wire" the ignition and start the vehicle. The notice also proposed that the ignition wires within the vehicle's interior be shielded so that it would be difficult to "hot wire" the ignition once the thief got inside the vehicle.

Manufacturers, such as GM and Volkswagen, opposed the interior hood release requirement, arguing that since a thief has to gain access to the interior of the vehicle to steal the car, the thief would then have access to the hood release. JAMA, AMC, Chrysler and other manufacturers objected to the shielding requirement, arguing it would make it more difficult to perform legitimate repair work on the ignition wires.

After re-evaluating these proposals, the agency has decided not to adopt them. As explained previously, the agency plans to concentrate its future rulemaking on the more effective route of improving ignition steering column locks. So long as the steering column lock has not been circumvented, a thief cannot steal a vehicle even if he or she has gained access to the engine compartment or the interior ignition wires to "hot wire" the ignition.

Clarification of Requirements

In several of the proposed changes to the text of the standard, the May 1978 notice used the term "ignition system lock" instead of "key locking system" to refer to the system used to activate the engine. Lucas Industries and others pointed out that diesel, turbine and electrical engines do not have electric ignition systems. The agency will continue using the term "key locking system."

Ford recommended that the agency reword the performance requirement that the steering or forward mobility of the vehicle be impaired when the key is removed to make clear that it only applies when the vehicle is not in motion. The agency has adopted Ford's recommendation and has made the necessary clarifying changes to the standard.

Costs and Benefits

The agency has considered the economic and other impacts of this final rule and determined that this rule is not significant within the meaning of Executive Order 12221 and the Department of Transportation's policies and procedures implementing that order. The agency's assessment of the benefits and economic consequences of this final rule are contained in a final regulatory evaluation, which has been placed in the docket. Copies of that final regulatory evaluation can be obtained by writing NHTSA's docket section at the address given in the beginning of this notice.

As discussed in the evaluation, the agency estimates that the final rule will add $1.51 to the cost of a passenger car and $2.06 to the cost of a truck or multipurpose passenger vehicle. The aggregate consumer cost of the final rule is $3.26 million annually for passenger cars and approximately $6.57 million annually for trucks and multipurpose passenger vehicles.

NHTSA has received complaints from consumers and businesses about vehicles in which the steering system inadvertently locked while the vehicle was in motion. Accidents occurred in several of these cases. The agency expects that the final rule will prevent such inadvertent lock-up, and thus will prevent the deaths and injuries that can result.

The provisions of the final rule should also deter the joyrider thief who accounts for the majority of accidents involving stolen vehicles. Stolen vehicles are involved in approximately one out of every 350 accidents and account for an estimated 5,600 disabling injuries and 150 fatalities annually. The cost to the public from stolen vehicles is enormous, ranging from $1.8 billion to $2.8 billion annually. The agency estimates that the final rule may result in as many as 25 lives saved and 1,120 less injuries annually.

Leadtime Requirements

The final rule is effective on September 1, 1982, for passenger cars, and on September 1, 1983 for light trucks and vans. The agency believes that a two-year lead time is adequate for passenger car manufacturers because many automobiles already comply with the final rule. Other manufacturers have systems that permit activation of the steering wheel lock by simultaneously performing two actions, and thus these manufacturers need only make minor modifications to bring these systems into compliance. Manufacturers of light trucks and vans are being given three years to comply with the standard because moderate design changes are involved and such manufacturers have generally not voluntarily complied with the rule in the past.

The principal authors of this notice are Nelson Erickson, Office of Vehicle Safety Standards and Stephen Oesch, Office of Chief Counsel.

In consideration of the foregoing, § 571.114 is revised to read as follows:

§ 571.114 Standard No. 114; Theft protection

S1. *Purpose and Scope.* This standard specifies requirements for theft protection to reduce the incidence of accidents resulting from unauthorized use.

S2. *Application.* This standard applies to passenger cars and to multipurpose passenger vehicles, and to trucks having a GVWR of 10,000 pounds or less.

S3. *Definitions.*

"Combination" means one of the specifically planned and constructed variations of a locking system which, when properly actuated, permits operation of the locking system.

"Key" includes any other device designed and constructed to provide a method for operating a locking system which is designed and constructed to be operated by that device.

S4. *Requirements.*

S4.1.1. Passenger cars manufactured before September 1, 1982, shall meet the requirements of S4.2, S4.4, S4.6, and S4.7 or the requirements listed in S4.1.2.

S4.1.2. Passenger cars manufactured on or after September 1, 1982, shall meet the requirements of S4.3, S4.5, S4.6, and S4.7.

S4.1.3. Trucks and multipurpose passenger vehicles having a GVWR of 10,000 pounds or less manufactured on or after September 1, 1983, shall meet the requirements of S4.3, S4.5, S4.6, and S4.7.

S4.2. Each vehicle shall have a key-locking system that, whenever the key is removed will prevent—

(a) Normal activation of the vehicle's engine or other main source of motive power; and

(b) Either steering or forward self-mobility of the vehicle, or both.

S4.3. Each vehicle shall have a key-locking system that whenever the key is removed while the vehicle is not in motion, will prevent—

(a) Normal activation of the vehicle's engine or other main source of motive power; and

(b) Either steering of forward self-mobility.

S4.4. The prime means for deactivating the vehicle's engine or other main source of motive power shall not activate the deterrent required by S4.2(b).

S4.5. Each vehicle shall have a key-locking system that, whenever the vehicle is in forward motion, will impede neither the steering nor the self-mobility of the vehicle, unless—

(a) The engine is deactivated; and

(b) The driver has performed an additional mechanical action that (1) is not a necessary step in deactivating the engine, and (2) cannot be performed simultaneously with the deactivation of the engine by a single hand.

S4.6. The number of different combinations of the key-locking systems required of each manufacturer for a type of vehicle shall be at least 1,000, or a number equal to the number of vehicles of that type manufactured by such manufacturer, whichever is less.

S4.7. A warning to the driver shall be activated whenever the key required by S4.2 or S4.3 has been left in the locking system and the driver's door is opened. The warning to the driver need not operate—

(a) After the key has been manually withdrawn to a position from which it may not turned;

(b) When the key-locking system is in the "on" or "start" position; or

(c) After the key has been inserted in the locking system and before it has been turned.

(Sec. 103, 113, 119, Pub. L. 89-563, 80 Stat. 718 (15 U.S.C. 1392, 1401, 1407); delegation of authority at 49 CFR 1.50)

Issued on December 22, 1980.

Joan Claybrook,

Administrator.

[FR Doc. 80-40423 Filed 12-23-80; 11:20 am]

BILLING CODE 4910-59-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1033

Service Orders; Various Railroads Authorized To Use Tracks and/or Facilities of Chicago, Rock Island and Pacific Railroad Co.; Debtor (William M. Gibbons, Trustee)

AGENCY: Interstate Commerce Commission.

ACTION: Fourteenth revised service order No. 1473.

SUMMARY: Pursuant to Section 122 of the Rock Island Transition and Employee Assistance Act, Pub. L. 96-254, this order authorizes various railroads to provide interim service over Chicago, Rock Island and Pacific Railroad Company, Debtor (William M. Gibbons, Trustee), and to use such tracks and facilities as are necessary for operations. This order permits carriers to continue to provide service to shippers which would otherwise be deprived of essential rail transportation.

EFFECTIVE DATE: 11:59 p.m., December 21, 1980, and continuing in effect until 11:59 p.m., March 31, 1981, unless otherwise modified, amended or vacated by order of this Commission.

FOR FURTHER INFORMATION CONTACT: M. F. Clemens, Jr., (202) 275-7840.

Decided: December 19, 1980.

Pursuant to Section 122 of the Rock Island Transition and Employee Assistance Act, Pub. L. 96-254, the Commission is authorizing various railroads to provide interim service over Chicago, Rock Island and Pacific Railroad Company, Debtor (William M. Gibbons, Trustee), (RI) and to use such tracks and facilities as are necessary for that operation.

In view of the urgent need for continued service over RI's lines pending the implementation of long-range solutions, this order permits carriers to continue to provide service to shippers which would otherwise be deprived of essential rail transportation.

Fourteenth Revised Service Order No. 1473 modifies Appendix A of the previous order as follows:

1. In Item 7.0., authority as an interim operator is restored to the Chicago and North Western Transportation Company between Purina and Short Line Junction, Iowa. Directed service authority in this territory under Directed Service Order No. 1482 expires 11:59 p.m., December 21, 1980.

2. In Item 11, the authority of the St. Louis Southwestern Railway Company (SSW) is deleted for the operation of the Tucumcari-Line between Santa Rosa, New Mexico and St. Louis, Missouri. The SSW has consummated its purchase of this line.

3. In Item 14. I., the authority of the Missouri-Kansas-Texas Railroad Company/Oklahoma, Kansas and Texas Railroad Company is deleted for operations on the Ponca City Branch between Billings and North Enid, Oklahoma, as requested.

4. By adding Item 25, authority is granted to the Fordyce and Princeton Railroad Company between Fordyce and Crossett, Arkansas, including the assumption of RI's trackage rights over the Ashley, Drew and Northern Railway Company between Whitlow Junction and Crossett, Oklahoma.

Appendix B of Thirteenth Revised Service Order No. 1473 is unchanged, and becomes Appendix B of this order.

It is the opinion of the Commission that an emergency exists requiring that the railroads listed in the attached appendices be authorized to conduct operations using RI tracks and/or facilities; that notice and public procedure are impracticable and contrary to the public interest; and good cause exists for making this order effective upon less than thirty days' notice.

It is ordered,

§ 1033.1473 Fourteenth Revised Service Order No. 1473.

(a) Various Railroads authorized to use tracks and/or facilities of the Chicago, Rock Island and Pacific Railroad Company, debtor, (William M. Gibbons, trustee). Various railroads are authorized to use tracks and/or facilities of the Chicago, Rock Island and Pacific Railroad Company (RI), as listed in Appendix A to this order, in order to provide interim service over the RI; and as listed in Appendix B to this order, to provide for continuation of joint or common use facility agreements essential to the operations of these carriers as previously authorized in Service Order No. 1435.

(b) The Trustee shall permit the affected carriers to enter upon the property of the RI to conduct service as authorized in paragraph (a).

(c) The Trustee will be compensated on terms established between the Trustee and the affected carrier(s); or upon failure of the parties to agree as hereafter fixed by the Commission in accordance with pertinent authority conferred upon it by Section 122(a) Public Law 96-254.

1. The authority contained in Item 5(E) of Appendix A of this order, previously operated by the Union Pacific Railroad Company (UP) between Colby and Caruso, Kansas (milepost 387.8 to 429.3), is conditioned upon the assumption by Burlington Northern, Inc. (BN) of the negotiated agreement between UP and the Rock Island Trustee with regard to the compensation to be paid the Trustee for that line segment until a new agreement is reached between the Trustee and the BN.

(d) Interim operators, authorized in Appendix A to this order, shall, within fifteen (15) days of its effective date, notify the Railroad Service Board of the date on which interim operations were commenced or the expected commencement date of those operations.

(e) Interim operators, authorized in Appendix A to this order, shall, within thirty days of commencing operations under authority of this order, notify the RI Trustee of those facilities they believe are necessary or reasonably related to the authorized operations.

(f) During the period of the operations over the RI lines authorized in paragraph (a), operators shall be responsible for preserving the value of the lines, associated with each operation, to the RI estate, and for performing necessary maintenance to avoid undue deterioration of lines and associated facilities.

1. In those instances where more than one railroad is involved in the joint use or RI tracks and/or facilities described in Appendix B, one of the affected carriers will perform the maintenance and have supervision over the operations in behalf of all the carriers, as may be agreed to among themselves, or in the absence of such agreement, as may be decided by the Commission.

(g) Any operational or other difficulty associated with the authorized operations shall be resolved through agreement between the affected parties or, failing agreement, by the Commission's Railroad Service Board.

(h) Any rehabilitation, operational, or other costs related to the authorized operations shall be the sole responsibility of the interim operator incurring the costs, and shall not in any way be deemed a liability of the United States Government.

(i) *Application.* The provisions of this order shall apply to intrastate, interstate and foreign traffic.

(j) *Rate applicable.* Inasmuch as the operations described in Appendix A by interim operators over tracks previously operated by the RI are deemed to be due to carrier's disability, the rates applicable to traffic moved over these lines shall be the rates applicable to traffic routed to, from, or via these lines which were formerly in effect on such traffic when routed via RI, until tariffs

naming rates and routes specifically applicable become effective.

1. The operator under this temporary authority will not be required to protect transit rate obligations incurred by the RI or the directed carrier, Kansas City Terminal Railway Company, on transit balances currently held in storage.

(k) In transporting traffic over these lines, all interim operators described in Appendix A shall proceed even though no contracts, agreements, or arrangements now exist between them with reference to the divisions of the rates of transportation applicable to that traffic. Divisions shall be, during the time this order remains in force, those voluntarily agreed upon by and between the carriers; or upon failure of the carriers to so agree, the divisions shall be those hereafter fixed by the Commission in accordance with pertinent authority conferred upon it by the Interstate Commerce Act.

(l) To the maximum extent practicable, carriers providing service under this order shall use the employees who normally would have performed the work in connection with traffic moving over the lines subject to this Order.

(m) *Effective date.* This order shall become effective at 11:59 p.m., December 21, 1980.

(n) *Expiration date.* The provisions of this order shall expire at 11:59 p.m., March 31, 1981, unless otherwise modified, amended, or vacated by order of this Commission.

This action is taken under the authority of 49 U.S.C. 10304, 10305, and Section 122, Pub. L. 96-254.

This order shall be served upon the Association of American Railroads, Car Service Division, as agent of the railroads subscribing to the car service and car hire agreement under the terms of that agreement and upon the American Short Line Railroad Association. Notice of this order shall be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing a copy with the Director, Office of the Federal Register.

By the Commission, Railroad Service Board, members Joel E. Burns, Robert S. Turkington and John H. O'Brien.

Agatha L. Mergenovich,

Secretary.

Appendix A—RI Lines Authorized to be Operated by Interim Operators

1. *Louisiana and Arkansas Railway Company (L&A):*

A. Tracks one through six of the Chicago, Rock Island and Pacific Railroad Company's (RI) Cadiz yard in Dallas, Texas, commencing at the point of connection of RI track six with the tracks of The Atchison, Topeka and Santa Fe Railway Company (ATSF) in the southwest quadrant of the crossing of the ATSF and the Missouri-Kansas-Texas Railroad Company (MKT) at interlocking station No. 19.

2. *Peoria and Pekin Union Railway Company (P&PU):* All Peoria Terminal Railroad property on the east side of the Illinois River, located within the city limits of Pekin, Illinois

3. *Union Pacific Railroad Company (UP):*

A. Beatrice, Nebraska

B. Approximately 36.5 miles of trackage extending from Fairbury, Nebraska, to RI Milepost 581.5 north of Hallam, Nebraska

C. Limon, Colorado

4. *Toledo, Peoria and Western Railroad Company (TP&W):*

A. Keokuk, Iowa

B. Peoria Terminal Company trackage from Hollis to Iowa Junction, Illinois

5. *Burlington Northern, Inc. (BN):*

A. Burlington, Iowa (milepost 0 to milepost 2.06)

B. Fairfield, Iowa (milepost 275.2 to milepost 274.7)

C. Henry, Illinois (milepost 126) to Peoria, Illinois (milepost 164.35) including the Keller Branch (milepost 1.55 to 8.62).

D. Phillipsburg, Kansas (milepost 282) to CBQ Junction, Kansas (milepost 325.9)

E. CBQ Junction, Kansas (milepost 325.9) to Seibert, Colorado (milepost 487).

6. *Fort Worth and Denver Railway Company (FW&D):*

A. from Amarillo to Bushland, Texas, including terminal trackage at Amarillo, and approximately (3) three miles northerly along the old Liberal Line.

B. North Fort Worth, Texas (milepost 603.0 to milepost 611.4).

7. *Chicago and North Western Transportation Company (C&NW):*

A. from Minneapolis-St. Paul, Minnesota, to Kansas City, Missouri

B. from Rock Junction (milepost 5.2) to Inver Grove, Minnesota (milepost 0)

C. from Inver Grove (milepost 344.7) to Northwood, Minnesota

*D. from Clear Lake Junction (milepost 191.1) to Short Line Junction, Iowa (milepost 73.6)

E. from Short Line Junction Yard (milepost 354) to West Des Moines, Iowa (milepost 384)

F. from Short Line Junction (milepost 73.6) to Carlisle, Iowa (milepost 64.7)

G. from Carlisle (milepost 64.7) to Allerton, Iowa (milepost 0)

H. from Allerton, Iowa (milepost 363) to Trenton, Missouri (milepost 415.9).

I. from Trenton (milepost 415.9) to Air Line Junction, Missouri (milepost 502.2).

J. From Iowa Falls (milepost 97.4) to Esterville, Iowa (milepost 206.9)

K. from Bricelyn, Minnesota (milepost 57.7) to Ocheyedan, Iowa (milepost 246.7)

L. from Palmer (milepost 454.5) to Royal, Iowa (milepost 502)

M. from Dows (milepost 113.4) to Forest City, Iowa (milepost 158.2)

N. from Cedar Rapids (milepost 100.5) to Cedar River Bridge, Iowa (milepost 96.2) and to serve all industry formerly served by the RI at Cedar Rapids

O. from Newton (milepost 320.5) to Earlham, Iowa (milepost 388.6)

P. Sibley, Iowa

Q. Worthington, Minnesota

R. Altoona to Pella, Iowa

S. Carlisle, Indianola, Iowa

T. Omaha, Nebraska (between milepost 502 to milepost 504).

U. Earlham (milepost 388.6) to Dexter, Iowa (milepost 393.5).

8. *Chicago, Milwaukee, St. Paul and Pacific Railroad Company (Milwaukee):*

A. from West Davenport, through and including Muscatine, to Fruitland, Iowa, including the Iowa-Illinois Gas and Electric Company near Fruitland

B. Washington, Iowa

C. from Newport, to a point near the east bank of the Mississippi River, sufficient to serve Northwest Oil Refinery, at St. Paul Park, Minnesota.

9. *Davenport, Rock Island and North Western Railway Company (DRI):*

A. Davenport, Iowa

B. Moline, Illinois

C. Rock Island, Illinois, including 26th Street yard

D. from Rock Island through Milan, Illinois, to a point west of Milan sufficient to include service to the Rock Island Industrial complex

E. from East Moline to Silvis, Illinois

F. from Davenport to Iowa City, Iowa

G. from Rock Island, Illinois, to Davenport, Iowa, sufficient to include service to Rock Island arsenal

10. *Illinois Central Gulf Railroad Company (ICG):* Ruston, Louisiana

*11. *St. Louis Southwestern Railway Company (SSW):*

A. from Brinkley to Briark, Arkansas, and at Stuttgart, Arkansas.

B. at North Topeka, Kansas.

12. *Little Rock & Western Railway Company:* from Little Rock, Arkansas (milepost 135.2) to Perry, Arkansas (milepost 184.2); and from Little Rock (milepost 136.4) to the Missouri Pacific/RI Interchange (milepost 130.6).

13. *Missouri Pacific Railroad Company:* from Little Rock, Arkansas (milepost 135.2) to Hazen, Arkansas (milepost 91.5); Little Rock, Arkansas (milepost 135.2) to Pulaski, Arkansas (milepost 141.0); Hot Springs Junction (milepost 0.0) to and including Rock Island milepost 4.7.

14. *Missouri-Kansas-Texas Railroad Company/Oklahoma, Kansas and Texas Railroad Company:*

A. Herington-Ft. Worth Line of Rock Island: beginning at milepost 171.7 within the City of Herington, Kansas, and extending for a distance of 439.5 miles to milepost 613.5 within the City of Ft. Worth, Texas, and use of Fort Worth and Denver trackage between Purina Junction and Tower 55 in Ft. Worth

B. Ft. Worth-Dallas Line of Rock Island: beginning at milepost 611.9 within the City of Ft. Worth, Texas, and extending for a distance of 34 miles to milepost 646, within the City of Dallas, Texas

C. El Reno-Oklahoma City Line of Rock Island: beginning at milepost 513.3 within the City of El Reno, Oklahoma, and extending for a distance of 16.9 miles to milepost 496.4 within the City of Oklahoma City, Oklahoma

D. Salina Branch Line of Rock Island: beginning at milepost 171.4 within the City of

*Changed.

Herington, Kansas, and extending for a distance of 27.4 miles to milepost 18.8 in the City of Abilene, Kansas, including RI trackage rights over the line of the Union Pacific Railroad Company to Salina (including yard tracks) Kansas

E. Right to use joint with other authorized carriers the Herington-Topeka Line of Rock Island: beginning at milepost 171.7 within the City of Herington, Kansas, and extending for a distance of 81.6 miles to milepost 89.9 within the City of Topeka, Kansas, as bridge rights only

F. Rock Island rights of use on the Wichita Union Terminal Railway Company and the Wichita Terminal Association, all located in Wichita, Kansas.

G. Rock Island right to use interchange tracks to interchange with the Great Southwest Railroad Company located in Grand Prairie, Texas.

H. The Atchison Branch from Topeka, at milepost 90.5, to Atchison, Kansas, at milepost 519.4 via St. Joseph, Missouri, at mileposts 0.0 and 498.3, including the use of interchange and yard facilities at Topeka, St. Joseph and Atchison, and the trackage rights used by the Rock Island to form a continuous service route, a distance of 111.6 miles.

*I. That part of the Mangum Branch Line from Chickasha, milepost 0.0 to Anadarko at milepost 18, thence south on the Anadarko Line at milepost 460.5 to milepost 485.3 at Richards Spur, a distance of 42.8 miles.

*J. Oklahoma City-McAlester Line of Rock Island: Beginning at milepost 496.4 within the City of Oklahoma City, Oklahoma, and extending for a distance of 131.4 miles to milepost 365.0 within the City of McAlester, Oklahoma.

15. *The Denver and Rio Grande Western Railroad Company:*

A. from Colorado Springs (milepost 609.1) to and including all rail facilities at Colorado Springs and Roswell, Colorado, (milepost 602.8), all in the vicinity of Colorado Springs, Colorado.

16. *Norfolk and Western Railway Company:* is authorized to operate over tracks of the Chicago, Rock Island and Pacific Railroad Company running southerly from Pullman Junction, Chicago, Illinois, along the western shore of Lake Calumet approximately four plus miles to the point, approximately 2,500 feet beyond the railroad bridge over the Calumet Expressway, at which point the RI track connects to Chicago Regional Port District track; and running easterly from Pullman Junction approximately 1,000 feet into the lead to Clear-View Plastics, Inc., for the purpose of serving industries located adjacent to such tracks and connecting to the Chicago Regional Port District. Any trackage rights arrangements which exited between the Chicago, Rock Island and Pacific Railroad Company and other carriers, and which extend to the Chicago Regional Port District Lake Calumet Harbor, West Side, will be continued so that shippers at the port can have NW rates and routes regardless of which carrier performs switching services.

17. *St. Louis-San Francisco Railway Co.:*

A. At Okeene, Oklahoma.

B. At Lawton, Oklahoma.

18. *Southern Railway Company:*

A. At Memphis, Tennessee.

19. *Cadillac and Lake City Railroad:*

A. From Sandown Junction (milepost 0.1) to and including junction with DRGW Belt Line (milepost 3.9) all in the vicinity of Denver, Colorado.

20. *Baltimore and Ohio Railroad Company:*

A. From Blue Island, Illinois (milepost 15.7) to Bureau, Illinois (milepost 114.2), a distance of 98.5 miles.

21. *Louisiana Midland Railway Company:*

A. From Hodge, Louisiana (Milepost 173.3) to Alexandria, Louisiana (milepost 247.8), which includes assumption of RI's trackage rights over the Louisiana and Arkansas Railway Company between Winnfield, Louisiana, and Alexandria, Louisiana, and the RI's track and yard in Alexandria, Louisiana.

22. *Cedar Rapids and Iowa City Railway Company (CIC):*

A. From the west intersection of Lafayette Street and South Capitol Street, Iowa City, Iowa, southward for approximately 2.2 miles, terminating at the intersection of the RI tracks and the southern line of Section 21, Township 79 North, Range 6 West, Johnson County, Iowa, including spurs of the main trackage to serve various industry; and to effect interchange with the Davenport, Rock Island and North Western Railway Company.

23. *Keota Washington Transportation Company:*

A. from Keota to Washington, Iowa; to effect interchange with the Chicago, Milwaukee, St. Paul and Pacific Railroad Company at Washington, Iowa, and to serve any industries on the former RI which are not being served presently.

24. *The La Salle and Bureau County Railroad Company:*

A. from Chicago (milepost 4.26) and Blue Island, Illinois (milepost 16.61), and yard tracks 6, 9 and 10; and crossover 115 to effect interchange at Blue Island, Illinois.

B. from Western Avenue (Subdivision 1A, milepost 16.6) to 119th Street (Subdivision 1A, milepost 14.8), at Blue Island Illinois.

** *Fordyce and Princeton Railroad Company (FP)*

A. from Fordyce to Crossett, Arkansas, which includes assumption of RI's trackage rights over the Ashley, Drew and Northern Railway Company between Whitlow Junction and Crossett, Arkansas.

[FR Doc. 80-40273 Filed 12-24-80; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF INTERIOR

Fish and Wildlife Service

50 CFR Part 33

Sport Fishing; Opening of Certain National Wildlife Refuges in North Carolina, South Carolina, and Tennessee, to Sport Fishing

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Special regulations.

SUMMARY: The Director has determined that the opening to sport fishing of certain national wildlife refuges in North Carolina, South Carolina, and Tennessee is compatible with the objectives for which the areas were established, will utilize a renewable natural resource, and will provide additional recreational opportunity to the public. The name and address of each affected refuge and the special regulations for each refuge are set forth below.

EFFECTIVE DATES: See the dates listed for each refuge under Supplementary Information below.

FOR FURTHER INFORMATION CONTACT:

The Area Manager or appropriate Refuge Manager at the address or telephone number listed below:

William C. Hickling, Area Manager, U.S. Fish and Wildlife Service, Plateau Building, Room A-5, 50 South French Broad Ave., Asheville, NC. 28801. Telephone: 704-258-2850, Ext. 321.

Steven W. Frick, Refuge Manager, Mattamuskeet National Wildlife Refuge, Rt. 1, Box N-2, Swanquarter, N.C. 27885. Telephone: 919-926-4021.

Jerry L. Holloman, Refuge Manager, Pee Dee National Wildlife Refuge, P.O. Box 780, Wadesboro, N.C. 28710. Telephone: 704-694-4424.

Marvin T. Hurdle, Refuge Manager, Carolina Sandhills National Wildlife Refuge, Route 2, Box 130, McBee, South Carolina 29101. Telephone: 803-335-8401.

George R. Garris, Refuge Manager, Cape Romain National Wildlife Refuge, Rt. 1, Box 191, Awendaw, S.C. 29429. Telephone: 803-928-3368.

Paul Ferguson, Refuge Manager, Santee National Wildlife Refuge, Route 2, Box 66, Summerton, S.C. 29148. Telephone: 803-478-2217.

Samuel W. Barton, Refuge Manager, Cross Creeks National Wildlife Refuge, Route 1, Box 229, Dover, Tennessee 37058. Telephone: 615-232-7477.

J. C. Bryant, Refuge Manager, Hatchie National Wildlife Refuge, Box 187, Brownsville, Tennessee 38012. Telephone: 901-772-0501.

Wendell C. Crews, Refuge Manager, Reelfoot (and Lake Isom) National Wildlife Refuge, P.O. Box 98, Samburg, Tennessee 38254. Telephone: 901-538-2481.

SUPPLEMENTARY INFORMATION:

General

Sport fishing on portions of the following refuges shall be in accordance with applicable State and Federal regulations, subject to additional special regulations and conditions as indicated.

**Added.

Portions of refuges which are open to sport fishing are designated by signs and/or delineated on maps. Special conditions applying to individual refuges and maps are available at refuge headquarters or from the Office of the Area Manager (addresses listed above).

The Refuge Recreation Act of 1962 (16 U.S.C. 460k) authorizes the Secretary of the Interior to administer such areas for public recreation as an appropriate incidental or secondary use only to the extent that it is practicable and not inconsistent with the primary objectives for which the areas were established. In addition, the Refuge Recreation Act requires that before any area of the refuge system is used for forms of recreation not directly related to the primary purposes and functions of the area, the Secretary must find that: (1) Such recreational use will not interfere with the primary purposes for which the area was established; and (2) funds are available for the development, operation, and maintenance of the permitted forms of recreation.

The recreational use authorized by these regulations will not interfere with the primary purposes for which these refuges were established. This determination is based upon consideration of, among other things, the Service's Final Environmental Impact Statement on the Operation of the National Wildlife Refuge System published in November 1976. Funds are available for the administration of the recreational activities permitted by these regulations.

§ 33.5 Special regulations; sport fishing; for individual wildlife refuge areas.

North Carolina

Mattamuskeet National Wildlife Refuge

Sport fishing on the Mattamuskeet National Wildlife Refuge, North Carolina, is permitted on approximately 40,000 acres. Sport fishing and bow fishing seasons extend from March 1, 1981, through November 1, 1981, except that the following areas are open to bank fishing during the entire year: (a) State Highway 94 Causeway; (b) in the immediate vicinity of the Lake Landing Water Control Structure; and (c) in the immediate vicinity of the Outfall Canal Water Control Structure and the Central Canal bridge, in the Mattamuskeet Lodge area. (1) Herring (alewife) dipping will be permitted from March 1, through May 15, from the canal banks and water control structures in the immediate vicinity of the following locations: (a) Waupoppin Canal control structure—from ½ hour before sunrise to ½ hour after sunset. (b) Outfall Canal and Lake Landing control structures—from ½ hour before sunrise to 10 p.m. (2) Boats and outboard motors will be permitted from March 1, through November 1, except in areas posted closed to motorboat use. Airboats are prohibited.

Pee Dee National Wildlife Refuge

Sport fishing on the Pee Dee National Wildlife Refuge, North Carolina is permitted on approximately 40 acres. The sport fishing season is year-round on Brown Creek within 100 yards of Brown Creek Bridge on U.S. Highway 52; from April 1, 1981, through September 30, 1981, on Brown Creek within 100 yards of both Bennett Bridge on SR-1627 and lower Brown Creek Bridge on SR-1634, on Sullivan and Little Ponds (Anson County) and on the Pee Dee River (Anson and Richmond Counties); and from April 1, 1981, through August 15, 1981, on Arrowhead Lake (Anson County) and Andrews Pond (Richmond County).

Fishing is permitted from sunrise to sunset. Only bank fishing is permitted, except in Andrews Pond and Arrowhead Lake. Jon boats, up to 14 feet, and canoes will be permitted in Andrews Pond and Arrowhead Lake. All motors are prohibited.

Only cane poles and rods and reels are permitted. Trotlines, set hooks, and nets are prohibited in Refuge waters. No special refuge fishing permit is required. Parking is permitted only in designated areas.

South Carolina

Cape Romain National Wildlife Refuge

Sport fishing on the Cape Romain National Wildlife Refuge, South Carolina, is permitted on approximately 610 acres. The sport fishing season on the refuge extends from March 15, 1981, through September 30, 1981.

Fishing is permitted during daylight hours only. Boats with electric motors are permitted. Other motors are prohibited. Boats must be removed from the refuge at the close of each day. Moore's Landing will be open daily from 5:00 a.m. until 8:00 p.m. EST, for launching and loading boats. Dogs are prohibited.

Carolina Sandhills National Wildlife Refuge

Sport fishing on the Carolina Sandhills National Wildlife Refuge, South Carolina, is permitted on approximately 150 acres. The fishing season is year-round on Lake Bee and on the Black Creek Bridge areas on State Road 33, State Road 145, and U.S. Highway 1 and Wire Road; from March 9, 1981, through October 4, 1981, on Martins Lake, and Pools A, B, C, D, G, and H; and from March 9, 1981, through September 6, 1981, on Lakes 16 and 17, and Pools J and L and Lynches River.

Fishing is permitted from sunrise until ½ hour after sunset. Unpowered boats and boats with electric motors are permitted only in Martins Lake, Lakes 16 and 17, and Lake Bee. Other types of motors are prohibited. All other areas are open only for bank fishing within posted areas. Fish baskets, nets, set hooks, and trotlines are prohibited.

Santee National Wildlife Refuge

Sport fishing on the Santee National Wildlife Refuge, South Carolina, is permitted on approximately 16,000 acres. Sport fishing is permitted 24 hours per day except for waters within land units which are limited to daylight use, bank fishing only. Sport fishing is permitted year-round except that Cantey Bay, Black Bottom, Savannah Branch, and waters within all land units are closed from November 1, 1981, to February 28, 1982. The overnight mooring of boats on the refuge is prohibited.

Tennessee

Cross Creeks National Wildlife Refuge

Sport fishing on the Cross Creeks National Wildlife Refuge, Tennessee, is permitted on approximately 3,260 acres. The open season for Elk and South Cross Creek Reservoirs and the 15 refuge impoundments extends from April 1, 1981, through September 15, 1981. Sport fishing on Barkley Lake is open year-round.

Fishing is permitted in designated areas from 30 minutes before sunrise to 30 minutes after sunset, except on Barkley Lake, which is open 24 hours per day. Outboard motor size is limited to 6 horsepower or less in Elk and South Cross Creek Reservoirs and the 15 refuge impoundments. Motor size is not restricted on Barkley Lake. Methods of fishing on the two reservoirs and the 15 refuge impoundments are limited to rod and reel and/or pole and line.

Overnight mooring of boats is prohibited on the refuge. Fishermen must park in designated areas. No special refuge fishing permit is required.

Hatchie National Wildlife Refuge

Sport fishing on the Hatchie National Wildlife Refuge, Tennessee, is permitted on approximately 150 acres which includes all lakes and streams. The sport fishing season extends from April 1, 1981, through November 14, 1981. Fishing is permitted during daylight hours only.

Boats powered with electric outboard motors are permitted. Gasoline motors are prohibited.

Methods of fishing are limited to pole and line, or rod and reel, using natural or artificial baits. Footpaths may be used to reach all lakes from Hatchie River.

Lake Isom National Wildlife Refuge

Sport fishing on the Lake Isom National Wildlife Refuge, Tennessee, is permitted on approximately 750 acres. The sport fishing season on the refuge extends from March 16, 1981, through September 30, 1981.

Fishing with bows and arrows is prohibited at all times. Boats having motors above 10 horsepower may not be operated on the refuge, unless being powered by auxiliary gas motors of 10 horsepower or less, electric trolling motors, or paddles. Fishing is permitted during daylight hours only.

Reelfoot National Wildlife Refuge

Sport fishing on the Reelfoot National Wildlife Refuge, Tennesssee, is permitted on approximately 9,092 acres. The fishing season on that portion of the refuge located north of Upper Blue Basin extends from February 15, 1981, through October 15, 1981. The fishing season on the portion of the refuge located south of Upper Blue Basin extends from January 21, 1981, until the day preceding opening of the 1981 waterfowl season. Fishing with bows and arrows is prohibited. Boats having motors above 10 horsepower may not be operated on the refuge, unless being powered by auxiliary gas motors of 10 horsepower or less, electric trolling motors, or paddles. Fishing is permitted during daylight hours only.

The provisions of this special regulation supplement the regulations which govern fishing on wildlife refuge areas generally which are set forth in Title 50 Code of Federal Regulations, Part 33. The public is invited to offer suggestions and comments at any time.

Dated: December 16, 1980.

Carrell L. Ryan,

Acting Area Manager.

[FR Doc. 80-40314 Filed 12-24-80; 8:45 am]

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Proposed Rules

Federal Register
Vol. 45, No. 250
Monday, December 29, 1980

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

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 2, 50, 70, and 73

Protection of Unclassified Safeguards Information

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The NRC proposes to amend its regulations to prohibit the unauthorized disclosure of safeguards information by NRC licensees and other persons. The Commission is issuing the proposed regulations to identify specific types of safeguards information to be protected, establish minimum protection requirements to be applied by licensees and other persons, and set forth the conditions under which access to safeguards information would be granted.

DATE: Comments must be received on or before March 9, 1981. Comments received after this date will be considered if it is practical to do so.

ADDRESSES: Written comments in connection with the proposed amendments should be sent to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch. Copies of comments received may be examined at the Commission's Public Document Room at 1717 H Street, N.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Mr. Donald J. Kasum, Physical Security Licensing Branch, Division of Safeguards, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Phone—301-427-4010.

SUPPLEMENTARY INFORMATION: In November 1978, the Commission approved a plan to classify, under Executive Order 12065, sensitive safeguards information for activities involving formula quantities of strategic nuclear material. Implementing regulations for the classification program, 10 CFR Parts 25 and 95, were published in the Federal Register on March 5, 1980 (45 FR 14476) with an effective date of October 1, 1980. In regard to the protection of other sensitive safeguards information not classifiable under the Executive Order (i.e., information worthy of protection in the interest of public health and safety but with no direct connection to the national security), the Commission has consistently supported legislation to amend the Atomic Energy Act of 1954, as amended, to provide for explicit authority in this area. Such legislation was recently enacted as a provision of the NRC Authorization of Appropriations Act for 1980 (PL 96-295). A new Section 147, SAFEGUARDS INFORMATION, was added to the Atomic Energy Act which directs the Commission to prescribe regulations or issue orders, after notice and opportunity for public comment, as necessary, to prohibit the unauthorized disclosure of safeguards information which specifically identifies a licensee's or applicant's detailed—

(1) Control and accounting procedures or security measures for the physical protection of special nuclear material;

(2) Security measures for the physical protection of source material or byproduct material; or

(3) Security measures for the physical protection of and the location of certain plant equipment vital to the safety of production or utilization facilities.

Accordingly, the Nuclear Regulatory Commission proposes to amend its regulations in 10 CFR Parts, 2, 50, 70, and 73, and invites public comment on the proposed amendments.

The requirements set forth in these proposed rules are the minimum restrictions that the Commission believes will be responsive to the new legislation, in that (i) the information to be protected is limited to specific safeguards measures employed by licensees or proposed by applicants; (ii) the only conditions for access are a "need-to-know" and certain specified employment statuses; and (iii) facilities and materials covered by the rule are limited to those the Commission has already determined need to be protected against theft or sabotage. The essential characteristics of the information protection system are as follows:

Types of safeguards information to be protected—In general, the proposed rule covers information previously withheld under 10 CFR 2.790(d)(1). A new proposed Appendix E to 10 CFR Part 73 defines explicitly types of information required to be protected.

In summary the list includes information regarding (unless otherwise classified as National Security Information (NSI) or Restricted Data (RD)):

i. Physical Protection at Fixed Sites

—Composite security and contingency plans

—Drawings showing location of site safeguards features and alarm system details

—Written guard orders and procedures

—Details of off-site response force capabilities (local police)

—Plant specific composite listings and locations of vital safety related equipment at reactor facilities as contained in physical security and safeguards contingency plans and plant specific analyses.

ii. Physical Protection In Transit

—Composite security and contingency plans

—Schedules and itineraries for specific shipments

—Description of vehicle safeguards features

—Detail of local police response force capabilities

iii. Calculated limits of error associated with inventory differences (LEID) [1]

iv. Inspections, audits and evaluations

—Portions of inspection reports, audits or investigations that contain details of a physical security system or that disclose uncorrected defects in the system.

—Portions of inspection reports, audits or investigations that contain limit of error data (LEID) or that disclose defects in a licensee's accounting system that could directly affect an LEID.

v. Correspondence

[1] Note that a licensee's or applicant's control and accounting procedures or inventory differences would *not* be included as Safeguards Information, and therefore not protected under the provisions of this proposed rule. Such information would continue to be withheld from public disclosure under 10 CFR 2.790(d), and in addition inventory differences for facilities that possess formula quantities of strategic special nuclear material would be classified under 10 CFR Part 95.

—Portions of correspondence to and from the NRC which contain details of any of the above.

A summary of the arguments surrounding the selection of each type of information is set forth below.

Group I—Information regarding physical protection at fixed sites. Included in this group are physical security plans, safeguards contingency plans, drawings that show safeguards features and details of the intrusion alarm system, composite listings of vital equipment and locations, written guard orders, and capabilities and arrangements made with local response forces.

There is general agreement that the release of this type of information in significant detail would significantly increase the likelihood of theft or sabotage by:

—Reducing deterrence value. A good example is the passenger search system at airports which worked extremely well for years because the performance characteristics of the system were not known. (The FAA has protected their security information under specific legislative authority since the early 1970's.) Once it was found that the systems could not detect certain items, some of the deterrence was lost.

—Allowing for possible compromise of the intrusion detection system and successful covert intrusion. Most alarm systems used to protect nuclear facilities are tamper resistant and tamper indicating, making compromise all but impossible for even sophisticated adversaries. However, with knowledge of the electrical details and performance characteristics of alarm equipment, elimination of alarm system protection becomes possible.

—Providing an opportunity for advance planning. In this regard the Generic Adversary Characteristics Report (NUREG-0549) states: "Professional criminals, many terrorists groups, some extremist protest groups, and certain disoriented persons plan carefully and thoughtfully before initiating a given criminal mission. Many of these adversaries will abort planned encounters when security or other interruptions occur." Our thought here is that opportunity to plan is a key element in target selection, and an essential element in a successful operation.

—Pinpointing target areas for power reactors—As part of a security plan review, Los Alamos National Laboratory provides to the Commission a detailed list of vital areas for a specific power reactor, a rank ordering of the importance of each vital area and sets or combinations that is sabotaged as a group would cause an offsite release. This is the type of information the Commission intends to protect under this rule. Obviously, such information would be valuable to an adversary planning an attack for without it the probability of successful sabotage would be quite small.

Group II—Information regarding physical protection in transit. Included in this group are the same types of information as for fixed site plus schedules and itineraries for shipments.

Release of information in this group would have the same potential adverse effects as for fixed information, plus this additional concern.

—Knowledge of shipment schedules and itinerary would allow an adversary to plan for and pick the time and place for a road ambush, thereby placing the defense forces at a significant disadvantage. (For multiple shipments over the same route, the itinerary, but not the schedule, tends to be self-disclosing. Therefore, routes for spent fuel shipments, which normally consist of several shipments in a series, are not withheld from disclosure).

Group III—Information regarding calculated limit of error associated with inventory differences (LEID). Included in this group are LEID's for any facility that possesses one effective kilogram or more of special nuclear material. (Note that nuclear material control plans, implementing procedures and records, and inventory differences are not included as protected safeguards information. This information in whole or in part does not appear to meet the Section 147 test for withholding.)

Disclosure of LEID information would aid an insider adversary in determining how much material could be diverted without exceeding the alarm threshold.

Group IV—Inspection reports, audits and investigations. This group includes reports produced by the licensee or the NRC that contain information from Groups I, II, and III, or those portions of such reports that contain details of an uncorrected defect or weakness in a licensee's safeguards program.

Disclosure of the details of an uncorrected vulnerability could provide a blueprint for defeat of the safeguards system and could be more harmful than the release of the security program itself. (For example, disclosing that a facility's motion alarm system could not detect a person crawling on hand and knees would provide significant benefit to a would be adversary.)

Therefore, based upon the above considerations, the Commission has determined that the unauthorized disclosure of the kinds of Safeguards Information listed in proposed Appendix E could reasonably be expected to have significant adverse effect on the health and safety of the public or the common defense and security by significantly increasing the likelihood of theft, diversion, or sabotage of nuclear material or a facility.

Access requirements—Access to the safeguards information would be limited to persons who have a need-to-know and who fall within certain employment or occupation categories. These categories include:

—Employees of a licensee, applicant, the Commission, the United States Government or agents of these bodies.

—Duly authorized Congressional Committees.

—Governors of States or their representatives.

—Representatives of the IAEA associated with the US/IAEA Agreement.

—Members of state and local police units.

—Parties in NRC adjudicatory hearings or federal court litigation involving the NRC when authorized by the presiding officer or court, as appropriate.

There would be no personnel security clearances required for these individuals. Section 147 contains no provisions regarding trustworthiness determinations (as are set forth in Section 145 for access to Restricted Data) and, consistent with the directive of Section 147 that only the minimum restrictions be applied to Safeguards Information, the Commission believes such clearances are not necessary.

Level of protection—The protection afforded the safeguards information would be substantially greater than that currently afforded to information under 10 CFR 2.790(d) and in some respects approaches that provided Confidential National Security Information (CNSI) under 10 CFR Part 95, except that there would be no requirement for personnel security clearances. Protection provisions include:

—Storage in steel filing cabinet equipped with a locking bar within a protected or controlled access area; or in a GSA approved security container within a locked building not in a protected or controlled access area.

—Control by an authorized individual while in use.

—Marking of documents top and bottom—Safeguards Information—and indicating on the first page the name and organization of the authorizing individual (portion marking would not be required except on reports and correspondence).

—Prohibition against transmittal by unprotected telecommunications except

under emergency or extraordinary conditions.

There would be no requirements for facility clearance or submittal of an information protection plan as are contained in 10 CFR Parts 25 and 95.

Persons, facilities and materials that are subject to the proposed rule—The proposed rule would apply to any person that possesses safeguards information, any applicant required by NRC regulations to submit a physical security, safeguards contingency or nuclear material control plan, and each licensee subject to the physical protection provisions of Part 73. Included in the latter would be:

—Power reactors

—Non-power reactors

—Fuel cycle facilities and transportation activities involving special nuclear material of moderate and low strategic significance

—Fuel cycle and transportation activities involving formula quantities of strategic special nuclear material for safeguards information not otherwise Classified NSI or RD

—Spent fuel shipments except for routes and quantities

Since there are no present NRC requirements for the physical protection of source or byproduct material, facilities that possess or use these materials exclusively would not be subject to the proposed rule.

Information Types Not Included—Certain types of information, even though possibly regarded as safeguards information, would not fall within the scope of the proposed rule. Most notably are studies, reports and analyses conducted by or on behalf of the Commission, licensees or applicants which concern the safeguarding of nuclear materials or facilities. Information not covered by the rule includes:

1. Documents, drawings or reports submitted by applicants or licensees, or produced by the staff, in response to the environmental and safety requirements contained in 10 CFR Parts 50, 51, 70, and 71.

2. Generic safeguards studies, reports or analysis whether or not produced by or for the Commission or a licensee.

3. Routes and quantities for spend fuel shipments.

4. Guard training and qualification plans.

5. Information concerning licensee control and accounting procedure, or inventory differences (not otherwise classified as NSI or RD) for special nuclear material, or source material and byproduct material.

6. Any information already in the public domain including commercial safeguards equipment specifications, catalogues and equipment buying data.

Freedom of Information Act Considerations (FOIA)—Section 147, in the introductory paragraph, provides that the Commission's exercise of the new authority contained in the section be made "subject to subsection (b)(3) of section 552 of title 5 of the United States Code" (FOIA). The Joint Explanatory Statement of the Committee on Conference in regard to this provision, contains the following:

"This express reference to the Freedom of Information Act is intended to make it clear that the compromise provision is a specific statutory exemption from the FOIA, as provided for in Section 5 U.S.C. 552(b)(3), and meets all the requirements for a statutory exemption under that section".

Implementing procedures in response to FOIA requirements are contained in 10 CFR Part 9, Subpart A. No change to Part 9 is considered to be necessary and none are proposed.

While material control and accounting records and information (other than LEID) would not be identified as Safeguards Information and accordingly would not be entitled to the special protections provided for that information under Section 147, the Commission staff proposes that the Commission continue to designate such information as commercial or financial information under 2.790(d)(1). The effect of revising 2.790(d)(1) as proposed will be to continue a basis for withholding this material control and accounting information from public release pursuant to 10 CFR 9.5(a)(4), (Exemption 4 of the FOIA), and to avoid requiring individual determinations of whether the information qualifies for withholding bases on the standard for proprietary information. Because the staff believes material control and accounting information consistently contains matters entitled to some measure of protection, it recommends use of 2.790(d)(1). Public comment is particularly requested on the proposed action regarding 2.790(d)(1).

Agency Proceedings

The Authorization Act also amended Section 181 of the Atomic Energy Act of 1954 by extending the requirements of this Section to safeguards information protected under the authority of Section 147. As amended, Section 181 requires that the Commission, in the case of agency proceedings, provide by regulation procedures that will effectively safeguard and prevent disclosure of Restricted Data, defense information or safeguards information to authorized persons with minimum impairment of the procedural rights which would be available if Restricted Data, defense information or safeguards information were not involved. As regards to safeguards information, basic regulations, as set forth in 10 CFR 2.744, "Production of NRC records and documents" and 10 CFR 2.790 "Public inspections, exemption, requests for withholding" are already in effect. (Restricted Data and National Security Information are covered in Subpart I of Part 2—Special Procedures Applicable to Adjudiciary Proceedings Involving Restricted Data or National Security Information.)

In addition to the regulations already in place, the staff proposes to amend 10 CFR 2.744 to add a provision giving presiding officers the authority to issue appropriate protective orders whenever protected Safeguards Information is required in an adjudicatory hearing. Because no clearances are required for access to Safeguards Information under Section 147, the staff believes it to be unnecessary to include such information in Subpart I of Part 2.

The promulgation of these amendments would not result in any activity that affects the environment. Accordingly, The Commission has deterimined under the National Environmental Quality guidelines and the criteria of 10 CFR 51.5(d) that neither an environmental impact statement nor environmental impact appraisal to support a negative declaration for the proposed amendments to Title 10 is required.

The NRC estimated the cost of these amendments to the licensed industry and the various states that would be required to protect the spent fuel shipping notices against unauthorized disclosure. Accordingly to these estimates the initial costs of storage container procurement and document marking would be about $100,000 and $250,000 respectively. Annual recurring costs for document processing and control would be about $300,000.

Pursuant to the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act 1974, as amended, and Sections 552 and 553 of Title 5 of the United States Code, notice is hereby given that adoption of the following amendments to Title 10, Chapter I, Code of Federal Regulations, Parts, 2, 50, 70, and 73, is contemplated.

PART 2—RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS

1. Section 2.744 is amended by adding a new paragraph (e) to read as follows:

§ 2.744 Production of NRC records and documents.

* * * * *

(e) In the case of requested documents and records (including Safeguards Information referred to in sections 147 and 181 of the Atomic Energy Act, as amended) exempt from disclosure under § 2.790 of this Part, but whose disclosure is found by the presiding officer to be necessary to a proper decision in the proceeding, any order to the Executive Director for Operations to produce the document or records (or any other order issued ordering production of the document or record) may contain such protective terms and conditions (including affidavits of non-disclosure) as may be necessary and appropriate to limit the disclosure to parties in the proceeding, to interested States and other governmental entities participating pursuant to § 2.715(c) of this Part, and to their qualified witnesses and counsel. When Safeguards Information protected from disclosure under section 147 of the Atomic Energy Act, as amended, is received and possessed by a party other than the Commission staff, it shall also be protected according to the requirements of § 73.21 of Part 73 of this Chapter. The presiding officer may also prescribe such additional procedures as will effectively safeguard and prevent disclosure of Safeguards Information to unauthorized persons with minimum impairment of the procedural rights which would be available if Safeguards Information were not involved. In addition to any other sanction that may be imposed by the presiding officer for violation of an order issued pursuant to this paragraph, violation of an order pertaining to the disclosure of Safeguards Information protected from disclosure under section 147 of the Atomic Energy Act, as amended, may be subject to a civil penalty imposed pursuant to § 2.205 of this Part.

2. Section 2.790 is amended by revising paragraph (d)(1) as follows:

§ 2.790 Public inspections, exemptions, requests for withholding.

* * * * *

(d)(1) Correspondence and reports to or from the NRC which contain information or records concerning a licensee's or applicant's material control and accounting program for special material.

* * * * *

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

3. Section 50.34 is amended by adding a new paragraph (e) to read as follows:

§ 50.34 Contents of applications; technical information.

* * * * *

(e) Each applicant who prepares a physical security plan or safeguards contingency plan pursuant to this section, shall protect the plan and other related Safeguards Information against unauthorized disclosure in accordance with the requirements of § 73.21 and Appendix E to Part 73 of this chapter.

4. Section 50.54 is amended by adding a new paragraph (v) to read as follows:

§ 50.54 Conditions of licenses.

* * * * *

(v) Each licensee subject to the requirements of this section shall ensure that physical security and safeguards contingency plans and other related Safeguards Information are protected against unauthorized diclosure in accordance with the requirements of § 73.21 and Appendix E to Part 73 of this chapter.

PART 70—DOMESTIC LICENSING OF SPECIAL NUCLEAR MATERIAL

5. Section 70.22 is amended by adding a new paragraph (l) after paragraph (k) to read as follows:

§ 70.22 Contents of applications.

* * * * *

(l) Each applicant who prepares a physical security or safeguards contingency plan shall protect such plans and other related Safeguards Information against unauthorized disclosure in accordance with the requirements of § 73.21 and Appendix E to Part 73 of this chapter.

6. Section 70.32 is amended by adding a new paragraph (j) to read as follows:

§ 70.32 Conditions of licenses.

* * * * *

(j) Each licensee subject to the requirements of this section shall ensure that physical security and safeguards contingency plans and other related Safeguards Information are protected against unauthorized disclosure in accordance with the requirements of § 73.21 and Appendix E to Part 73 of this chapter.

PART 73—PHYSICAL PROTECTION OF PLANTS AND MATERIALS

7. Section 73.1(b) is amended by adding a new paragraph (7) to read as follows:

§ 73.1 Purpose and scope.

* * * * *

(b) * * *

(7) This part prescribes requirements for the protection of Safeguards Information in the hands of any person, whether or not a licensee of the Commission, who produces, receives, or acquires Safeguards Information.

8. Section 73.2 is amended by adding new paragraphs (jj), (kk), (ll) & (mm) to read as follows:

§ 73.2 Definitions

* * * * *

(jj) "Safeguards Information" means information not otherwise classified as National Security Information or Restricted Data which specifically identifies a licensee's or applicant's detailed, (1) security measures for the physical protection of special nuclear material, (2) security measures for the physical protection and location of certain plant equipment vital to the safety of production or utilization facilities, or (3) limits of error associated with inventory differences (LEID) for special nuclear material.

(kk) "Need-To-Know" means a determination by a person having responsibility for protecting Safeguards Information that a proposed recipients's access to Safeguards Information is necessary in the performance of official, contractual, or licensee duties of employment.

(ll) "Person" means (1) any individual, corporation, partnership, firm, association, firm, association, trust, estate, public or private institution, group, government agency other than the Commission or the Department of Energy (DOE), (except that the DOE shall be considered a person to the extent that its facilities are subject to the licensing and related regulatory authority of the Commission pursuant to Section 202 of the Energy Reorganization Act of 1974 and Sections 104, 105, and 202 of the Energy Reorganization Act of 1974 and Sections 104, 105, and 202 of the Uranium Mill Tailings Radiation Control Act of 1978), any state or political subdivision of state, or any political subdivision of any government or nation, or other entity; and (2) any legal successor, representative, agent, or agency of the foregoing.

(mm) "Security Storage Container", includes any of the following repositories: (1) A steel filing cabinet equipped with a steel locking bar and a 3 position, changeable combination, GSA approved padlock, for storage in a building located within a protected or controlled access area; (2) A security filing cabinet that bears a Test Certification Label on the side of the locking drawer, inside wall adjacent to the locking drawer, or interior door plate, and is marked, "General Services Administration Approved Security Container" on the exterior of the top

drawer of door; (3) A bank safe-deposit box; and (4) Other repositories which in the judgment of the NRC, would provide comparable physical protection.

9. A new § 73.21 is added to read as follows:

§ 73.21 Requirements for the protection of safeguards information.

(a) *General Performance Requirement*—Each licensee subject to the provisions of §§ 73.20, 73.25, 73.26, 73.37, 73.40, 73,45, 73.46, 73.50, 73.55, 73.60, or 73.67, and each person who produces, receives, or acquires Safeguards Information shall ensure that Safeguards Information is protected against unauthorized disclosure. To meet this general performance requirement, licensees and persons subject to this section shall establish and maintain an information protection system that includes the measures specified in paragraphs (b) through (i) of this section.

(b) *Information to be Protected*—The specific types of information, documents, and reports that shall be protected are set forth in Appendix E of this Part.

(c) *Access to Safeguards Information*—(1) Except as the Commission may otherwise authorize, no person may have access to Safeguards Information unless the person has an established "need-to-know" for the information and is:

(i) An employee, agent, or contractor of an applicant, a licensee, the Commission, or the United States Government,

(ii) A member of a duly authorized committee of the Congress,

(iii) The Governor of a State or designated representative,

(iv) A representative of the International Atomic Energy Agency (IAEA) engaged in activities associated with the U.S./IAEA Safeguards Agreement who has been certified by the NRC,

(v) A member of a state or local law enforcement authority that is responsible for responding to requests for assistance during safeguards emergencies, or

(vi) A person to whom disclosure is ordered pursuant to § 2.744 of Part 2 of this chapter.

(2) Except as the Commission may otherwise authorize, no person may disclose Safeguards Information to any other person except as set forth in paragraph (c)(1) of this section.

(d) *Protection While in Use or Storage*—(1) While in use, matter containing Safeguards Information shall be under the control of an authorized individual to preclude access by persons who do not have a need-to-know or are otherwise not authorized access in accordance with this section.

(2) While unattended or not in actual use, Safeguards Information shall be stored in a locked security storage container within a locked room or building. Knowledge of lock combinations protecting Safeguards Information shall be limited to a minimum number of personnel for operating purposes who have a "need-to-know" and are otherwise authorized access to Safeguards Information in accordance with the provisions of this section.

(e) *Preparation and Marketing of Documents*—(1) Each document that contains Safeguards Information as defined in Appendix E of this part shall contain on the face of the document (i) the name, title, and organization of the individual authorized to make a Safeguards Information determination, and who has determined that the document contains Safeguards Information, (ii) the date the document was originated or the determination made, and (iii) an indication that the document contains Safeguards Information. Each page shall be marked in a conspicuous fashion at the top and bottom with the legend SAFEGUARDS INFORMATION.

(2) If the document contains any form of Restricted Data or National Security Information, it shall also be marked in accordance with the provisions of 10 CFR Part 95.

(3) Transmittal letters or memoranda which do not in themselves contain Safeguards Information shall be marked to indicate that attachments or enclosures contain Safeguards Information.

(4) In addition to the information required on the face of the document, each item of correspondence to and from the NRC that contains Safeguards Information shall, by marking or other means, clearly indicate which portions (e.g., paragraphs or pages) contain Safeguards Information and which do not. (Portion marking is not required for the specific items of information set forth in Appendix E other than correspondence to and from the NRC.

(f) *Reproduction and Destruction of Matter Containing Safeguards Information*—(1) Safeguards Information may be reproduced to the minimum extent necessary consistent with need without permission of the originator.

(2) Documents containing Safeguards Information may be destroyed by burning, pulping or other methods that assure complete destruction of the information they contain.

(g) *External Transmission of Documents and Material*—(1) Documents containing Safeguards Information, when transmitted outside an authorized place of use or storage, shall be enclosed in two sealed envelopes or wrappers. The inner envelope or wrapper shall contain the name and address of the intended recipient, be marked both sides, top and bottom with the words SAFEGUARDS INFORMATION. The outer envelope or wrapper shall contain the intended recipient's name and address with no indication that the document inside contains Safeguards Information.

(2) Safeguards Information may be transported by messenger-courier, or United States first class, registered, express, or certified mail.

(3) Safeguards Information shall not be transmitted by unprotected telecommunications circuits (including facsimile) except under emergency or extraordinary conditions.

(h) *Use of Automatic Data Processing (ADP) Systems*—Safeguards Information may be processed or produced on an ADP system provided that the system is self-contained within the licensee's facility and requires the use of an access code, or has been approved for security by the NRC.

(i) *Removal from Safeguards Information Category*—Documents originally containing Safeguards Information shall be removed from the Safeguards Information category whenever the information no longer meets the criteria contained in this section and Appendix E of this part.

10. Section 73.80 is amended by adding a reference to Section 147 of the Atomic Energy Act of 1954 as amended, as follows:

§ 73.80 Violations.

An injunction or other court order may be obtained prohibiting any violation of any provision of the Atomic Energy Act of 1954, as amended, or Title II of the Energy Reorganization Act of 1974, or any regulation or order issued thereunder. A court order may be obtained for the payment of a civil penalty imposed pursuant to section 234 of the Act for violation of section 53, 57, 62, 81, 82, 101, 103, 104, 107, 109, or 181 of the Act, or section 206 of the Energy Reorganization Act of 1974, or any rule, regulation, or order issued thereunder, or any term, condition, or limitation of any license issued thereunder, or for any violation for which a license may be revoked under section 186 of the Act. Any person who willfully violates any provision of the Act or any regulation or order issued thereunder may be guilty of a crime and, upon conviction, may be

punished by fine or imprisonment or both, as provided by law.

11. A new Appendix E to Part 73 is added to read as follows:

Appendix E to Part 73—Protection of Safeguards Information

Introduction: This appendix defines the specific type of information and documents that are subject to the information protection requirements of § 73.21.

Appendix E

I. The following items shall be considered Safeguards Information.

A. Physical Protection at Fixed Sites

Information not otherwise Classified as Restricted Data or National Security Information relating to the protection of (i) power and non-power reactors, (ii) facilities that possess special nuclear material of moderate and low strategic sigificance, and (iii) facilities that possess formula quantities of strategic special nuclear material. Specifically:

(1) The composite physical security plan for the nuclear facility or site.

(2) Site specific "as built" drawings, diagrams, sketches, or maps showing the identity, barrier construction, internal layout, and location of facility safeguards features including alarm stations, guard posts, defensive positions, and patrol routes.

(3) As installed details of alarm system layouts showing location of instrusion detection devices, alarm assessment equipment, system wiring, normal and emergency power sources, and duress alarms.

(4) Written orders and procedures for guards and other security personnel, duress codes, and patrol schedules.

(5) Details of the on-site and off-site communications systems.

(6) Lock combination and mechanical key design.

(7) Plant specific composite listings and locations of vital safety-related equipment at production or utilization facilities as contained in physical security plans, safeguards contingency plans and plant specific safeguards analyses.

(8) The composite safeguards contingency plan for the facility or site.

(9) Response plans to specific threats detailing size, disposition, response times, and armament of responding forces.

(10) Size, armament, and disposition of on-site reserve forces.

(11) Size, identity, armament, and response times of off-site response forces.

B. Physical Protection In Transit

Information not otherwise classified as Restricted Data or National Security Information relative to the protection of shipments of (i) spent fuel, (ii) special nuclear material of moderate and low strategic significance, and (iii) formula quantities of strategic special nuclear material. Specifically:

(1) The composite transportation physical security plan.

(2) Schedules and itineraries for specific shipments.[1 2]

(3) Details of vehicle immobilization features, intrusion alarm devices, and communications systems.

(4) Arrangements with and capabilities of local police response forces, and locations of safe havens.

(5) Details regarding limitations of radio-telephone communications.

(6) Procedures for response to safeguards emergencies.

C. Limits of Error of Inventory Differences

Information not otherwise classified as Restricted Data or National Security Information relating to calculated limits of error associated with inventory differences (LEID) at facilities that possess one effective kilogram or more of special nuclear material.

D. Inspections, Audits & Evaluations

Information not otherwise classified as National Security Information or Restricted Data relating to safeguards inspections and reports. Specifically:

(1) Portions of safeguards inspection reports, evaluations, audits, or investigations that contain details of a licensee's or applicant's physical security system or that disclose uncorrected defects, weaknesses, or vulnerabilities in the system.[1]

(2) Portions of safeguards inspection reports, evaluations, audits, or investigations that contain limits of error associated with inventory differences (LEID), or that disclose uncorrected defects or weaknesses in a licensee's accounting system that could directly affect the LEID.[1]

E. Correspondence To and From the NRC

Portions of correspondence to and from the NRC insofar as they contain Safeguards Information specifically defined in paragraph A through D of this Appendix.

(Secs. 53, 147, 161b, 161i, 161o, 181, Pub. L. 83–703 as amended, 68 Stat. 930, 948, 949, 953; Sec. 201, Pub. L. 93–438, 88 Stat. 1242–1243, Sec. 207 Pub. L. 96–295, 94 Stat. 780 (42 U.S.C. 2073, 2201, 2231, 5841)).

Dated at Washington, D.C. this 19th day of December 1980.

For the U.S. Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 80-40412 filed 12-24-80; 8:45am]

BILLING CODE 75900-01-M

[1]Routes and quantities for shipments of spent fuel are not withheld from public disclosure. Schedules for spent fuel shipments may be released 10 days after the last shipment of a current series. (Reference § 73.37(e)(3)).

[2]Schedules and itineraries for shipments other than those involving spent fuel or formula quantities of strategic special nuclear material may be released if it becomes necessary to disclose such information to common carriers or other persons not subject to the general license provisions of 10 CFR 70.20(a).

10 CFR Part 50

Codes and Standards; Public Meeting

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of public meeting.

SUMMARY: The Nuclear Regulatory Commission will conduct a public meeting to discuss its regulation "Codes and Standards," which was last amended in the Federal Register (44 FR 57911) on October 9, 1979.

DATE: The meeting will be held on Friday, January 30, 1981, from 9:00 to 4:00 p.m.

ADDRESS: The meeting will be held at the Commission's Offices at 7920 Norfolk Avenue, Bethesda, Maryland, Conference Room P 114/118.

FOR FURTHER INFORMATION CONTACT: A. Taboada, Office of Standards Development, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, 301–443–5997.

SUPPLEMENTARY INFORMATION: The meeting is intended to provide an opportunity for NRC staff and other interested parties to discuss comments, questions, and suggestions on Section 50.55a, Codes and Standards, of the Commissions regulations and problems developed during its implementation. Potential subjects for discussion include:

1. Expanding references to Section III of the ASME Boiler and Pressure Vessel Code to include Subsection NC "Class 2 Components," Subsection ND, "Class 3 Components," and Subsection NE, "Class MC Components";

2. Reorganizing paragraphs for easier location of specific provisions and rewording the regulation to make it easier to understand;

3. Changes to mitigate implementation problems which have been experienced during application of the regulation.

Written comments may be submitted to the Commission staff at the meeting or at any time to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch.

Interested persons are invited to attend and ask questions or present oral or written statements on the regulation and the specific areas being considered for modification. Any person who intends to make an oral statement should notify Mr. A. Taboada, Office of Standards Development, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Telephone 301–443–5997 by January 15, 1981. It is expected that oral statements will be limited to 10 minutes. Persons desiring additional information

regarding the meeting should also contact Mr. Taboada.

(5 U.S.C. 552(a))

Dated at Bethesda, Md., this 18th day of December 1980.

For the Nuclear Regulatory Commission.

Ray G. Smith,

Acting Director, Office of Standards Development.

[FR Doc. 80-40410 Filed 12-24-80; 8:45 am]

BILLING CODE 7590-01-M

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10 CFR Part 50

Domestic Licensing of Production and Utilization Facilities

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Denial of a petition for rulemaking.

SUMMARY: Notice is hereby given that a petition for rulemaking filed by Mr. William K. Watson by letter dated January 6, 1980, with the Nuclear Regulatory Commission is denied. This petition, which was assigned Docket Number PRM-50-26, requested that the Commission amend 10 CFR Part 50, "Domestic Licensing of Production and Utilization Facilities." The proposed amendment would have provided that an applicant for a license for a facility that stored certain quantities of nuclear products be required to design the facility to protect against release to the atmosphere of these products in the event the facility were attacked by use of nuclear weapons detonated at ground level with a yield of up to 5 megatons.

FOR FURTHER INFORMATION CONTACT: James A. Prell, Office of Standards Development, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555 (301-443-5904).

SUPPLEMENTARY INFORMATION: The Nuclear Regulatory Commission (NRC) has denied a petition for rulemaking submitted by letter dated January 6, 1980, from William K. Watson, 5409 Denver Avenue South, Seattle, Washington 98108. A notice of filing of petition, Docket No. PRM-50-26, was published in the Federal Register on February 15, 1980 [45 FR 10360]. Interested persons were invited to submit written comments or suggestions on the petition.

Mr. Watson petitioned the Commission to revise the language of 10 CFR Part 50.13 to read as follows:

"An applicant for a license to construct a production or utilization facility, or for an amendment to such license, wherein it is contemplated there will be stored anywhere within the facility nuclear products with a radioactive half-life of one year or more in quantities in excess of 100,000 Curies, shall be required to design the facility in such a manner that the nuclear products cannot be released to the atmosphere by the use of a nuclear weapon with an equivalent yield of less than five (5) megatons which is detonated at ground level at the geographical location of any structures at the facility which contain the aforesaid quantities of radioactive material."

The petitioner alleges that nuclear-armed cruise missiles are now able, with reasonable probability, to directly impact a building, pond, or storage tank and disseminate their contents over a wide region. In support of his contentions, the petitioner references two articles written by C. V. Chester and R. O. Chester of Oak Ridge National Laboratory. Both articles appeared in a magazine entitled "Nuclear Application and Technology." The first, "Civil Defense Implications of A Pressurized Water Reactor In A Thermonuclear Target Area," was published in the December 9, 1970, issue while the second, "Civil Defense Implications Of An LMFBR In A Thermonuclear Target Area," was published in the March 1974 issue. These articles indicate that a direct hit by nuclear weapons in the 20- to 100-kiloton range could smash the reactor containment vessel and disperse its contents over a large area.

The basic question inherent in the petition is: "Should the Nuclear Regulatory Commission, in licensing the construction of nuclear facilities for peaceful civilian use, take into account and require effective protection against the possibility of attack by enemies of the United States?" This question has been previously addressed in a decision by the Atomic Energy Commission in *Florida Power and Light Company* (Turkey Point Nuclear Generating Units No. 3 and No. 4) 4 AEC 9 (1967). That decision was later upheld by the United States Court of Appeals for the District of Colubmia Circuit in *Siegel* vs. *Atomis Energy Commission*, 400 F.2d 778 (1968).

In its opinion the Atomic Energy Commission discussed the meaning of the statutory terms "common defense and security" and "health and safety of the public" in the following manner:

> We think it plain from the structure of the Atomic Energy Act and the construction placed thereon by the United States *Supreme Court (Power Reactor Development Co.* v. *International Union*, 367 U.S. 396, 1961), that responsibility for interpreting and implementing the Act's general standards has been vested by the Congress in the Atomic Energy Commission which is charged with determining what measures are required to give application to those standards. In our regulatory process, as the staff points out, we have implemented the statutory requirements regarding the "common defense and security" and the "health and safety of the public" in Commission regulations applicable to nuclear reactors, particularly Parts 20, 50, 70 and 100, and have furnished additional guidance in our decisions.
>
> For a fuller understanding of the premises unerlying that implementation, one must recall the circumstances at the time of enactment of the Atomic Energy Act of 1954 and the issuance thereafter of Commission regulations bearing on reactor licensing. Reactor technology, although then in the process of declassification, was essentially still classified. Further, concern existed that there be sufficient special nuclear material for our military needs and that the material used for fueling reactors, all of which was Government-owned, be subject to appropriate safeguards against loss or diversion. While the passage of time has lent more immediacy to some of these concerns as contrasted to others, we have, in the above context, considered the common defense and security standard to refer principally to: the safeguarding of special nuclear material; the absence of foreign control over the applicant; the protection of Restricted Data; and the availability of special nuclear material for defense needs.
>
> We have considered the public health and safety standard to refer to the overall qualifications of the applicant and the design of the facility to protect plant employees and the public against accidents and their consequences. At the operating license stage we would also consider such matters as the execution of the design of the facility and proposed operating procedures.
>
> This implementation of the subject standards has been based upon our understanding of the intent of Congress as expressed in the various provisions of the Atomic Energy Act which pertain to the licensing of reactors and of the legislative concerns which gave rise to those provisions. It bears emphasis that—as is the case with the Act and its legislative history—neither our regulations nor our decisions indicate any requirement that an applicant provide for special design features or other measures for the specific purpose of protection against the effects of enemy attacks and destructive acts.
>
> We believe that our practice of excluding the foregoing from licensing consideration is founded on compelling factors. It would appear manifest, as an initial proposition, that the protection of the United States against hostile enemy acts is a responsibility of the nation's defense establishment and of the various agencies of our Government having internal security functions. The power reactors which the Commission licenses are, or course, equipped with numerous features intended to assure the safety of plant employees and the public, as indicated by our earlier summary description of the proposed Turkey Point facility. These safeguards, while designed to protect against accidents and their consequences, do not have as their specific purpose protection against effects of enemy attacks and destructive acts—although the massive containment and the procedures and systems for rapid shutdown

of the facility could also serve a useful purpose in the latter regard. One factor underlying our practice in this connection has been a recognition that reactor design features to protect against the full range of the modern arsenal of weapons are simply not practicable and that the defense and internal security capabilities of this country constitute, of necessity, the basic "safeguards" as respects possible hostile acts by an enemy of the United States.

The circumstances which compel our recognition are not, of course, unique as regards a nuclear facility; they apply also to other structures which play vital roles within our complex industrial economy. The risk of enemy attack or sabotage against such structures, like the risk of all other hostile acts which might be directed against this country, is a risk that is shared by the nation as a whole. This principle, we believe, is rooted in our political history and we find no Congressional indication that nuclear facilities are to be treated differently in the subject regard.

Certain other considerations are equally militating in our view. Assessment of whether, at some time during the life of a facility, another nation actually would use force against that particular facility, the nature of such force and whether that enemy nation would be capable of employing the postulated force against our defense and internal security capabilities are matters which are speculative in the extreme. Moreover, examination into the above matters, apart from their extremely speculative nature, would involve information singularly sensitive from the standpoint of both our national defense and our diplomatic relations. These matters are clearly not amenable to board consideration and determination in the licensing process and we would not propose to make them cognizable issues in the absence of a clear Congressional direction to that end. (4 AEC at pp. 12–14).

Shortly after denying Mr. Siegel's contention, the Commission published in effective form 10 CFR 50.13, "Attacks and destructive acts by enemies of the United States; and defense activities" (32 FR 13445). In the statement of consideration, the Commission reiterated what the common defense and security standard and the public health and safety standard meant. The meanings were the same as presented in the Commission's response to the Siegel contention.

Mr. Siegel appealed the AEC decision to the United States Court of Appeals for the District of Columbia Circuit. It rendered a decision in August 1968 which upheld the Atomic Energy Commission decision. In upholding the Commission's decision, the Court of Appeals stated:

We are unable to find any specific indication, within or without the corners of the statute, that the Commission was commanded to intrude the possibility of enemy action into the concepts of "the common defense and security" and "the public health and safety." The Commission has, we think persuasively, demonstrated that the legislative concerns reflected in these phrases are of another order. In the case of the former, the internal evidence of the Act is that Congress was thinking of such things as not allowing the new industrial needs for nuclear materials to preempt the requirements of the military; of keeping such materials in private hands secure against loss or diversion; and of denying such materials and classified information to persons whose loyalties were not to the United States. In the case of the latter standard of "the public health and safety," the Congressional preoccupation was with industrial accidents and the dangers they presented to employees and the neighboring public.

In short, Congress certainly can be taken to have expected that an applicant for a license should bear the burden of proving the security of his proposed facility as against his own treachery, negligence, or incapacity. It did not expect him to demonstrate how his plant would be invulnerable to whatever destructive forces a foreign enemy might be able to direct against it in 1984. We hold that the Commission was well within the limits of the powers delegated to it by Congress when it decided to limit petitioner's cross-examination in the licensing proceeding, and to embody the policy of limitation in its regulations (400 F2d at 784) (footnote omitted).

At the time that the Atomic Energy Act was being written and considered by Congress, potential adversaries of the United States had in their possession nuclear weapons capable of destroying nuclear power plants and dispersing their contents over wide areas. Although these potential adversaries did not possess the technology needed to remotely deliver these weapons to nuclear power plants, (i.e., rockets and missiles), they did possess long range bombers capable of accurately dropping their weapons on predesignated sites. The 1954 Congress had to be aware of this situation as well as this country's research efforts in rocket and missile development. They also had to know that Russia and other countries were developing rockets which could be used for transporting nuclear warheads over long distances. In addition, the 1954 Congress had to be aware of the missile's potential for widespread destruction after having witnessed its effective use by Germany against England during World War II.

Thus, the 1954 Congress was able to relate the potential dangers posed by nuclear weapons and missiles to nuclear power plants. However, nowhere did they indicate, either legislatively or otherwise, that the AEC should be responsible for requiring that licensed facilities be designed to protect the public's health and safety from possible destructive acts by enemies of the United States. The basic argument presented by the petitioner is that the level of sophistication for nuclear missiles has improved so substantially since 1954, that licensed nuclear facilities now should be designed to protect against a release to the atmosphere of their radioactive inventory in the event the facility is targeted by such a weapon.

Granting this petition would establish a precedent affecting not only the nuclear industry, but each industry that possessed material that might be detrimental to the public health and safety. Regulations could be developed requiring that each industry that possessed hazardous material be responsible for defending themselves from attack by enemies of the United States, who may use nuclear weapons. It appears as valid today as in 1954, that protecting the public health and safety from possible destructive acts by enemies of the United States of facilities containing potentially hazardous materials, is and should be the responsibility of the Department of Defense.

Five comments were received from the public in response to the petition published in the Federal Register. One of the commenters was C. V. Chester, from Oak Ridge National Laboratory, co-author of the two articles referenced in the petition for rulemaking. All commenters, including Mr. Chester, recommended that the NRC deny the petition. The reasons given by the commenters were that the petition was unreasonable, would be very expensive to implement, and would be illegal if implemented.

It is the belief of the NRC that the technological changes in weaponry referred to in the petition do not alter the logical and legal basis for in the precedents established in this area by the Atomic Energy Commission in its opinion in *Florida Power and Light* (supra), the Court of Appeals decision, and in the rulemaking that resulted in 10 CFR 50.13.

In view of the foregoing, the Executive Director for Operations, acting under authority delegated by the Commission (10 CFR 1.40(o)) has in accord with established precedent denied the petition for rulemaking filed by William K. Watson (PRM 50–26). Copies of the petition for rule making, the comments thereon, and the Commission's letter of denial are available for public inspection in the Commission's Public Document Room at 1717 H Street NW., Washington, D.C.

Dated at Bethesda, Md., this 18th day of November 1980.

For the Nuclear Regulatory Commission.
William J. Dircks,
Executive Director for Operations.
[FR Doc. 80-40411 Filed 12-24-80; 8:45 am]
BILLING CODE 7590-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 80-CE-14]

Transition Area—Greenfield, Iowa; Proposed Designation

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rule making (NPRM).

SUMMARY: This notice proposes to designate a 700-foot transition area at Greenfield, Iowa, to provide controlled airspace for aircraft executing a new instrument approach procedure to the Greenfield, Iowa, Airport based on the Greenfield Non-Directional Radio Beacon (NDB), a navigational aid.

DATES: Comments must be received on or before February 2, 1981.

ADDRESSES: Send comments on the proposal to: Federal Aviation Administration, Chief, Operations, Procedures and Airspace Branch, Air Traffic Division, ACE-530, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (8181) 374-3408.

The official docket may be examined at the Office of the Regional Counsel, Central Region, Federal Aviation Administration, Room 1558, 601 East 12th Street, Kansas City, Missouri

An informal docket may be examined at the Office of the Chief, Operations, Procedures and Airspace Branch, Air Traffic Division.

FOR FURTHER INFORMATION, PLEASE CONTACT:
Dwaine E. Hiland, Airspace Specialist, Operations, Procedures, and Airspace Branch, Air Traffic Division, ACE-532, FAA, Central Region. 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 374-3408.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons may participate in the proposed rule making by submitting such written data, views or arguments as they may desire. Communications should identify the airspace docket number, and be submitted in duplicate to the Operations, Procedures and Airspace Branch, Air Traffic Division, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106. All communications received on or before February 2, 1981 will be considered before action is taken on the proposed amendment. The proposal contained in this Notice may be changed in light of the comments received. All comments received will be available both before and after the closing date for comments in the Rules Docket for examination by interested persons.

Availability of NPRM

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Operations, Procedures and Airspace Branch, 601 East 12th Street, Kansas City, Missouri 64106 or by calling (816) 374-3408. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for further NPRMs should also request a copy of Advisory Circular No. 11-2 which described the application procedure.

The Proposal

The FAA is considering an amendment to Subpart G, § 71.181, of the Federal Aviation Regulations (14 CFR § 71.181) by designating a 700-foot transition area at Greenfield, Iowa. To enhance airport usage, the city of Greenfield, Iowa, has requested the development of an instrument approach procedure to the Greenfield Airport utilizing the Greenfield NDB as a navigational aid. This radio facility will provide new navigational guidance for aircraft utilizing the airport. The establishment of a new instrument approach procedure based on this navigational aid entails designation of a transition area at Greenfield, Iowa, at and above 700 feet above ground level (AGL) within which aircraft are provided air traffic control service. The intended effect of this action is to ensure segregation of aircraft using the approach procedure under Instrument Flight Rules (IFR) and other aircraft operating under Visual Flight Rules (VFR).

Accordingly, Federal Aviation Administration proposes to amend Subpart G, § 71.181 of the Federal Aviation Regulations (14 CFR 71.181) as republished on January 2, 1980, (45 FR 445) by adding the following new transition area:

Greenfield, Iowa

That airspace extending upward from 700 feet above the surface withihn a five mile radius of the Greenfield Airport (Latitude 41° 20' 00"N, Longitude 94° 26' 38"w) and three miles either side of the 141° bearing of the Greenfield NDB (Latitude 41° 19' 32"N, Longitude 94° 26' 39"W) extending from five miles to 8.5 miles southeast of the NDB. (Sec. 307(a), Federal Aviation Act of 1958 as amended (49 U.S.C. 1348); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); Sec. 11.65 of the Federal Aviation Regulations (14 CFR 11.65))

The FAA has determined that this document involves a proposed regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Since this regulatory action involves an established body of technical requirements for which frequent and routine amendments are necessary to keep them operationally current and promote safe flight operations, the anticipated impact is so minimal that this action does not warrant preparation of a regulatory evaluation.

Issued in Kansas City, Missouri, on December 15, 1980.
Paul J. Baker,
Director, Central Region.
[FR Doc. 80-40260 Filed 12-24-80; 8:45 am]
BILLING CODE 4910-13-M

14 CFR Part 73

[Airspace Docket No. 80-AWA-14]

Alteration of Restricted Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter the description of Restricted Area R-4305, by changing the time of designation from 5 days per week to continuous. The Minnesota Air National Guard conducts an increasing amount of training on weekends and this action would extend the time of designation for R-4305 to include weekends.

DATES: Comments must be received on or before January 28, 1981.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA Great Lakes Region, Attention: Chief, Air Traffic Division, Docket No. 80-AWA-14, Federal Aviation Administration, 2300 East Devon, Des Plaines, Ill. 60018.

The official docket may be examined at the following location: FAA Office of the Chief Counsel, Rules Docket (AGC-204), Room 916, 800 Independence Avenue, SW., Washington, D.C. 20591.

An informal docket may be examined at the Office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT:
Lewis Still, Airspace Regulations Branch (AAT-230), Airspace and Air Traffic

Rules Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426-8525.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons may participate in the proposed rulemaking by submitting such written data, views or arguments as they may desire. Communications should identify the airspace docket number and be submitted in triplicate to the Director, Great Lakes Region, Attention: Chief, Air Traffic Division, Federal Aviation Administration, 2300 East Devon, Des Plaines, Ill. 60018. All communications received on or before January 28, 1981 will be considered before action is taken on the proposed amendment. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, SW., Washington, D.C., 20591, or by calling (202) 426-8058. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11-2 which describes the application procedures.

The Proposal

The FAA is considering an amendment to Subpart B of Part 73 of the Federal Aviation Regulations (14 CFR Part 73) that would extend the time of designation for the utilization of Restricted Area R-4305 from Monday through Friday, to "Continuous" (7 days per week). The 148th Tactical Reconnaissance Group (MN ANG), conducts an increasing amount of training missions on weekends and has requested the operating hours of R-4305 be extended to include this time period. Also, there is a minor change to the using agency's title. Section 73.43 of Part 73 was republished in the Federal Register on January 2, 1980, (45 FR 706).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend § 73.43 of Part 73 of the Federal Aviation Regulations (14 CFR Part 73) as republished (45 FR 706) as follows:

Under R-4305 Lake Superior, Minn.:

Time of designation. "0001 local time Monday to 2400 local time Friday." is deleted and "Continuous." is substituted therefor.

Using agency. "Commander, Eight Air Force, Barksdale AFB, La." is deleted and "Commander, Eight Air Force, Barksdale AFB, LA/DOOBS. (Autovon 781-3917/3857)" is substituted therefor.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.65.)

The FAA has determined that this document involves a proposed regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Since this regulatory action involves an established body of technical requirements for which frequent and routine amendments are necessary to keep them operationally current and promote safe flight operations, the anticipated impact is so minimal that this action does not warrant preparation of a regulatory evaluation and a comment period of less than 45 days is appropriate.

Issued in Washington, D.C., on December 19, 1980.

B. Keith Potts,

Acting chief, Airspace and Air Traffic Rules Division.

[FR Doc. 80-40265 Filed 12-24-80; 8:45 am]

BILLING CODE 4910-13-M

Coast Guard

33 CFR Parts 88 and 89

[OGD 77-233]

Navigation Lights for Small Vessels

AGENCY: U.S. Coast Guard, DOT.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: In the Federal Register of September 7, 1978, the Coast Guard proposed rules for approval, installation, and performance of navigation lights on vessels of less than 20 meters in length that must comply with the International Regulations for Preventing Collisions at Sea, 1972. Numerous comments were received and this supplemental notice of proposed rulemaking incorporates the recommendations of commenters. The principal changes are to allow manufacturer certification of lights in lieu of Coast Guard testing and approval and to make the practical cut-off and horizontal sector requirements less restrictive. These changes would substantially reduce the economic impact of the rules.

DATES: Comments must be received on or before February 27, 1981.

ADDRESSES: (a) Comments should be mailed to Commandant (G-CMC/24), (OGD 77-233), U.S. Coast Guard, Washington, D.C. 20593. The comments, draft evaluation, and other materials referenced in this notice will be available for examination and copying between 7 a.m. and 5 p.m., Monday through Thursday except holidays, at the Marine Safety Council (G-CMC/24), Room 2418, U.S. Coast Guard Headquarters, 2100 Second Street, S.W., Washington, D.C. 20593. Comments may also be hand-delivered to this address.

(b) The ABYC standard (A-16) referenced in this notice may be obtained at a cost of $3.00 from the American Boat and yacht Council, Inc., P.O. Box 806, Amityville, N.Y. 11701.

(c) The UL standard (1104) referenced in this notice may be obtained at a cost of $6.00 from Underwriters Laboratories Inc., 333 Pfingsten Road, Northbrook, IL 60062.

FOR FURTHER INFORMATION CONTACT: Mr. Lysle B. Gray, Office of Boating Safety (G-BBT-2/42), Room 4220, U.S. Coast Guard Headquarters, 2100 Second Street, S.W., Washington, D.C., 20593, (202) 426-4027.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, data, or arguments. Persons submitting comments should include their names and addresses, identify this notice (OGD 77-233) and the specific sections of the proposal to which the comments apply, and give reasons for the comments. Persons desiring acknowledgement of their comments should enclose a stamped self-addressed postcard or envelope.

The rules may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on these proposed rules. Copies of all written comments received will be available for examination by interested persons at the marine Safety Council address noted above.

Drafting Information

The principal persons involved in drafting this proposal are: Lysle Gray, and LTUG E. B. McLean, Office of Boating Safety, and William R. Register, Office of the Chief Counsel.

Background

A notice of proposed rulemaking (NPRM) for this proposal was published in the Federal Register of September 7, 1978, beginning at page 39946, (43 FR 39946). The NPRM proposed requirements for approval, installation, and performance of navigation lights on vessels of less than 20 meters in length that must comply with the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS). Two public hearings were held and 67 written comments were received. Revisions have been made to the proposal in accordance with the comments and this supplemental NPRM contains the proposed revisions.

Discussion of Comments and Revisions Made to the NPRM

The following paragraphs contain an analysis of comments received on the NPRM and an explanation of the proposed revisions in this supplemental NPRM.

1. *Practical cut-off and horizontal sectors.* Proposed § 89.5(a)(2) in the NPRM allowed up to 10° tolerance in the horizontal sector requirements in Rule 21 of the 72 COLREGS. This provision applied only to navigation lights installed on vessels before August 1, 1981. The proposed requirements for lights installed on and after this date, however, were much more restrictive. Proposed § 89.47 allowed only a 2° installation tolerance in light alignment. Proposed § 89.14(a) interpreted the term "practical cut-off" in Annex I of the 72 COLREGS to mean "50% of minimum required intensity," and proposed § 89.15 allowed only a 2° production tolerance in the horizontal sector intensities required by Annex I.

a. Numerous comments were received concerning these proposed requirements. Comments on proposed § 89.15 recommended an 8° production tolerance for horizontal sector intensity on the basis that more rigid production tolerances could not be achieved without excessive increases in production costs. Commenters on proposed § 89.47 objected to the proposed 2° installation tolerance as being virtually impossible to achieve when installing lights on a production basis. Commenters on proposed § 89.14 recommended that the proposed interpretation of "practical cut-off" be changed to "67% of minimum required intensity." These commenters stated that the 50% value would result in removal of several widely accepted models of navigation lights from the market and would substantially increase the cost to produce models still remaining on the market. Several other commenters also objected to these requirements, as well as other NPRM provisions, on more general grounds. The principal complaint was that lights which could meet the requirements of the NPRM would be exceedingly expensive for many recreational boat owners.

b. On the basis of these comments it is apparent that the 50% practical cut-off value and the 2° tolerances proposed in the NPRM for lights installed on and after August 1, 1981, are unreasonable from a cost standpoint and that production of lights in accordance with these requirements would in many cases be impracticable. Two principal revisions have been made in this supplemental NPRM to alleviate commenters' objections. The 2° tolerances have been replaced with the 10° tolerance proposed for existing lights and the 50% value in the interpretation of practical cut-off has been replaced with a 67% value. The specific changes are as follows:

i. The 10° tolerance provision in proposed § 89.5 (a)(2) has been made applicable to all navigation lights.

ii. Proposed § 89.14 of the NPRM has been transferred to § 88.5 of Part 88 and the 50% value for practical cut-off in that rule has been replaced with a 67% value.

iii. The 2 degree tolerance provisions in §§ 89.15 and 89.47 of the NPRM have been deleted.

These changes and other changes discussed below should substantially reduce the costs of this proposal and allow a larger number of existing models of navigation lights to continue in production without excessive tooling and design changes.

c. Although these revisions would allow greater production and installation tolerances for navigation lights installed on and after August 1, 1981, little change, if any, would result in the performance characteristics of these lights as observed during vessel operation. Most small vessels cannot maintain a constant heading when steering on a given course. As a result, the directional information that their navigation lights provide to oberservers on other vessels is sometimes inaccurate depending upon the relative positions of the other vessels. These inaccuracies will occur regardless of whether the lights are designed with a 10 degree tolerance in horizontal sectors, as proposed in § 89.5(a)(2), or with the more restrictive tolerances in the NPRM. These inaccuracies also correspond to visual discrepancies in course and heading observed on small vessels during daylight hours. As a general rule, the apparent heading of a small vessel, as observed during daylight hours, can vary by as much as 10 degrees from the vessel's actual heading.

d. In addition to making proposed § 89.5(a)(2) applicable to all navigation lights, the wording of this provision has been revised to parallel the corresponding enforcement provision in Commandant Instruction 16672.1. (As discussed in more detail in paragraph 9 of this preamble, the instruction outlines the Coast Guard's enforcement policy for navigation lights on small vessels). Section 89.5(a)(2) in the NPRM provided that compliance with the 72 COLREGS would be presumed unless visual inspection showed that a light's "horizontal arc of visibility deviates 10° or more from the requirements of rule 21 of the 72 COLREGS * * *." This supplemental NPRM provides that compliance will be presumed unless it can be determined that "a masthead light, sidelight, towing light, or sternlight, shows light more than 10° beyond the horizontal sector prescribed for the light in Rule 21 of the 72 COLREGS * * *." The purpose of the revision is to make clear that a 10° tolerance is only allowed outside required horizontal sectors. The allowable tolerances inside required horizontal sectors are the 2° and 6° obscuration allowances prescribed by proposed §§ 89.5(a)(5) and 89.5(a)(6).

2. *Adequacy of existing lights.* Several commenters objected to the NPRM on the basis that lights currently in use on small vessels are adequate and that no safety justification exists for imposing additional requirements. In support of their objections, the commenters stated that none of the Coast Guard casualty reports on small boat accidents list inadequacies in navigation lights as the principal cause of the casualty. These comments have not been adopted. The 72 COLREGS have the force and effect of U.S. law and do not provide for continued use of navigation lights that violate those requirements or the requirements of implementing regulations. Accordingly, continued use of noncomplying lights cannot be allowed. Their continued use also could pose a safety hazard. Nonconforming lights would exhibit lighting characteristics that are different from characteristics displayed by lights that do comply with the 72 COLREGS. The resulting confusion to mariners in trying to determine the intentions of approaching or nearby vessels at night and in periods of restricted visibility could result in dangerous passing situations or other hazardous situations.

3. *Certification.* Several manufacturers recommended that the approval procedures in the NPRM be

replaced with requirements that would allow manufacturers to certify that their lights meet 72 COLREGS requirements. The recommendations have been adopted in proposed §§ 89.7, 89.11(a)(2), and 89.11(b)(1). As explained in the draft evaluation, the certification process can provide an effective incentive for manufacturers to design and produce lights that conform to the 72 COLREGS and Coast Guard enforcement activity can be limited to the visual inspection process described in proposed § 89.5. The certification process can also eliminate administrative costs involved in the approval process and provide a corresponding reduction in governmental involvement in boating activities.

4. *Approval.* Proposed § 89.7 also allows carriage of Coast Guard approved lights in lieu of lights that have a manufacturer certification. The Coast Guard currently approves navigation light designs for use on merchant vessels that are required to comply with the electrical engineering regulations in Subchapter J of Title 46, CFR. The specific requirements for navigation lights are in Subpart 111.75 of Subchapter J. The electrical engineering regulations are being revised in a separate rulemaking docket (CGD 75-124) and the planned changes to Subpart 111.75 include a requirement that approved navigation lights must, as a condition of approval, meet the technical requirements of the 72 COLREGS or other applicable rules of the road.

5. *Testing.* The supplement NPRM also deletes the testing provisions in Subpart D of the NPRM. On the basis of subsequent Coast Guard analysis of those tests, it became apparent that they were not sufficiently complete to permit a laboratory to perform them without first obtaining additional information concerning specific test procedures to be used. Replacement tests have not been provided, however, in order to allow manufacturers leeway in determining what tests should be done to check for compliance with 72 COLREGS requirements. Two testing procedures currently exist that contain reliable test methods and criteria. The American Boat and Yacht Council has recently developed ABYC Standard A-16 entitled "Recommended Practices and Standards Covering the Design, Construction, Performance and Installation of Electric Navigation Lights". Underwriters Laboratories standard 1104 entitled "Standard for Navigation Lights" is also available. Copies of these standards may be obtained by writing to the appropriate address listed above under "ADDRESSES".

6. *Obscuration.* Proposed § 89.49(a) allows a 6° obscuration for an all-round light but limits masthead lights to a 2° obscuration and prohibits any obscuration for sidelights and sternlights. Several manufacturers recommended that, as a cost saving measure, this requirement be revised to allow a 6° obscuration allowance for all navigation lights on small vessels. This recommendation has not been adopted. A 6° obscuration allowance can cause noticeable changes in lighting configuration depending upon the relative position of an observer on an oncoming vessel. In any event, most lights on existing vessels already comply with this requirement and, on new vessels, proper selection and placement of lights can prevent obscuration. The cost to relocate lights on existing vessels in order to comply with this requirement should not be burdensome.

7. *Chromaticity.* Manufacturers of lights objected to the chromaticity requirements in the 72 COLREGS as being too restrictive. Compliance with these requirements should not pose a problem. They are referenced in both standards ABYC A-16 and UL 1104, and both standards provide realistic tests for measuring chromaticity.

8. *Combination sidelights.* Proposed § 89.17(c) in the NPRM prohibited red and green lenses in combination sidelights, if removable, from being interchangeable. This prohibition has been relaxed in the supplemental NPRM to allow interchangeable lens if the fixture is permanently marked with the words "red", "green", or "grn" to denote lens color. This revision has been made to further reduce retooling costs required for existing light designs to comply with these regulations. The revision will also allow a manufacturer to supply a lens from a certified light to a vessel operator who needs a replacement lens for an older light.

9. *Enforcement policy.* The current Coast Guard enforcement policy for navigation lights on small vessels is outlined in Commandant Instruction 16672.1 of 21 July 1980. This Instruction includes the enforcement procedures described in § 89.5 of this supplemental NPRM. However, the Instruction also provides that citations are not to be issued for failure to carry screens or for having certain lighting configurations that do not comply with the 72 COLREGS. The International Maritime Consultative Organization is currently considering amendments to the 72 COLREGS that would provide for optional use of screens on small vessels and that would permit the nonconforming configurations listed in the instruction. In all probability, the 72 COLREGS amendments will be adopted before the regulations in this supplemental NPRM become effective.

a. A violation of proposed § 89.7 would subject the vessel operator to penalties under the International Navigational Rules Act of 1977 (33 U.S.C. 1601-1608) or the Federal Boat Safety Act of 1971 (46 U.S.C. 1451-1489). Violations determined in accordance with the enforcement policy set out in proposed § 89.5 would also subject a vessel operator to these penalties.

b. Proposed §§ 89.9 and 89.11 are directed to manufacturers of certified lights. A manufacturer who violated one of these provisions would be subject to penalties under the Federal Boat Safety Act of 1971. The International Navigational Rules Act of 1977 does not include penalties for manufacturers.

10. *Effective date.* The planned effective date for these regulations is August 1, 1982. This date has been selected in consultation with Canadian officials who plan to adopt the same date in order to avoid conflicts in adjoining waters. The proposed compliance date in proposed § 89.7 for certified or approved lights coincides with this effective date.

Summary of Draft Evaluation

11. The proposed regulations are considered to be nonsignificant and, accordingly, a draft evaluation has been prepared and placed in the public docket as required by the DOT Policies and Procedures for Simplification, Analysis and Review of Regulations (DOT Order 2100.5 of May 22, 1980). The DOT Order requires that each draft evalution include an economic analysis which quantifies, to the extent practicable, the estimated cost of the regulations to the private sector, consumers, and Federal, State and local governments, as well as the anticipated benefits and impacts of the regulations. Comments on the content and accuracy of the evaluation may be submitted and will be considered in conjunction with comments submitted on the proposed regulations.

12. As explained in the draft evaluation, the total annual cost of these proposed regulations to the boating public would be approximately $4,410,000. This cost is $9,840,000 less than the total annual cost of $14,250,000 that would have been incurred if the NPRM requirements had been adopted. Increased costs to the Coast Guard and State and local governments resulting from this proposal are not expected. Adoption of these regulations would

improve the overall quality of navigation lights displayed on small vessels that operate in waters subject to the 72 COLREGS, and thereby decrease the risk of collision between vessels at night and in periods of restricted visibility.

Proposed Regulations (as Revised)

13. In consideration of the foregoing, the Coast Guard proposes to amend Title 33, Code of Federal Regulations, as follows:

PART 88—72 COLREGS; INTERPRETATIVE RULES

a. Part 88 would be amended by adding a new § 88.5 to read as follows:

§ 88.5 Practical cut-off.

For vessels less than 20 meters in length, the term "practical cut-off" used in Section 9 of Annex I to the 72 COLREGS means 67 percent of minimum required intensity. In addition, for practical cut-off to be reached, the intensity must decrease to 10 percent of minimum required intensity by 20° outside the prescribed horizontal sector required in Rule 21 of the 72 COLREGS.

b. A new Part 89 would be added to read as follows:

PART 89—NAVIGATION LIGHTS FOR SMALL VESSELS

Sec.
89.1 Scope and application.
89.3 Definitions.
89.5 Enforcement policy.
89.7 Certification or approval.
89.9 Construction.
89.11 Labeling.

Authority: 33 U.S.C. 1607; 46 U.S.C. 1454; 49 CFR 1.46.

§ 89.1 Scope and application.

(a) This part prescribes rules for navigation lights on vessels of less than 20 meters in length that must comply with the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS).

(b) The 72 COLREGS are published as Appendix A of Part 87 of this subchapter. The 72 COLREGS contain requirements for navigation lights that supplement the requirements in this part. Vessels must comply with the 72 COLREGS when operating outside the lines of demarcation prescribed in Part 82 of this subchapter.

§ 89.3 Definitions.

As used in this part:

(a) The terms "vessel", "power driven vessel", and "sailing vessel" have the same meaning provided for these terms in Rule 3 of the 72 COLREGS.

(b) The terms "masthead light", "sidelight", "sternlight", "all-round light", and "towing light" have the same meaning provided for these terms in Rule 21 of the 72 COLREGS.

§ 89.5 Enforcement policy.

(a) Installed Navigation lights are presumed to meet the requirements of the 72 COLREGS unless it can be determined by visual inspection that—

(1) Their configuration does not confirm to part C and Annex I of the 72 COLREGS:

(2) A masthead light, sidelight, towing light, or sternlight shows light more than 10 degrees beyond the horizontal sector prescribed for the light in Rule 21 of the 72 COLREGS;

(3) One or more lights is inoperative, or has a faulty lamp, switch, wiring, or battery or is not bright enough to be visible for the distance required by Rule 22 of the 72 COLREGS;

(4) The lens of any light is broken, scorched or faded, or otherwise does not meet the color requirements in Annex I of the 72 COLREGS;

(5) The horizontal sector of an all-round light is obscured for more than 6 degrees by an opaque object or by misalignment.

(6) The horizontal sector of a masthead light is obscured for more than two degrees by an opaque object or by misalignment.

(7) The horizontal sector of a sidelight, sternlight, or towing light is obscured for any angle by an opaque object or by misalignment.

(8) The light is not in compliance with either § 89.7(a) or 89.7(b).

§ 89.7 Certification or approval.

(a) Each navigation light installed on a U.S. vessel on or after August 1, 1982, must have the certification marking prescribed by § 89.11(b)(1) or be approved by the Coast Guard in accordance with 46 CFR Subpart 11.75.

(b) Each navigation light installed on a foreign vessel on or after August 1, 1982, must meet paragraph (a) of this section or be certified by a foreign administration to meet the 72 COLREGS.

§ 89.9 Construction.

(a) Each certified navigation light housing must be constructed so that it may be accurately aligned during installation.

(b) Compliance with paragraph (a) of this section may be accomplished by using—

(1) flat vertical mounting surfaces, either transverse or longitudinal;

(2) index marking; or

(3) a template.

(c) The red and green lenses in certified combination side lights, if removable, may not be interchangeable unless the light fixture is permanently marked with the words "red" and "green", or "red" and "grn", adjacent to the mounting for the corresponding color lens.

§ 89.11 Labeling.

(a) Each manufacturer of a certified navigation light must mark each light, or the smallest package in which it is sold, with the following information:

(1) Manufacturer identification (name and address).

(2) Certification statement: "This navigation light is certified to be of a type that meets the 72 COLREGS if installed in accordance with manufacturer instructions."

(3) Name of light (e.g. masthead, sidelight, etc.).

(4) Application (e.g. sailing vessel, power driven vessel; size of vessel, i.e. vessels less than 12 meters in length or vessels less than 20 meters in length).

(5) Lamp type by the lamp manufacturer's identification.

(6) Lamp wattage and rated voltage.

(b) Each light must also be permanently marked with the following:

(1) The phrase "cert. 72 COLREGS" where it can be seen without disassembling the light and without removing it from its mounting.

(2) The lamp type where it can be seen by a person changing the lamp.

(3) The manufacturer's name or identifying mark where it can be seen without disassembling the light and without removing it from its mounting.

(c) Each navigation light must be packaged with instructions on how to install the light in a manner that ensures compliance with 72 COLREGS.

(33 U.S.C. 1607; 46 U.S.C. 1454; 49 CFR 1.46)

Dated: December 22, 1980.

H. W. Parker,

Rear Admiral, U.S. Coast Guard, Chief, Office of Boating, Public, and Consumer Affairs.

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BILLING CODE 4910-14-M

DEPARTMENT OF TRANSPORTATION

33 CFR Part 161

[CGD 80-010]

Prince William Sound Vessel Traffic Service; Amendment to

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: The Coast Guard is proposing to amend the regulations which govern the Prince William Sound Vessel Traffic Service. The amendment will consist of minor alterations of a procedural nature and editorial changes. The intended effects of the proposal are to improve

and update the present statutes and regulations, and to codify some practices which have been developed by Captain of the Port (COTP) Order.

DATES: Comments must be received on or before February 12, 1981.

ADDRESSES: Comments should be submitted to Commandant (G–CMC/24), (CGD 80–010), U.S. Coast Guard, Washington, D.C. 20593. Comments will be available for examination at the Marine Safety Council, Room 2418, U.S. Coast Guard Headquarters, 2100 Second Street, S.W., Washington, D.C. 20593.

FOR FURTHER INFORMATION CONTACT: Mr. Edward J. LaRue, Jr., Project Manager, Office of Marine Environment and Systems, Room 1608, U.S. Coast Guard Headquarters, 2100 Second Street, S.W., Washington, D.C. 20593, (202) 426–4958. Normal office hours are between 7:30 a.m. and 4:30 p.m., Monday through Thursday, except holidays.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this proposed rulemaking by submitting written views, data, or arguments. Written comments should include the docket number (CGD 80–010), the specific section of the proposal to which each comment applies, and the reasons for the comments. Commenters should include their name and address. Those desiring acknowledgement that their comments have been received should enclose a self-addressed postcard or envelope.

The proposal may be changed in view of the comments received. All comments received before expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid in the rulemaking process.

Drafting information

The principal persons involved in drafting this proposal are Mr. Edward J. LaRue, Jr., Project Manager, Office of Marine Environment and Systems, and Lieutenant Michael Tagg, Project Attorney, Office of the Chief Counsel.

Discussion of The Proposed Regulations

After more than two years of successful operation, the Coast Guard is proposing certain minor alterations and editorial changes to the Prince William Sound Vessel Traffic Service (VTS) regulations. The alterations are mainly of a procedural nature and are intended to increase the efficiency of the VTS while maintaining the high safety standards. The proposed editorial changes are intended to:

(1) Better organize the regulations;

(2) Improve format and language;

(3) Correct small inconsistencies in references; and

(4) Update the regulations to be consistent with existing statutes and regulations.

For example, throughout the regulations, measurements have been changed from feet to meters in order to agree with the national policy set forth by the Metric Conversion Act of 1975. Minor editorial changes will not be discussed unless confusion might result without some explanation.

Proposed § 161.303 would include two additional definitions. Definitions of "tank vessel" and "Laden tank vessel" would be included since tug assistance requirements and one-way traffic restrictions would depend upon whether or not the tank vessel is carrying cargo. The particular sections affected will be discussed separately.

The International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS) demarcation lines, previously used to establish the jurisdictional boundaries between the international rules and the Navigation Rules for Harbors, Rivers and Inland Waters (33 U.S.C. 151 *et seq.*) and the Pilot Rules for Inland Waters (33 CFR Part 80), no longer apply and the COLREGS navigation rules (33 CFR Part 87) now control throughout the VTS area. § 161.305 would be amended to reflect this change by dropping the references to the Navigation Rules for Harbors, Rivers and Inland Waters and the Pilot Rules for Inland Waters.

The requirement found in § 161.306(b) that the master and pilot of certain vessels maintain a copy of the current Prince William Sound VTS Operating Manual on the vessel when in the VTS area will be amended to require that the master only maintain a copy, thus relieving the pilot of the requirement. Since the pilot must demonstrate familiarity with the VTS area to obtain his or her license the regulation is directed primarily at a vessel's master and deck officers who may or may not be familiar with the area. Further, a vessel enters the VTS area prior to picking up a pilot, and since the Operating Manual is required to be aboard "when in the VTS area" the master effectively has the sole responsibility for complying with the regulation. An explanatory note correcting an out-of-date address for obtaining a copy of the VTS Operating Manual will be included in the amended § 161.306.

The proposed amendments to §§ 161.334 and 161.336 will change the order in which arrival information is reported. Presently, a short preliminary report is given three hours before entering the VTS area and a detailed report made one hour prior to entering Hinchinbrook Entrance. The Coast Guard feels that in the interest of safety it would be more appropriate for a vessel to transmit the detailed arrival information at the earlier time.

Proposed § 161.340(a) will reword the description of the reporting point at Hinchinbrook Entrance. The present regulations require a report when abeam of Schooner Rock, but as the position of a vessel when abeam of Schooner Rock would vary depending on the course steered, the Coast Guard proposes to change the description to read "when entering or departing the VTS Area through Hinchinbrook Entrance". This will require the report to be given as the vessel crossed the boundary of the VTS Area regardless of the course steered, thus giving a more accurate picture of the reporting vessel's position to the VTC and other vessels.

Proposed § 161.356 would include two additional provisions affecting the conduct of certain vessels in the Traffic Separation Scheme (TSS). Because the U.S. chose not to submit the TSS to the Inter-Governmental Maritime Consultative Organization (IMCO) for approval, 72 COLREGS rules regarding TSS's do not apply. The proposed amendments would parallel the 72 COLREGS requirements for vessels engaged in fishing, vessels under 20 meters in length, and sailing vessels operating in the TSS. The proposed amendments would reestablish the requirements that existed by virtue of the Navigation Rules for Harbors, Rivers and Inland Waters prior to the revocation of the COLREGS demarcation lines.

The amendments proposed in §§ 161.370 and 161.372 are editorial reorganiations of the existing materials. No substantive changes have been made.

Section 161.376 would be amended to include mandatory speed limits in the Valdez Narrows Area. Speeds of laden tank vessels of 20,000 DWT or more would be limited to six knots between Middle Rock and Potato Point in Valdez Narrows. Within the Valdez Narrows One-Way Traffic Area vessels of the same type and size will be limited to a speed of twelve knots. Both speed limits are presently enforced by a Captain of the Port directive.

The Captain of the Port has required tugs to stand by the northern entrance to Valdez Narrows to assist vessels in the

event of a marine casualty since the inception of the Prince William Sound VTS. The tugs escort the laden tank vessels through the Narrows and assist in the docking process. Due to the possibility of a major oil spill resulting from a grounding side-on due to the lack of readily available tug assistance, the Coast Guard proposes to amend § 161.378 to make the tug requirement permanent rather than through a COTP order for laden tank vessels of 20,000 DWT or more.

Section 161.378 also requires tank vessels of 20,000 DWT or more to use tug assistance in docking and undocking. As the Alyeska Terminal Operations Manual already requires such tug assistance, the Coast Guard regulation is redundant. It is therefore proposed to delete § 161.378(c).

Since the publication of the Prince William Sound VTS regulations on July 25, 1977, an anchorage has been designated in Prince William Sound. This anchorage is located outside of an arbitrarily established portion of the VTS boundary. For administrative purposes the Coast Guard proposes to shift the eastern boundary of the VTS so that the anchorage would be included in the VTS area.

Proposed §§ 161.383 and 161.385 would change the southern end of the Prince William Sound Traffic Separation Scheme (TSS) in order to align it with the boundary of the VTS Area at Hinchinbrook Entrance. At present, the southern end of the TSS coincides with the territorial sea baseline from headland to headland in Hinchinbrook Entrance. Although the baseline and VTS boundary are very close in this area, it is felt that it would be of benefit to the mariner to make the southern end of the TSS coincide with the VTS Area boundary. Therefore, proposed §§ 161.383 and 161.385 include some new geographic coordinates for the termination of the TSS at Hinchinbrook Entrance.

The proposed amendment will reduce the size of the Valdez Narrows One-Way Traffic Zone. At the northern end of the Narrows, the Coast Guard proposes to change the boundary of the zone from "a line bearing 000° True" from a point on Entrance Island to "a line bearing 307° True from Entrance Island Light." This change would eliminate a triangular portion of the existing One-Way Area north of the Narrows in Port Valdez.

In the southern portion of the One-Way Area, proposed § 161.387 will establish the boundary of the zone as a line bearing 307° True from Tongue Point. This change would eliminate from the One-Way Area a straight portion of Valdez Arm which has a navigable width of greater than three miles. The Coast Guard believes that as there is ample sea room in this portion of Valdez Arm, the geography of the area, by itself, does not justify a one-way traffic restriction. With this change, the one-way and speed restrictions would commence at Tongue Point, where Valdez Arm abruptly narrows to about one and one-half miles. The portion to be excluded from the One-Way Area would, however, continue to be a part of the Valdez Narrows Control Area.

The net result of the proposed changes to § 161.387 would be that the one-way and speed restrictions would become permanent requirements in the most constricted and therefore most hazardous part of the waterway. Portions of the existing One-Way Zone which have proven to be less difficult to navigate will still be designated VTS Control Areas and, will be subject to close scrutiny by the VTC. The VTC will continue to selectively impose operating restrictions on vessels transiting the areas as the situation requires. The Coast Guard believes that this procedure will maintain the high level of safety in the system while facilitating traffic flow.

Evaluation

These proposed regulations are considered to be nonsignificant in accordance with guidelines set out in *the Policies and Procedures for* Simplication, Analysis, and Review of Regulations (DOT Order 2100.5 of 5-22-80). A full Evaluation of the proposal has not been conducted since its impact is expected to be minimal due to the procedural, editorial and administrative nature of the amendments and since no additional costs are being imposed on the consumers.

In consideration of the foregoing, it is proposed that Part 161 of Title 33 of the Code of Federal Regulations, be amended to read as follows:

§ 161.301 [Amended]

1. Revise § 161.301(b) and (c)(3) to read as follows:

* * * * *

(b) The General Rules in §§ 161.301 through 161.311 excepting § 161.306 and the Traffic Separation Scheme (TSS) Rules in §§ 161.350 through 161.354 and 161.356 (b) and (c) apply to the operation of all vessels.

(c) General Rule § 161.306, the Communications Rules in §§ 161.320 through 161.332, the Vessel Movement Reporting Rules in §§ 161.334 through 161.342, the TSS Rules in §§ 161.348 and 161.356(a), and the Valdez Narrows Rules in §§ 161.372 and 161.374 apply only to the operation of: * * *

(3) Each commercial vessel of 8 meters or over in length engaged in towing another vessel astern, alongside, or by pushing; and

* * * * *

§ 161.303 [Amended]

2. Amend § 161.303 by adding definitions to read as follows:

* * * * *

"Tank Vessel" means any vessel especially constructed or converted to carry oil or other hazardous substances in bulk in the cargo spaces.

"Laden Tank Vessel" means a tank vessel having cargo on board in excess of normal clingage or residual.

§ 161.305 [Amended]

3. Revise § 161.305 (a), (b), (c), and (d) to read as follows:

* * * * *

(a) International Regulations for Preventing Collisions at Sea, 1972;

(b) Vessel Bridge-to-Bridge Radiotelephone Regulations (Part 26 of this chapter);

(c) The Federal Boating Safety Act of 1971 (46 U.S.C. 1451 et seq.); and

(d) Any other law or regulation.

4. Revise § 161.306 to read as follows:

§ 161.306 VTS Operating Manual.

The master of a vessel listed in § 161.301(c) shall insure that a copy of the current edition of the Prince William Sound Vessel Traffic Service Operating Manual is available on board the vessel when it is in the VTS area.

Note.—The Prince William Sound VTS Operating Manual includes VTS regulations, navigation information, and guidelines for the efficient operation of the VTS System. The Manual may be obtained in person or by writing: Prince William Sound Vessel Traffic Service, c/o USCG Marine Safety Office, P.O. Box 488, Valdez, Alaska 99686; or Commander, Seventeenth Coast Guard District, Federal Building, P.O. Box 3-5000, Juneau, Alaska 99802. Temporary changes to the operating manual are promulgated by the Commander, Seventeenth Coast Guard District, in local notice to mariners.

§ 161.307 [Amended]

5. Revise § 161.307(b) to read as follows:

* * * * *

(b) The master of a vessel in the VTS Area shall comply with each direction issued to the vessel under this section.

6. Revise § 161.334 to read as follows:

§ 161.334 Initial report.

Three hours before a vessel enters or begins to navigate in the VTS Area through Hinchinbrook Entrance or at least 30 minutes before a vessel enters

or begins to navigate in the VTS Area from other points, the master of the vessel shall report to the VTC:

(a) Name, type, and draft of the vessel.

(b) Position of the vessel.

(c) Estimated time and place of entering or beginning to navigate in the VTS Area.

(d) Estimated vessel speed to transit the VTS Area.

(e) ETA to the destination in the VTS Area and name of the destination.

(f) If the vessel is a towing vessel, the overall length of the tow, including the towing vessel.

(g) Whether or not any dangerous cargo listed in § 161.13 of this chapter is on board the vessel or its tow.

(h) Any impairment to the operation of the vessel as described in § 161.332.

(i) Alternate communications, if any.

(j) Any other information requested by the VTC.

7. Revise § 161.336 to read as follows:

§ 161.336 Follow-up report.

At least 60 minutes before a vessel enters or begins to navigate in the VTS Area through Hinchinbrook Entrance the master of the vessel shall report the following information to the VTC:

(a) Name of the vessel.

(b) Position of the vessel.

(c) Course and speed of the vessel.

(d) ETA at Hinchinbrook Entrance.

(e) ETA of the vessel at its destination if changed from the preliminary report.

§ 161.340 [Amended]

8. Revise § 161.340(a) to read as follows:

* * * * *

(a) When entering or departing the VTS Area at Hinchinbrook Entrance; and

* * * * *

9. Revise § 161.350 to read as follows:

§ 161.350 Vessel operation in the TSS.

(a) The master of a vessel shall operate the vessel in accordance with the TSS rules prescribed in §§ 161.352, 161.354 and 161.356 (b) and (c).

(b) The master of a vessel described in § 161.301(c) shall, in addition to paragraph (a), operate the vessel in accordance with § 161.356(a).

§ 161.356 [Amended]

10. Revise § 161.356 (d) and (3) to read as follows:

* * * * *

(d) A vessel engaged in fishing shall not impede the passage of any vessel following a traffic lane.

(e) A vessel of less than 20 meters in length or a sailing vessel shall not impede the safe passage of a power driven vessel following a traffic lane.

11. Revise § 161.370(b) to read as follows:

§ 161.370 One-way traffic in Valdez Narrows.

* * * * *

(b) A tank vessel of 20,000 DWT or more may not enter Valdez Narrows One-Way Traffic Area unless:

(1) It complies with § 161.372; and

(2) It complies with § 161.376(a) (1), (3), and (4)

12. Revise § 161.372 to read as follows:

§ 161.372 Entering Valdez Narrows.

A vessel described in § 161.301(c) may not enter the Valdez Narrows One-Way Traffic Area unless:

(a) Permission to enter is obtained from the VTS;

(b) Any directions from the VTS to remain separated from another vessel are complied with;

(c) The radio equipment on the vessel that is used to transmit the reports required by the Prince William Sound VTS rules is in operation;

(d) The radar on a vessel equipped with radar is in operation and manned; and

(e) The vessel is free of any condition that may impair its navigation, such as fire, defective steering equipment, or defective propulsion machinery.

13. Revise § 161.376 (b), (c), and (d) to read as follows:

§ 161.376 Tank vessels in the VTS.

* * * * *

(b) No laden tank vessels of 20,000 DWT or more may transit that portion of Valdez Narrows between Middle Rock and Potato Point at a speed in excess of 6 knots.

(c) No tank vessel of 20,000 DWT or more may transit the Valdez Narrows One-Way Traffic Area in excess of 12 knots.

(d) While in the VTS Area, if a tank vessel of 20,000 DWT or more is unable to comply with paragraph (a) the master shall immediately notify the VTC.

§ 161.378 [Amended]

14. Revise § 161.378 (b) and (c) to read as follows:

* * * * *

(b) No laden tank vessel of 20,000 DWT or more may transit the Valdez Narrows One-Way Traffic Area unless—

(1) A sufficient number of tugs, as determined by the VTS, is standing by the northern entrance to Valdez Narrows; and

(2) Tug assistance is utilized when directed by the VTS.

(c) The master of any tank vessel required to use tug assistance shall ensure that there are sufficient persons positioned on the vessel to handle lines to tugs as needed.

15. Revise § 161.380 to read as follows:

§ 161.380 VTS area.

The VTS Area consists of the navigable waters of the United States north of a line drawn from Cape Hinchinbrook Light to Schooner Rock Light, comprising that portion of Prince William Sound between longitudes 146°30'W. and 147°20'W.; and includes Valdez Arm, Valdez Narrows, and Port Valdez.

16. Revise § 161.383 (d) and (e) to read as follows:

§ 161.383 Separation zone.

The separation zone is 1,830 meters wide from Hinchinbrook Entrance to Valdez Arm west to Bligh Reef and decreases in width from 1,830 meters to 915 meters from the entrance to Valdez Arm to where it terminates at the entrance to the Valdez Narrows One-Way Traffic Area and is bounded by lines connecting the following latitudes and longitudes:

* * * * *

(d) 60°17'05" N., 146°49'18" W.

(e) 60°16'20" N., 146°46'28" W.

* * * * *

17. Revise § 161.385 (a)(4) and (b)(4) to read as follows:

§ 161.385 Traffic lanes.

The traffic lanes are 1,375 meters wide from Hinchinbrook Entrance to Valdez Arm west of Bligh Reef, and decrease in width from 1,375 meters to 915 meters from the entrance to Valdez Arm to where they terminate at the entrance to the Valdez Narrows One-Way Traffic Area. The traffic lanes are as follows:

(a) The inward bound traffic lane is between the separation zone and a line connecting the following latitudes and longitudes:

* * * * *

(4) 60°15'45" N., 146°44'20" W.

(b) The outward bound traffic lane is between the separation zone and a line connecting the following latitude and longitudes:

* * * * *

(4) 60°17'38" N., 146°51'20" W.

18. Revise § 161.387 to read as follows:

§ 161.387 Valdez Narrows One-Way Traffic Area.

Valdez Narrows One-Way Traffic Area consists of the navigable waters of the United States in Valdez Arm, Valdez Narrows, and Port Valdez north of a line bearing 307° true from Tongue Point at

61°02'06" N., 146°40'00" W., and southwest of a line bearing 307° true from Entrance Island Light at 61°05'06" N., 146°36'42" W.

(60 Stat. 238 (5 U.S.C. 552); 63 Stat. 545 (14 U.S.C. 633); 80 Stat. 937 (49 U.S.C. 1655(b); 92 Stat. 1477 (33 U.S.C. 1231); 49 CFR 1.46(n)(4))

Dated: December 22, 1980.

W. E. Caldwell,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Environment and Systems.

[FR Doc. 80-40405 Filed 12-24-80; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 179

[OGD 77-115]

Manufacturer and Dealer First-Purchaser List Requirements

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: The Coast Guard is proposing to amend its defect notification regulations to require boat and associated equipment dealers, distributors, private label merchandisers, subsequent manufacturers, or other persons in the distribution-manufacturing chain, as well as the initial manufacturers, to obtain first-purchaser information. In many instances, there has been a low notification/correction level in recall campaigns because of inadequate first-purchaser information. This proposal attempts to remedy the situation by requiring the manufacturer to ask for first-purchaser information and requiring those persons in the distribution chain to provide it.

DATES: Comments must be received on or before February 27, 1981.

ADDRESSES: Comments should be mailed to Commandant (G-CMC/24), (CGD 77-115), U.S. Coast Guard, Washington, D.C. 20593. Between 7 a.m. and 5 p.m., Monday through Thursday, comments may be delivered to and will be available for examination at the Marine Safety Council (G-CMC/24), Room 2418, U.S. Coast Guard Headquarters, 2100 Second Street, S.W., Washington, D.C. 20593.

FOR FURTHER INFORMATION CONTACT: CDR W. R. Wilkins, Chief, Product Assurance Branch (G-BBT-3/42), Office of Boating, Public, and Consumer Affairs, U.S. Coast Guard Headquarters, Washington, D.C. 20593, (202/426-1065).

SUPPLEMENTARY INFORMATION: The National Boating Safety Advisory Council has been consulted and its opinions and advice have been considered in the formulation of this proposed amendment. The transcript of the proceedings of the meeting of the National Boating Safety Advisory Council at which this amendment was discussed is available for examination in Room 4224, U.S. Coast Guard Headquarters, 2100 Second Street, S.W., Washington, D.C. The minutes of the meeting are available from the Executive Director, National Boating Safety Advisory Council, c/o Commandant (G-BA/42), U.S. Coast Guard, Washington, D.C. 20593.

Interested persons are invited to participate in this proposed rulemaking by submitting written views, data, or arguments. Each comment submitted should include the name and address of the person submitting it, identify this notice (CGD 77-115) and the specific section of the proposal to which the comment applies, and give the reasons for the comment. Persons desiring acknowledgement that their comment has been received should enclose a stamped self-addressed postcard or envelope. All comments received will be considered before final action is taken on this proposal.

No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

After the close of the comment period, the National Boating Safety Advisory Council may be consulted in the formulation of the final rule at a meeting open to the public. A notice will be published in the Federal Register announcing the time and place this meeting will be held.

This proposal has been reviewed and is not considered significant under the Department of Transportation's "Regulatory Policies and Procedures" (44 FR 11034, February 26, 1979). A draft evaluation has been prepared and has been included in the public docket.

Drafting Information

The principal persons involved in drafting this proposal are: Cdr. W. R. Wilkins, Project Manager, Office of Boating, Public, and Consumer Affairs, and Ms. M. A. McCabe, Project Attorney, Office of the Chief Counsel.

Discussion of the Proposed Regulations

Section 15 of the Federal Boat Safety Act of 1971 (FBSA) (46 U.S.C. 1464) requires manufacturers of boats and associated equipment to notify purchasers of any significant safety defect or noncompliance with Federal Standards discovered after the boat or equipment leaves the place of manufacture. Part 179 of Title 33 of the Code of Federal Regulations was issued to implement this provision.

On October 17, 1976, Pub. L. 94-531 amended Section 15(g) of the FBSA by authorizing promulgation of regulations defining and establishing procedures to be followed by dealers and distributors to assist manufacturers in obtaining first-purchaser information, provided that the regulation does not relieve manufacturers of their obligations in this regard. In many cases, once the boat or associated equipment has passed into the distribution chain, the manufacturer has no knowledge of its disposition or location unless this information is provided by the dealer, distributor, private label merchandiser, subsequent manufacturer or other persons in the chain.

This proposal would add a new § 179.04 to Part 179 requiring manufacturers and dealers or distributors of boats or associated equipment to gather and maintain first-purchaser information. Comments are specifically solicited on the paperwork and recordkeeping burden this proposal would impose on these parties. A detailed discussion of the proposed new section follows.

Paragraph (a) of the proposed regulation would apply to any person who must make notification under Section 15 of the Federal Boat Safety Act of 1971 or 33 CFR Part 179. These are defined, for the purposes of Section 15, as being: any person engaged in the manufacture, construction or assembly of boats, inboard engines, outboard engines or stern drive units; any person engaged in the manufacture or construction of components for these items to be sold for subsequent assembly; and any person importing these items into the United States for purposes of sale.

Since these people must make notification, they must obtain and keep first-purchaser records. Basically, the intent of this paragraph would be to require two things of those persons who must keep first-purchaser records. First, they must provide some means whereby the person who sells to the consumer can physically record the name and address of the seller and purchaser and an identification of the item sold. It is intended that this information be physically recorded in some manner so that it may be preserved, rather than verbally taken or transmitted. The means of recording which must be used was intentionally not specified to allow flexibility to use any existing or future systems. These could include, but are not limited to, warranty cards, computer listings, or copies of sales invoices.

The second requirement of paragraph (a) is that the manufacturer must make an effort to inform all persons in the distribution chain of their responsibilities to assist in the collection of first-purchaser information by providing an excerpt, copy, or summary of this regulation. Again, the exact method by which this is accomplished is left to the manufacturer's discretion, but the notice must be in writing. For example, it may be printed on some form such as the warranty card or provided on a separate sheet.

Paragraph (b) applies to all persons who are in the business of selling or distributing boats or associated equipment and who sell to the consumer. This paragraph also has two requirements which are the next step in gathering first-purchaser information.

First, it requires the seller to record in writing or some other physical way the first-purchaser information specified in paragraph (a), and submit it to the manufacturer or whomever the manufacturer designates within 90 days of the date of sale. It is not intended that the responsibility for recording and submitting this information be passed on to the consumer. It is felt that some time limit on the submission of this information is necessary simply to ensure that the job does not lie idle and therefore forgotten. Ninety days is the upper limit. It does not preclude earlier submissions, and since it is one calendar quarter, should be compatible with most normal business cycles. The proposal also permits submission to some other person designated by the manufacturer to allow for the use of commercial services for first-purchaser list maintenance. The second requirement of paragraph (b) is that the seller retain a copy of the information until receipt is acknowledged by the manufacturer, or the manufacturer's designee, as required in paragraph (d). The reason for this is to protect the seller and to ensure that the information is still available should it become lost while being forwarded to the manufacturer.

Paragraph (c) would specify the responsibilities of intermediate parties in the distribution chain between the responsible manufacturer and the consumer. Basically, this section would require that any person who sells a boat or item of designated associated equipment for further resale or for further manufacture must pass on to each intermediate purchaser in the chain the means for recording first-purchaser information and an excerpt, copy or summary of these regulations. The manufacturer would be required under paragraph (a) to supply both of these items.

Paragraph (d) would require that the manufacturer acknowledge receipt of the first-purchaser information, in writing, within 90 days of receiving it from the seller. This would allow for the detection of items that may get lost in transit between the seller and the manufacturer and provide evidence that the seller's responsibilities have been fulfilled.

Although there will be some additional costs for this recordkeeping, the impact of this regulation on those persons affected should be minimal. Manufacturers are now required to collect this information and persons in the distribution chain who do not now keep such records, will obtain records which many sales organizations keep as a matter of good business practice.

In addition, this proposal would revise § 179.19 to reflect the new address for Coast Guard Headquarters.

In consideration of the foregoing, it is proposed to amend 33 CFR Part 179 as set forth below.

1. By adding a new § 179.04 to read as follows:

§ 179.04 Manufacturer and dealer first-purchaser list requirements.

(a) Each manufacturer responsible for defect notification under Section 15 of the Act shall provide to dealers, distributors, private label merchandisers, subsequent manufacturers, or other persons who are in the business of selling or distributing boats or associated equipment, to whom the manufacturer delivers a product for subsequent resale, the following:

(1) A means of recording the following information:

(i) The name and address of the first purchaser for purposes other than resale.

(ii) An identification of the particular item sold (for boats the Hull Identification Number (HIN) and for engines the engine serial number).

(iii) The name and address of the seller or other means by which the manufacturer may identify that person.

(2) An excerpt, copy, or summary of this regulation, stating the responsibilities of persons in the distribution chain in assisting the manufacturer in compiling first purchaser-lists.

(b) Each dealer, distributor, private label merchandiser, subsequent manufacturer, or other person who is engaged in the business of selling or distributing boats or associated equipment, for purposes other than resale, shall—

(1) Record, at the time of sale, the information specified in paragraph (a)(1) of this section and submit it to the manufacturer, or the manufacturer's designee, within 90 days of the date of sale; and

(2) Retain a copy of this information until the manufacturer, or the manufacturer's designee, acknowledges receipt of it as required by paragraph (d) of this section.

(c) Each dealer, distributor, private label merchandiser, subsequent manufacturer, or other person engaged in the business of selling or distributing boats or associated equipment, who sells these products for the purpose of further manufacture or resale, shall deliver with the product, the material provided by the manufacturer as required in paragraph (a) of this section.

(d) Each manufacturer shall send written acknowledgement to the person who submitted the information under paragraph (b) of this section within 90 days of the date of receipt of the information.

(e) Each manufacturer shall retain the information required in paragraph (a)(1) of this section for at least five years from the date of certification or from the date of manufacture if certification is not required.

2. By revising § 179.19 to read as follows:

§ 179.19 Address of commandant.

Each report and communication sent to the Coast Guard required by this part must be submitted to: U.S. Coast Guard (G-BBT-3/42), 2100 Second Street SW., Washington, D.C. 20593.

(46 U.S.C. 1464; 49 CFR 1.46(n)(1)).

Dated: December 22, 1980.

H. W. Parker,

Rear Admiral, U.S. Coast Guard, Chief, Office of Boating, Public, and Consumer Affairs.

[FR Doc. 80-40402 Filed 12-24-80; 8:45 am]
BILLING CODE 4910-14-M

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33 CFR Part 181

[CGD 79-013]

Identification of Boats

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: The Coast Guard is proposing to amend the regulations concerning boat hull identification numbers. The regulations are being changed to provide a more accurate identification of the manufacturer responsible for notifying an owner of a defect in a boat. Changes are also proposed to make alteration or removal of a hull identification number more difficult and to require an

alternative identification for each boat if the hull identification number is removed or destroyed. Other changes are proposed to clarify certain ambiguities in the present regulation. These changes should ensure that the manufacturer responsible for repairing a defective or noncomplying boat can be identified and that each boat remains uniquely identified with the number assigned by its manufacturer.

DATE Comments must be received before February 27, 1981.

ADDRESSES: Comments should be mailed to Commandant (G-CMC/TP24) (CGD 79-013), U.S. Coast Guard, Washington, D.C. 20593. Between the hours of 7:00 a.m. and 5:00 p.m., Monday through Thursday, comments may be delivered to, and are available for inspection and copying at the Marine Safety Council (G-CMC/TP24), Room 2418, Department of Transportation, Coast Guard Headquarters, 2100 Second Street, S.W., Washington, D.C. 20593.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Calvin F. Perkins, Jr., Office of Boating, Public, and Consumer Affairs (G-BBT-3/42), U.S. Coast Guard Headquarters, 2100 Second Street, S.W., Washington, D.C. 20593, (202/426-1065).

SUPPLEMENTARY INFORMATION: The National Boating Safety Advisory Council has been consulted and its opinions and advice have been considered in the formulation of this amendment. The transcript of the proceedings of the National Boating Safety Advisory Council at which this amendment was discussed is available for examination in Room 4224, U.S. Coast Guard Headquarters Building, 2100 Second Street, S.W., Washington, D.C. The minutes of the meeting are available from the Executive Director, National Boating Safety Advisory Council, c/o Commandant (G-BA), U.S. Coast Guard, Washington, D.C. 20593.

Interested persons are invited to participate in this proposed rulemaking by submitting written views, data, or arguments. Each comment submitted should include the name and address of the person submitting it, identify this notice (CGD 79-013) and the specific section of the proposal to which the comment applies, and give the reasons for the comment. Those desiring acknowledgment that their comment has been received should enclose a stamped self-addressed post card or envelope. The proposal may be changed in light of comments received. All comments received will be considered before final action is taken on the proposal. Copies of all written comments received will be available for examination by interested persons. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information

The principal persons involved in drafting this proposal are: LCDR Anthony J. Pettit, Project Manager, Office of Boating, Public, and Consumer Affairs, and Coleman Sachs, Project Attorney, Office of Chief Counsel.

Discussion of the Proposed Amendment

Since the Hull Identification Number (HIN) regulation became effective in 1972, the Coast Guard has monitored its suitability to meet the desired purpose as well as its usefulness in other areas.

The HIN is used for titling, registration, accident investigation, and insurance. It also provides a positive identification of lost and stolen boats. However, certain problems have been identified. This amendment seeks to solve them by: (1) Identifying persons who have defect notification accountability and restricting assigment and use of manufacturer identifications to those persons, (2) establishing measures to make alteration or removal of an HIN difficult and prescribing an alternative means of identification and, (3) resolving miscellaneous ambiguities in the regulation which have led to confusion and unintended noncompliance.

Defect Notification Responsibilities

Language in the heading of Subpart C and the body of § 181.21 and § 181.23 would be revised to indicate that only boats need be identified with an HIN, not bare hulls which could not be marketed as boats. This would eliminate the need to define "hull" and resolve the confusion that occurs in multistage manufacturing as to who is responsible for affixing the HIN. Under the proposed revision the builder of a bare hull ordinarily would not be responsible. The responsibility would lie with the first party who completed additional manufacturing on the hull to the extent that it could be marketed as a boat to an ordinary customer. At present, the combination of the HIN and certification regulations (33 CFR Part 181, Subparts B and C) does not necessarily ensure that the boat as marketed is labeled with the name of the company responsible for correcting noncompliances and safety defects. One cannot say unequivocally that the name on the certification plate (assuming one is required) designates the party with defect notification responsibility or that the three-character manufacturer identification code in the HIN designates this responsibility. For example, a boat which is marketed by a private label merchandiser and manufactured by a company which buys bare hulls from a separate source might not bear any indication of the party responsible for defect notification. The HIN could show the code of the bare hull builder with the certification plate showing the name of the private label merchandiser, yet the "manufacturer" for purposes of defect notification and correction would be the intermediate manufacturer. Sometimes, it becomes difficult to determine who did build a boat, particularly after one or more of the companies involved goes out of business. The Coast Guard intends that the manufacturer identification in the HIN always represent either a domestic manufacturer or an importer who is legally responsible for defect notification under Section 15 of the Federal Boat Safety Act of 1971 (46 U.S.C. 1464).

Paragraphs 181.23(a), 181.25(a), and 181.31(a) would be revised to require importers to use their own manufacturer identification, not those of foreign manufacturers. The responsibility is the importer's, although the importer may have the foreign builder actually affix the HIN. Thus, every imported boat would be identified with the party who has defect notification responsibilities under Section 15 of the Federal Boat Safety Act of 1971. An exception is provided for importers of Canadian built boats because the Canadian Coast Guard and the U.S. Coast Guard have working agreements that make it possible to identify the responsible parties in the event of recall. A similar exception would be made for other countries with which the U.S. Coast Guard establishes similar agreements.

Paragraph 181.31(a) would be expanded to include more specific criteria for assigning manufacturer identifications. Only manufacturers who must identify boats and who have defect notification responsibility may apply for a code. The application must be in writing and must indicate the manufacturer's name and address, as well as the general types and lengths of boats to be manufactured or imported. The Coast Guard considers these the minimum conditions which will enable it to avoid assigning a manufacturer identification code to a person not entitled to one. Since the original HIN regulation had virtually no restrictions on the issuance and use of manufacturer identification codes, the codes have been assigned to anyone who informs the Coast Guard of an intention to

manufacture boats. Codes have been issued to foreign manufacturers who have no legal responsibility under the Act. Codes have also been issued to persons who merely wanted to be identified as boat manufacturers or wanted to build a boat for personal use. This resulted in inefficient use of Coast Guard resources. The Coast Guard believes that specific conditions for issuance and use of these codes should be established, and that the conditions should be clearly stated as part of the regulation.

Section 181.33 would limit the use of manufacturer identification codes and require manufacturers to report changes in business name or address. These provisions are necessary so that the Coast Guard may maintain a current source of contact with each manufacturer to meet the requirements of defect notification. Codes have been issued to companies which have moved, changed their name, been sold, or gone bankrupt and been reestablished as new businesses, without any change of code or requirement to notify the Coast Guard of the change in status. As a result, companies producing boats with a given code may not be legally responsible for some boats previously produced with the same code because they were produced by a different business entity.

Paragraph 181.33(a) would prohibit use of a manufacturer identification code by anyone other than the manufacturer to whom it was assigned. Thus, as long as the original business entity is preserved, a manufacturer would be expected to keep the same code throughout transactions such as acquisitions, mergers, consolidations, etc. But when a boat manufacturing business is dissolved, the code could not be used by another business which acquired its assets. When a manufacturer simply has a change in business name or address with no change in business entity or defect notification responsibility, the same identification code should be used. However, paragraph 181.33(b) would require that the Coast Guard be advised of the new name or address so that the manufacturer could be contacted if necessary.

Preserving a Unique Boat Identification

Several measures are proposed to reduce the number of incidents of tampering with HINs, to make tampering more obvious, and to provide an alternative means of identification if the HIN is tampered with or lost. Consumer complaints, reports from state and local law enforcement personnel and the Coast Guard's own experience indicate that the present wording of the HIN regulation does not ensure the integrity of the HIN. In addition, the National Association of State Boating Law Administrators (NASBLA) has requested the Coast Guard to take affirmative action to ensure that removal, alteration, or replacement of HINs would be truly obvious and evident. Most cases the Coast Guard is aware of involve alteration of the last four digits to obtain lower taxes or insurance rates or to represent a boat for sale as being newer than it actually is. In some cases, the HINs on stolen boats are altered so that the boats can be sold and registered without detection. The proposed revision of the HIN regulations may eliminate many of these abuses.

Boating safety interests would also be furthered if HINs were made more resistant to tampering. In several cases where it was suspected that boats were not in compliance with safety standards, the Coast Guard has not been able to determine which safety standards applied because the date of certification, contained in the last four digits of the HIN, had been altered after the boats left the factory.

In addition to these deliberate abuses, the Coast Guard knows of many situations where the HIN could easily be lost accidentally because it was placed, albeit "permanently", on removable components such as rubrails. Even when correctly applied, there is a certaind risk of accidental damage to the HIN because it must be placed on the outside of the hull, rather than in a more protected location inside the boat.

Section 181.24 would be a new requirement intended to provide a means whereby a boat can still be uniquely identified even if the HIN is damaged or lost. The Coast Guard also expects that this may deter those who would deliberately alter a HIN. The principal cost involved in implementing such a requirement would be the initial cost for manufacturers to make a change in their production methods; the cost of the actual marking will be less than a dollar per boat. Many builders already have additional numbers on their boats which will meet this requirement. Writing the HIN with an indelible marker on some unexposed portion of the boat would meet the intent, as would laminating into the boat a torn-off piece of a production control document. A manufacturer is free to change the location of the marking randomly or periodically. The intent is that a manufacturer who is asked about a missing or questionable HIN can direct the person to a place on the boat where the correct HIN can either be found or the marking that is observed can be relayed back to the manufacturer, who can then furnish the correct HIN.

Section 181.25 would be clarified to indicate that all twelve characters of the HIN should be run together, rather than separated into three functional groupings. Separating the groupings can cause doubt about missing characters and provide added opportunities for tampering.

Paragraph 181.29(b) would be added to address specifically the HIN which is affixed by means of a separate plate and to prohibit placing HINs on removable components. Law enforcement personnel have brought to our attention examples where they felt it was just too easy to tamper with the HINs. The most common case was punched aluminum strip attached with blind (hollow or "pop") rivets. Any person who had access to a similar punching machine could drill out the rivets and replace the aluminum strip with a new one, with virtually no evidence of the change.

Under the proposed criteria, the Coast Guard would not consider acceptable a plate which is simply blind riveted. A plate which is both blind riveted and bonded would be acceptable if the strength of the bond were such that the surrounding hull area would normally be damaged in attempting to pry it loose. A welded plate would be acceptable, as would one which is attached with solid rivets if the drilling, grinding, or prying involved in removal would normally involve some damage to the surrounding area. In all of the latter methods considerably more skill and determination would be required to remove the plate than with the plate which is only blind riveted.

One member of the National Boating Safety Advisory Council subcommittee that assisted in developing these amendments suggested that the word "permanently" be removed from paragraph 181.29 (b) as it appears in the phrase "* * * otherwise permanently affixed * * *". The word was considered vague and open to a variety of interpretations, making the requirement difficult to enforce effectively. The Coast Guard solicits comments on removal of this word or suggestions for other language that would better describe the dual requirements of permanency and visibility of tampering. The Coast Guard's major concern is for every boat to be uniquely numbered throughout its useful life under most circumstances, not for the HIN to be so rugged and impervious that it cannot be removed from the hull. The Coast Guard does not expect that every HIN will be affixed so as to defeat the efforts of a

determined and skilled boat thief to conceal alterations. For the most part, however, ordinary and reasonable methods of affixing the HIN can discourage efforts at alteration by the inexperienced thief or other persons who might want to alter or remove a HIN.

Section 181.35 is being proposed to provide a clear prohibition against tampering with HINs. Civil penalty proceedings could be initiated under 33 CFR 1.07 against anyone found to have violated this provision. A penalty of up to $500 could be assessed under 46 U.S.C. 1484(b).

Miscellaneous Clarifications

Among the miscellaneous clarifications which are being proposed, paragraphs 181.23(b) and 181.31(b) set forth the procedure for issuing an HIN to the amateur builder or persons who import a boat for their own personal use. This procedure has been in use for eight years.

Paragraph 181.23(c) would be revised to prohibit the manufacturer from assigning the same 12-character HIN to more than one boat. Under existing regulations, the same first eight characters of the HIN may not be assigned to more than one boat. This would be permitted under the proposed regulations in recognition of the fact that variations will occur in the last four characters of the HIN for boats that are built in different months or years. As the fourth through eighth characters need only cover a month's, and not a year's production, manufacturers would be afforded greater flexibility to indicate model data and other information. A similar practice is followed in the automobile industry. The Coast Guard seeks to foster recognition of the HIN as a 12-character unit. This would reduce the use of partial HINs which now occurs in some computer systems, thereby promoting greater computer system compatibility. The FBI's National Crime Information Center (NCIC) computer is programmed to receive only 12-character HINs.

Paragraph 181.25(c) would be clarified to indicate that for boats which do not have to be certified, i.e., boats that are not required to meet any Coast Guard safety standard, the date which appears in the HIN represents the date of manufacture rather than the date of certification.

Section 181.27 would be modified to prevent placing additional characters which could be taken as part of the HIN in the vicinity of the HIN. State boat registration authorities and NCIC personnel have reported that the boat owner frequently reads additional information following the HIN as being part of the HIN.

The National Boating Safety Advisory Council reviewed these proposed amendments at their meeting in May 1979 and voted unanimously in favor of their adoption.

This proposal has been reviewed and is not considered a significant rulemaking under the Department of Transportation's "Regulatory Policies and Procedures" (44 FR 11034, February 26, 1979). A draft evaluation has been prepared and is available for inspection at the Marine Safety Council. (See Addresses).

In consideration of the foregoing, the Coast Guard proposes to revise Subpart C of Part 181 of Title 33, Code of Federal Regulations to read as follows:

PART 181—MANUFACTURER REQUIREMENTS

* * * * *

Subpart C—Identification of Boats

Sec.

181.21 Purpose and applicability.
181.23 Hull identification numbers required.
181.24 Additional marking required.
181.25 Hull identification number format.
181.27 Information displayed near hull identification number.
181.29 Hull identification number display.
181.31 Manufacturer identification code assignment.
181.33 Conditions for use of manufacturer identification codes.
181.35 Removal of numbers.

Authority: 46 U.S.C. 1454, 1456, 1464, 1488; 49 CFR 1.46 (n)(1).

* * * * *

Subpart C—Identification of Boats

§ 181.21 Purpose and applicability.

This subpart prescribes the requirements for identification of boats to which section 4 of the Federal Boat Safety Act of 1971 applies.

§ 181.23 Hull identification numbers required.

(a) A manufacturer, as defined in § 181.3 of this part, must identify each boat produced or imported with a hull identification number that meets the requirements of this subpart.

(b) A person who builds or imports a boat not for sale, but for personal use, must identify that boat with a hull identification number that meets the requirements of this subpart.

(c) No person may assign the same hull identification number to more than one boat.

§ 181.24 Additional marking required.

Manufacturers who are required to identify boats under § 181.23(a), must provide a means of identifying each boat if its hull identification number is lost, unreadable, or altered. This requirement is satisfied by any additional or unique marking which the manufacturer can match with the hull identification number that was originally assigned to the boat.

§ 181.25 Hull identification number format.

Each hull identification number required by § 181.23 must consist of twelve characters, uninterrupted by slashes, hyphens, or spaces, as follows:

(a) The first three characters must be a manufacturer identification assigned under § 181.31, unless the boat is built in Canada, in which case the Canadian manufacturer's identification code may be used.

(b) Characters four through eight must be assigned by the manufacturer and must be letters of the English alphabet, or Arabic numerals, or both, except the letters I, O, and Q.

(c) Characters nine through twelve must indicate the date of certification when certification is required by Subpart B of this part and when no date of certification appears on the required certification label. In all other cases, characters nine through twelve must indicate the date of manufacture, which can be no earlier than the date construction or assembly began and no later than the date the boat leaves the place of manufacture, assembly, or import. The characters must be either—

(1) Arabic numerals with characters nine and ten indicating the month and characters eleven and twelve indicating the last two numerals of the year; or

(2) A combination of Arabic numerals and letters of the English alphabet with character nine indicated as "M", characters ten and eleven the last two numerals of the model year, and character twelve the month of the model year. The first month of the model year, August, must be designated by the letter "A", the second month, September, by the letter "B", and so on until the last month of the model year, July.

§ 181.27 Information displayed near hull identification number.

If additional information is displayed on the boat within two inches of the hull identification number, that information must be separated from the hull identification number by means of borders or labeling so that it will not be interpreted as part of the hull identification number.

§ 181.29 Hull identification number display.

(a) The hull identification number must be affixed—

(1) On boats with transoms, to the starboard outboard side of the transom within two inches below the top of the transom, gunwale, or hull/deck joint, whichever is lowest;

(2) On boats without transoms, to the starboard side of the hull, aft, within two inches of the top edge and within one foot of the aftermost portion of the hull;

(3) On catamarans and pontoon boats which have readily replaceable hulls, to the aft crossbeam within one foot of the starboard hull attachment.

(b) The hull identification number must be carved, burned, stamped, embossed, or otherwise permanently affixed to the boat so that alteration, removal, or replacement would be obvious. If the number is on a separate plate, the plate must be fastened in such a manner that its removal would normally cause some scarring of or damage to the surrounding hull area. The hull identification number must not be attached to parts to the boat that are removable.

(c) The characters of the hull identification number must be no less than one-fourth of an inch high.

(d) If the hull identification number would not be visible from a position astern of the vessel, because of rails, fittings, or other accessories, the number must be located as near as possible to the location specified in paragraph (a) of this section, provided that it is visible from astern.

§ 181.31 Manufacturer identification code assignment.

(a) Each manufacturer who needs an identification code to meet the requirements of § 181.23(a) and § 181.25, must request a manufacturer identification code in writing from Commandant (G-BP), U.S. Coast Guard, 2100 Second Street, SW., Washington, D.C. 20593. The request must indicate the name and U.S. address of the manufacturer that will be using the identification code and the general types and lengths of boats it intends to produce or import. Manufacturer identification codes will be assigned only to manufacturers as defined in § 181.3 of this part who are responsible for meeting the defect notification requirements of part 179 of this subchapter. There is no charge for the assignment.

(b) Persons who are required to identify boats under § 181.23(b) must obtain the required hull identification number from the State Boating Law Administrator of the intended state principal use, or, if the Boating Law Administrator does not assign these numbers, from the Coast Guard District office that covers the area of intended use.

§ 181.33 Conditions for use of manufacturer identification codes.

(a) No manufacturer may sell or transfer a manufacturer identification code or use a manufacturer identification that has been assigned to another.

(b) A manufacturer who moves or has a change in business name must advise the Commandant (G-BP) of the new address or name.

§ 181.35 Removal of numbers.

No persons may remove, alter, or conceal a number required by this subpart unless authorized by the Commandant.

(46 U.S.C. 1454, 1456, 1464, 1488; 49 CFR 1.46(n) (1))

Dated: December 22, 1980.

H. W. Parker,

Rear Admiral, U.S. Coast Guard, Chief, Office of Boating, Public, and Consumer Affairs.

[FR Doc. 80-40404 Filed 12-24-80; 8:45 am]

BILLING CODE 4910-14-M

PANAMA CANAL COMMISSION

35 CFR Part 103

Order of Passage of Vessels Through the Panama Canal

AGENCY: Panama Canal Commission.

ACTION: Correction of notice of proposed rulemaking.

SUMMARY: This document makes correction of typographical errors in FR Doc 80-37858 published in the Federal Register on December 4, 1980 (45 FR 80313) announcing a proposal to amend the Panama Canal Commission's Regulations relating to the general provisions governing vessels by establishing a plan for scheduling vessels transiting the Panama Canal.

FOR FURTHER INFORMATION CONTACT: Michael Rholde, Jr., Secretary, Panama Canal Commission, 425 13th Street NW., Washington, D.C. 20004, Phone: (202) 724-0104.

or

Captain John D. Thurber, Marine Director, Panama Canal Commission, Phone (Repubic of Panama) 52-7917.

SUPPLEMENTARY INFORMATION: Corrections to document: In the Supplementary Information paragraph, the word "terminals" at the end of line 12, column 1, page 80314, should be changed to "terminus"; the word "Docks" in line 17, column 1, page 80314, should be changed to read "locks." The Authority of Part 103 should be changed to read as follows:

Authority: Sec. 1801, Pub. L. 96-70, 93 Stat. 492 (22 U.S.C. 3811): E.O. 12173, 45 FR 69271: E.O. 12215, 45 FR 36043.

In the final sentence of § 103.8 (b), the words "numerous or" should be inserted so that the sentence in its entirety reads as follows: "Requests for booking or prescheduling may be denied in the case of vessel operators or agents who establish a record of numerous or repeated cancellations."

Michael Rhode, Jr.,

Secretary.

December 15, 1980.

[FR Doc. 80-40312 Filed 12-24-80; 8:45 am]

BILLING CODE 3640-01-M

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

Glacier Bay National Monument; Protection of Humpback Whales

AGENCY: National Park Service.

ACTION: Proposed rule.

SUMMARY: The regulations set forth below are intended to limit the adverse impact of commercial fishing on the humpback whale *(Megaptera Novaengliae)* within Glacier Bay National Monument. These proposed rules are designed to supplement the regulations relating to the protection of humpback whales published May 15, 1980 (45 FR 32228) as well as the Final Rulemaking found elsewhere in today's Federal Register. These rules propose the addition of Pacific herring *(Clupea spp.)* to the list of fish which may not be actively fished for nor retained if incidentally caught. In addition, these rules propose the prohibition of bottom trawling within Glacier Bay.

DATES: Written comments should be submitted on or before March 30, 1981.

ADDRESS: Comments should be directed to: Superintendent, Glacier Bay National Monument, P.O. Box 1089, Juneau, Alaska 99802.

FOR FURTHER INFORMATION CONTACT: John Chapman, Superintendent, Glacier Bay National Monument, P.O. Box 1089, Juneau, Alaska 99802. Telephone: (907) 586-7137.

SUPPLEMENTARY INFORMATION:

Background

On May 15, 1980, the National Park Service published Final Rules Regarding the Protection of Humpback Whales in Glacier Bay National Monument (45 FR 32228). Two major areas were addressed: (1) Operating restrictions on all vessels within Glacier Bay; and (2)

numerical limitations on entries by large vessels (vessels at or in excess of 100 tons gross) into the Bay. At the same time interim regulations were published which addressed numerical limitations on entries by small vessels (vessels below 100 tons gross) and prohibited commercial and charter fishing for the principal food sources for humpback whales in Glacier Bay. These rules are published in final form today.

Much of the relevant background information regarding the humpback whale, Glacier Bay National Monument, recent research investigations and findings and the legal authorities for this action, are set out in the final rulemaking relating to the protection of the humpback whales found elsewhere in today's Federal Register. This information will not be reproduced in this rulemaking, but is hereby incorporated.

Experience with these regulations at Glacier Bay during the 1980 whale season indicated two shortcomings in the area of commercial fishing activities.

Pacific herring (*Clupea spp.*) are not known to frequent Glacier Bay in large numbers. However, they are now known to occur in the Bay. The fact that Pacific herring comprise a primary food source for humpback whales elsewhere in Southeast Alaska is well established. However, the importance of these fish as a food source for humpbacks in Glacier Bay is not yet known since the research record into the relationship among natural food cycles, food availability, and whale behavior is incomplete. Until this relationship is more fully explored prudence dictates a conservative approach towards human activities which may adversely effect an endangered species such as the humpback whale.

Bottom trawling is practiced by only two known commercial fishing vessels within Glacier Bay at this time. It is a fishing method which disrupts feed beds. Significant numbers of shrimp (*Pandalidae*), a prohibited commercial fishery within the Bay, are incidentally taken and lost as a whale food source using this method. Again, prudence dictates a conservative approach towards a human activity potentially harmful to this endangered species until food relationships are better understood.

As with all other regulations relating to the protection of humpback whales within Glacier Bay National Monument, these proposed rules will be subject to ongoing review and modification where warranted. After two and one-half years, the Service shall formally review these regulations.

Drafting Information

The following persons participated in the writing of these regulations: John Chapman, Superintendent; Donald D. Chase, Chief of Operations, Glacier Bay National Monument; William F. Paleck, Alaska Regional Office; Deborah L. Williams, Solicitor's Office, Anchorage.

Impact Analysis

The National Park Service has made a determination that the regulations contained in this rulemaking are not significant, as that term is defined under Executive Order No. 12044, as amended, and 43 CFR Part 14, nor do they require the preparation of a regulatory analysis pursuant to the provisions of these authorities. In addition, the Service has determined that these regulations do not represent a major Federal action significantly affecting the quality of the human environment which would require an Environmental Impact Statement. An Environmental Assessment and Finding of No Significant Impact which address protection of humpback whales within Glacier Bay have been prepared and are available at the address listed at the beginning of this rulemaking.

Authority

(Presidential Proclamations Nos. 1733 (43 Stat. 1988), 2330 (53 Stat. 2534), and 4618 (43 FR 57053); Act of August 25, 1916 (39 Stat. 535, as amended, 16 U.S.C. 1 *et seq.*); 245 DM 1 (44 FR 23384); National Park Service Order 77 (38 FR 7478), as amended.)

John F. Chapman,

Superintendent.

In consideration of the foregoing, it is proposed that § 7.23(f) of Title 36 of the Code of Federal Regulations be amended to read as follows:

* * * * *

§ 7.23 Glacier Bay National Monument, Alaska.

(f) *Commercial Fishing.* (1) No commercial or charter fishing operator will actively fish for, or retain if incidentally caught, capeline (*Mallotus*), sandlance (*Ammodytes*), euphausids (*Thalassia*), shrimp (*Pandalidae*) or Pacific herring (*Clupea spp.*) within Glacier Bay. (2) Bottom trawling is prohibited within Glacier Bay. (3) These restrictions on fishing shall apply throughout the year but shall only apply to the waters inside the mouth of Glacier Bay.

[FR Doc. 80-40369 Filed 12-24-80; 8:45 am]

BILLING CODE 4310-70-M

ENVIRONMENTAL PROTECTION AGENCY

[A-7-FRL 1714-4]

40 CFR Part 52

Approval and Promulgation of Missouri State Implementation Plan for Lead

AGENCY: Environmental Protection Agency.

ACTION: Proposed rulemaking.

SUMMARY: As required by Section 110 of the Clean Air Act and the October 5, 1978 promulgation of a National Ambient Air Quality Standard for lead (43 FR 46246), the state of Missouri has submitted for approval to EPA a State Implementation Plan (SIP) for lead. The lead SIP provides for the attainment of the National Ambient Air Quality Standard (NAAQS) for lead in all areas of the state. EPA is proposing to approve the SIP with the exceptions discussed below. Copies of the SIP are available to the public as noted below. The EPA invites public comments on EPA's proposed actions, the identified deficiencies, and the consistency of the Missouri lead SIP with respect to the requirements of the Clean Air Act.

DATES: Comments must be received on or before February 27, 1981.

ADDRESSES: Copies of the Missouri submission and the minutes of the public hearings where the state regulations were reviewed are available for review during normal business hours at the following locations:

Environmental Protection Agency, Region VII, Air, Noise and Radiation Branch, 324 East 11th Street, Kansas City, Missouri 64106.

Public Information Reference Unit, Room 2922, EPA, 401 M Street SW., Washington, D.C. 20460.

Kansas City, Missouri Health Department, Air Pollution Control 21st Floor, City Hall, Kansas City, Missouri 64106.

Missouri Department of Natural Resources, 2010 Missouri Boulevard, Jefferson City, Missouri 65102.

City of St. Louis Division of Air Pollution Control, 419 City Hall, St. Louis, Missouri 64103.

St. Louis County, Dept. of Community Health and Medical Care, 801 S. Brentwood Blvd., Clayton, Missouri 63105.

Written comments should be mailed to Ken Greer, Air and Hazardous Materials Division, Air, Noise and Radiation Branch, EPA Region VII, 324 East 11th Street, Kansas City, Mo. 64106.

FOR FURTHER INFORMATION: Contact Ken Greer at 816 374-3791 [FTS 758-3791].

SUPPLEMENTARY INFORMATION:

I. Background

On October 5, 1978, National Ambient Air Quality Standards (NAAQS) for lead were promulgated by the Environmental Protection Agency (EPA) (43 FR 46246). Both the primary and secondary standards were set at a level of 1.5 micrograms lead per cubic meter of air (μg lead/m^3), averaged over a calendar quarter. As required by section 110(a)(1) of the Clean Air Act (the Act), within nine months after promulgation of a NAAQS each state is required to submit a state implementation plan (SIP) which provides for implementation, maintenance, and enforcement of the primary and secondary NAAQS within the state. The state of Missouri has developed and submitted a SIP for the attainment of the lead NAAQS. The plan includes a strategy for attainment of the lead NAQS in all parts of the state and shows attainment of the NAAQS by four years after EPA approval of the SIP. This time frame differs from the required attainment date of October 31, 1982, or with a two-year extension, October 31, 1984. The plan also commits to development of a long-term lead monitoring network to be installed around the lead smelters in the state, and in Kansas City and St. Louis. Monitoring data will be available before the attainment date. (October 31, 1984).

II. Discussion of Lead SIP Elements

A. Basic Requirements

The basic requirements for a SIP in general are outlined in Section 110(a)(2) of the Clean Air Act and EPA regulations at 40 CFR Part 51, Subpart B. These provisions require the submission of air quality data, emission inventory data, air quality modeling, a control strategy, a demonstration that the NAAQS will be attained within the time frame specified in the Clean Air Act, and provisions for ensuring maintenance of the NAAQS. Specific requirements for developing a SIP for lead concerning lead air quality data, emission inventory for lead, control strategies for lead, etc., are outlined in 40 CFR Part 51, Subpart E.

B. Description of SIP

On September 5, 1980 the Missouri Air Conservation Commission, acting on behalf of the Governor of Missouri, submitted the Missouri lead SIP to EPA for approval. The major elements of the SIP include: a summary of measured air quality data from 1974 to present, a base-year emission inventory for stationary and mobile sources, control strategies showing reductions in lead emissions from stationary and mobile sources, consent orders which provide schedules for installation of control equipment on certain stationary sources, calculations of projected ambient air lead concentrations in areas that have shown exceedances of the standard, and provisions for the review of new and modified sources of lead emissions. The SIP also outlines plans for long-term ambient air monitoring for lead in Kansas City and St. Louis, and around three primary lead smelters in Missouri.

The plan indicates that the lead standards have been exceeded in St. Louis, and around the Amax and St. Joe Lead Co. primary lead smelters in Missouri. The plan provides for attainment of the standards by 1982 in St. Louis, due to the phase-down of the lead content in gasoline, and by October 31, 1984, in the vicinity of the lead smelters, due to implementation of both stack and fugitive emission controls. A two-year extension for attainment is requested by the state only for the areas around the Amax and St. Joe primary lead smelters in Missouri.

To comply with 40 CFR 51.80(a), the SIP also includes attainment demonstrations for the Asarco primary lead smelter and the St. Joe Lead Co. lead mine at Viburnum. Although no violations of the lead standards have been recorded in the vicinity of the Asarco smelter, the SIP contains a consent order requiring the reduction of lead emissions through the installation of fugitive emission controls. Although no violations have been recorded in the vicinity of the lead mine, dispersion modeling predicts a standards violation. The SIP shows that the standards will be attained in this area by terminating the operation of an ore dryer used at the mine.

C. Results of EPA Review

After evaluating the Missouri plan to determine whether it meets all requirements for an approvable lead SIP, EPA proposes to approve the plan with the exceptions discussed below. These deficiencies of the plan will have to be corrected before EPA can fully approve the SIP. EPA will work with the Missouri Department of Natural Resources to correct the deficiencies discussed below.

1. Attainment Date: One major deficiency of the plan is the stated attainment date for the ambient air lead standards. Section 110(a)(2)(A) of the Clean Air Act requires all states to attain the lead standards within three years of EPA's approval of their lead SIPs. The State has erroneously interpreted the statute to mean that the attainment date is three years from the actual EPA approval date of the lead SIP. EPA has stated in a previous FR notice that the attainment date for all States is October 31, 1982, three years from the mandated EPA approval date of October 31, 1979 (43 FR 46246). Therefore, EPA is proposing to disapprove (under § 110(a)(2) of the Act) the attainment date as stated in the Missouri lead SIP. Athough EPA is proposing to disapprove this attainment date, it can propose approval of the State's control strategies because it finds that these strategies will produce attainment by October 31, 1982 (or, with a two year extension, by October 31, 1984). EPA will request in the final rulemaking that the state revise the attainment date to be October 31, 1982 or, with a two-year extension, October 31, 1984. If, in accordance with § 110(c)(1) (B) and (C) of the Act, the State fails to revise the attainment date, EPA will promulgate for the Missouri lead SIP the correct attainment date.

2. Request for Attainment Date Extension: Concerning the State's request for the two-year extension of the attainment date for areas around the Amax and St. Joe primary lead smelters, EPA proposes to approve the request. EPA may approve an extension of up to two years (as outlined in § 110(e) of the Act and 40 CFR 51.30), if, among other factors, the ". . . necessary technology or alternatives [for control] will not be available soon enough to permit full implementation of such control strategy . . ." by the attainment date. The SIP, if the extension is granted, is to provide for attainment of the primary standard as "expeditiously as practicable," but no later than October 31, 1984.

EPA proposes to approve the extension request because the State has demonstrated that certain necessary fugitive emission controls will not be available by October 31, 1982.

3. Emission Inventory: EPA is proposing to approve the part of the SIP which describes the lead emission inventory for stationary sources and the St. Louis mobile source inventory. The State has correctly included in the stationary source inventory all significant point sources of lead in Missouri. The SIP incorrectly states that mobile source emission inventories are required only in metropolitan areas with populations greater than 500,000. Mobile source emission inventories are required as part of area source inventories (according to 40 CFR 51.81) which are required for any areas which have shown an exceedance of the standards

since 1974. The standards have been exceeded in St. Louis, at St. Joe Lead Co. in Herculaneum, and at Amax Lead Co., which is near Boss, Missouri. Boss is a small rural town which has a low traffic density. Herculaneum is also a small rural town with a low traffic density except for an interstate highway that passes near the smelter and town. EPA requests that traffic flow information be provided by the State before final rulemaking to confirm that the mobile source emissions are insignificant compared to the emissions from the lead smelters in both the Boss and Herculaneum areas.

4. Air Quality Modeling: Section 51.84 of 40 CFR requires each lead SIP to include air quality dispersion modeling of emissions from certain categories of lead sources, including primary and secondary lead smelters, lead acid battery plants, and other lead sources emitting more than 25 tons of lead per year. EPA proposes to approve the modeling done for the Schuykill Metals plant (a secondary lead smelter), Globe Union, Inc., (a lead acid battery plant) and the St. Joe Lead Co. lead mine (a source emitting more than 25 tons per year of lead). EPA proposes to disapprove the portion of the lead SIP which deals with modeling for the three primary lead smelters. The SIP states that the State attempted modeling for the primary smelters, but due to inadequacies in modeling techniques for complex terrain situations and fugitive emissions, found no correlation between modeling and monitoring data. However, the State did not submit this modeling to EPA. EPA will require that additional modeling be done for all three primary lead smelters, including a presentation of predicated ambient levels of lead in the vicinity of each smelter. EPA will require the State to submit this modeling within twelve months of EPA's final rulemaking on the Missouri lead SIP. EPA will provide assistance to the State to help satisfy the State's obligation under 40 CFR 51.84.

5. Monitoring: EPA has reviewed the short-term monitoring strategy that the State developed around each primary lead smelter. EPA finds that the system is consistent with EPA's "Guidelines for Short Term Lead Monitoring in the Vicinity of Point Source" (March 26, 1979). Additionally, a full year of data collected at the short-term monitoring sites will be available in early 1981. EPA has requested that the data be submitted to EPA before final rulemaking and made available for public review. This will allow EPA and the public to be aware of the concentrations of lead in the air around the smelters due to the lack of modeling data and the absence of any long-term monitoring data for these areas. EPA proposes to approve the State's commitment to continue to monitor for lead in Kansas City and St. Louis and to develop and implement a long-term monitoring strategy around each primary lead smelter to meet the requirements of 40 CFR 51.17(b). EPA agrees with the State that preparation of the long-term monitoring plan should be keyed to the date that EPA's final lead monitoring point source guidelines are published. EPA also agrees that one year of site specific meteorological data should be collected at each smelter before long-term air monitoring sites are selected. The period for meteorological data collection should commence at each smelter when the meteorological equipment becomes operational. The State plans to reevaluate the primary smelter's control strategies if one full year of long-term monitoring data shows that the standards will not be attained by October 31, 1984. EPA expects the State to fulfill this commitment.

6. Control Strategies: Concerning the control strategy for the attainment of the lead standards throughout Missouri, EPA proposes to approve the control strategy for the St. Joe lead mine and the Asarco primary lead smelter. EPA also proposes to approve the control strategies for the Amax and St. Joe primary lead smelters. The state used the highest 90-day average lead concentration recorded by the short term monitoring network for each of the smelters. Using a simple proportional model, the state then calculated the emission reductions needed from each smelter to attain the lead standards. EPA has concerns regarding the limited data base used to calculate the needed reductions in emissions from each smelter to attain the standard, but EPA believes that at this time, the State has used the best information available. EPA believes that with additional monitoring and modeling, coupled with the State's commitment to revise the SIP in the future if new information shows that additional controls are needed on any or all primary lead smelters, the necessary level of control will be achieved within the required time frames specified by the Clean Air Act.

Concerning the Missouri Air Conservation Commission (MACC) consent orders which establish schedules requiring controls to be added at each primary lead smelter, EPA proposes to approve the Asarco and St. Joe consent orders. EPA also proposes to approve the Amax consent order although two of the scheduled emission control projects are not required to be fully operational until after October 31, 1984. EPA can propose approval of this schedule because it finds that the emission reductions attributable to the portions of these controls which will not be operational prior to the October 31, 1984 attainment date represent a *de minimis* fraction of the total lead reductions needed from the Amax smelter in order to demonstrate attainment.

The schedule states that completion of the two emission control projects will be within 48 months of EPA approval of the Missouri lead SIP. One project concerns the completion of plant area paving and the other concerns completion of ductwork, piping, etc., leading to an emission control unit.

EPA projects final action on the Missouri Lead SIP by March 31, 1980. Assuming final action approving the SIP by that date, the two projects would be required by the consent order to be completed no later than five months after the mandated attainment date (with extension) of October 31, 1984.

Also, assuming final action approving the lead SIP by March 31, 1981, the AMAX consent order would require that, by the mandated attainment date of October 31, 1984, control equipment be installed and operating which would reduce emissions by 444.4 tons/year out of the 446.2 tons/year reduction needed to show full attainment. The remaining 1.8 tons/year reduction would be obtained when the remaining emission control projects are completed by not later than March 31, 1985. Thus, the plan projects attainment of the lead standards in the vicinity of the Amax plant with a 64.4% reduction in lead emissions. The plan demonstrates a 64.2% reduction by the required attainment date, assuming plan approval by March 31, 1981.

EPA finds that the remaining 0.2% reduction necessary for attainment of the lead standards at the Amax smelter represents a *de minimis* portion of the total emission reductions needed. Furthermore, partial completion of the two emission control projects prior to the proposed October 31, 1984 attainment date could provide the needed additional 0.2% reduction. Consequently, EPA is proposing to approve the control strategy for the Amax smelter.

Concerning the consent orders in general, EPA requests clarification from the State on two items. The first concerns the language in the consent orders that explains that due to strikes or natural disasters, the project completion dates will be automatically

extended a corresponding amount of time. EPA believes that the State should require the source to request in writing an extension, stating the reasons necessitating an extension. EPA requests that the State submit a written clarification to EPA before final rulemaking that the State does intend to require the sources to submit a written request for extension of the schedule, documenting the reasons for the extension, if strikes or natural disasters force delays in the schedule. The second item that EPA requests clarification from the State concerns the reporting requirements of the increments of progress in the consent orders. The State intends to monitor the sources' progress on the consent order schedules by having State enforcement personnel inspect the sources on the date of each milestone listed in the consent orders. EPA believes that the State should monitor the sources on a quarterly basis as to the sources' progress toward completion of the control measures. EPA requests that the State provide to EPA before final rulemaking a commitment to provide quarterly reports to EPA which describe the progress made by each source toward installation of the control measures described in the consent orders.

Concerning the operation of a rotary dryer at the St. Joe lead mine in Herculaneum which was scheduled to terminate operation during the summer of 1980, EPA requests that the State submit before EPA's final action a written agreement validating the termination of operation. Since the termination of operation of the rotary dryer is the State's control plan for attainment at the St. Joe lead mine, the written agreement should also validate that the rotary dryer operation will continue to be inoperative. The written agreement to be submitted by the State must be in a form such as a legally enforceable compliance order.

7. Other SIP Requirements: The plan makes a commitment to provide the necessary state resources to implement the plan. A detailed description of these resources is presently contained in the State's approved SIP for other criteria pollutants. Thus, EPA proposes to approve the Resources Section of the Missouri Lead SIP.

EPA also proposes to approve the Authority section (§ X) of the SIP if the State submits the information on new lead source permits requested from the State before final EPA rulemaking. The information requested concerns public review of permits for new sources of lead in Missouri. EPA requires permits for new sources which have the potential to emit five tons/year of lead or more, and requires a minimum of 30 days of public comment on all permits for new major sources. The State regulation calls for State review of all new sources with lead emissions greater than 1 ton/year. However, the regulation does not expressly state that a public review period is provided for in the review of new sources of lead in the size range of 1 ton/year to 100 tons/year. It is clear to EPA that the state regulations provide for public review of state actions on new sources of lead over 100 tons/year. A written clarification has been requested from the State of the procedures, required by 40 CFR 51.18 (h)(2)(ii), that Missouri will follow to allow for a public comment period of at least 30 days on all new source review actions for sources with lead emissions greater than 1 ton/year.

EPA also finds that the State's approved SIP for the other criteria pollutants contain regulations satisfying other general SIP requirements which have not received specific mention in this notice. EPA finds that these regulations can be incorporated into the State's lead SIP. Therefore, EPA proposes to approve the lead plan as satisfying all of the requirements in Section 110(a)(2) of the Act and 40 CFR Part 51, Subpart B.

III. EPA's Proposed Actions

EPA is proposing to approve the Missouri lead SIP except for two sections. The sections proposed for disapproval concern the State's attainment date for the lead standard, and the modeling done for the three primary lead smelters. EPA is proposing to disapprove Missouri's attainment date section and allow the State 60 days from EPA's final approval/disapproval action to correct the attainment date to agree with the required date of October 31, 1982 (or, with extension, October 31, 1984). If the State does not revise accordingly, EPA will promulgate the correct attainment date for the Missouri SIP in accordance with § 110(c)(1)(B) and (C) of the Act. EPA is also proposing to disapprove the modeling that the State attempted for the three primary lead smelters. EPA requests that the State submit within twelve months of EPA final rulemaking, complete modeling for each primary lead smelter as required by 40 CFR 51.84.

EPA also requests additional information be submitted by the State in a letter before EPA final action which is anticipated by March 31, 1981. If the State does not submit the needed items prior to EPA's final action on the lead SIP, EPA will disapprove the affected portion of the SIP. The additional information is needed to clarify certain section of the SIP and consists of: (1) A compliance order or other legally enforceable agreement stating that the rotary dryer operation has been closed down at the St. Joe lead mine, and will remain inactive; (2) Mobile source emission information for the area near the St. Joe primary lead smelter (including the town of Herculaneum), and the area near the Amax primary lead smelter (including the town of Boss); (3) A clarification of the procedures that Missouri will follow to allow for a public comment period of at least 30 days on all new source review actions for sources with lead emissions greater than 1 ton/year; (4) Information concerning the consent orders which clarify that the State will require the sources to submit in writing to the State any requests for extensions in the consent order schedules; and (5) A committment that the State will provide to EPA quarterly reports which outline the sources' progress toward installation of the control measures described in the consent orders. EPA also requests the State to submit the monitoring data from January through September 1980 from the short-term monitoring network around the three primary lead smelters.

IV. Public comments

The Regional Administrator hereby issues this notice setting forth EPA's approval/disapproval of the Missouri lead SIP as a proposed rulemaking and advises the public that interested persons may participate by submitting written comments to the Region VII office. Comments received on or before the date listed in the DATES section will be considered. Comments received will be available for public inspection at the EPA Region VII Office and at the locations listed in the Addresses Section of this notice.

The Administrator's decision to approve or disapprove that proposed revision to the Missouri general SIP will be based on the comments received and on a determination whether the revision meets the requirements of Section 110(a)(2) of the Clean Air Act and 40 CFR Part 51, Requirements for Preparation, Adoption and Submittal of State Implementation Plans.

The Missouri Department of Natural Resources has certified that the public hearing requirements of 40 CFR 51.4 have been met.

Under Executive Order 12044, EPA is required to judge whether a regulation is "significant" and, therefore, subject to the procedural requirements of the order or whether it may follow other specialized development procedures.

EPA labels these other regulations "specialized." I have reviewed this regulation and determined that it is a specialized regulation not subject to the procedural requirements of Executive Order 12044.

(Sections 110 and 301(a) of the Clean Air Act as amended [42 U.S.C. §§ 7410 and 7610(a)])

Dated: November 21, 1980.

William Rice,

Acting Regional Administrator.

[FR Doc 80-40384 Filed 12-24-80; 8:45 am]

BILLING CODE 6560-38-M

COMMUNITY SERVICES ADMINISTRATION

45 CFR Part 1020

Environmental Protection

AGENCY: Community Services Administration.

ACTION: Proposed rule.

SUMMARY: CSA is publishing a proposed rule establishing a new PART covering environmental protection and implementing the procedural provisions of the National Environmental Policy Act. This proposed rule is in compliance with the requirements of 45 CFR Part 1507 that each agency shall adopt as necessary procedures to supplement the regulations published by the Council on Environmental Quality.

DATES: CSA welcomes comments on this proposed rule. Comments received by January 28, 1981 will be considered in drafting the final rule.

ADDRESS: Comments may be mailed to: Ms. Jacqueline G. Lemire, Policy Development and Review Division, Community Services Administration, 1200 19th Street, N.W., Washington, D.C. 20506.

FOR FURTHER INFORMATION CONTACT: Ms. Jacqueline G. Lemire, Community Services Administration, 1200 19th Street NW., Washington, D.C. 20506, Telephone: (202) 254-5047, Teletypewriter: (202) 254-6418.

SUPPLEMENTARY INFORMATION: Since policy implementing the National Environmental Policy Act previously was published by the Council on Environmental Protection and CSA only is adding procedural requirements, CSA has determined that this is not a significant rule as defined in its published rule implementing Executive Order 12044.

The National Environmental Policy Act (NEPA) of 1969 (42 USC 4321 *et seq.*) establishes national policies and goals for the protection of the environment. Section 102(2) of NEPA contains certain procedural requirements directed toward the attainment of such goals. In particular, all Federal agencies are required to give appropriate consideration to the environmental effects of their proposed actions in their decision-making and to prepare detailed environmental statements on recommendations or reports significantly affecting the quality of the human environment.

Executive Order 11991 of May 24, 1977, directed the Council on Environmental Quality (CEQ) to issue regulations to implement the procedural provisions of NEPA. Accordingly, CEQ issued final NEPA regulations (40 CFR Part 1500-1508) on November 29, 1978, which are binding on all Federal agencies as of July 30, 1979. These regulations provide that each Federal agency shall as necessary adopt implementing procedures to supplement the regulations. Section 1507.3(b) of the NEPA regulations identifies those sections of the regulations which must be addressed in agency procedures.

This proposed rule establishes and explains CSA's procedures for compliance with the NEPA regulations. Subsequent to the finalization of this rule CSA will publish rules implementing other environmentally-related Acts and Executive Orders. This proposed rule also establishes a separate Part (1020) in Chapter X under which CSA will publish all environmentally-related rules.

William W. Allison,

Acting Director.

45 CFR Chapter X is proposed to be amended by adding a new Part 1020 to read as follows:

PART 1020—ENVIRONMENTAL PROTECTION

Subpart A—General

Sec.
1020.1-1 Applicability.
1020.1-2 Purpose.

Subpart B—Procedures for Implementing the National Environmental Policy Act of 1969 (NEPA), as Amended

Sec.
1020.10-1 Background.
1020.10-2 Definition.
1020.10-3 Purpose.
1020.10-4 Applicability of NEPA to CSA activities.
1020.10-5 Responsibilities for implementing NEPA.
1020.10-6 Implementing procedures.
1020.10-7 How to determine if actions require an environmental assessment and/or an environmental impact statement.
1020.10-8 Environmental information.

Subpart C—Procedures for Implementing the National Historic Preservation Act [Reserved]

Subpart D—Procedures for Implementing Executive Order 11988 Re Floodplains Management [Reserved]

Subpart E—Procedures for Implementing Executive Order 11990 Re Protection of Wetlands [Reserved]

Authority. Sec. 602, 78 Stat. 530; 42 U.S.C. 2942.

Subpart A—General

§ 1020.1-1 Applicability.

This part applies to all organizational units of the Community Services Administration and all actions funded or authorized under Titles I, II, IV, VI, VII and IX of the Economic Opportunity Act of 1964, as amended, when the assistance is administered and actions are authorized by the Community Services Administration.

§ 1020.1-2 Purpose.

This part establishes CSA's policies and procedures with respect to protection of the environment and the protection of historic properties and other valuable national resources. This Part implements a number of laws relating to environmental protection each of which has varying requirements.

Subpart B—Procedures for Implementing the National Environmental Policy Act of 1969 (NEPA), as Amended

§ 1020.10-1 Background.

(a) The National Environmental Policy Act (NEPA) of 1969 (42 USC 4321 *et seq.*) establishes national policies and goals for the protection of the environment. Section 102(2) of NEPA contains certain procedural requirements directed toward the attainment of such goals. In particular, all Federal agencies are required to give appropriate consideration to the environmental effects of their proposed actions in their decision-making and to prepare detailed environmental statements on recommendations or reports on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment.

(b) Executive Order 11991 of May 24, 1977, directed the Council on Environmental Quality (CEQ) to issued regulations to implement the procedural provisions of NEPA. Accordingly, CEQ issued final NEPA regulations (40 CFR Parts 1500-1508) on November 29, 1978, which are binding on all Federal agencies as of July 30, 1979. These regulations provide that each Federal agency shall as necessary adopt

implementing procedures to supplement the regulations. Section 1507.3(b) of the NEPA regulations identifies those sections of the regulations which must be addressed in agency procedures.

§ 1020.10-2 Definition.

"Human Environment" shall be interpreted comprehensively to include the natural and physical environment and the relationship of people with that environment. This means that economic or social effects are not intended by themselves to require preparation of an environmental impact statement. When an environmental impact statement is prepared and economic or social and natural or physical environmental effects are interrelated, then the environmental impact statement will discuss all of these effects on the human environment.

§ 1020.10-3 Purpose.

The purpose of this subpart is to establish and explain CSA procedures for compliance with the NEPA regulations and to explain to those applying for CSA funds what information must be supplied to CSA prior to funding (whether by grant, contract or cooperative agreement) to enable the responsible CSA officials to consider and evaluate the environmental impact of a proposed agency action in compliance with the NEPA regulations before making any final agency decision.

§ 1020.10-4 Applicability of NEPA to CSA activities.

(a) All actions and organizational units within the Community Services Administration initially are covered by these procedures. However, some actions are exempt from the requirements to develop an environmental assessment or an environmental impact statement since, by their very nature, they do not individually or cumulatively have a significant effect on the human environment. These actions are published at § 1020.10-7(b) ("Categorical Exclusions"). Actions which require at least an environmental assessment are found at § 1020.10-7(c), are those normally requiring an environmental impact statement are found at § 1020.10-7(d).

(b) For purposes of this subpart "agency actions" include new and continuing activities, including projects and programs entirely or partly financed, assisted, conducted, regulated, or approved by CSA including those supported by grants, contracts, cooperative agreements, interagency agreements, or memoranda of understanding; new or revised agency rules, regulations, plans, policies, or procedures; and legislative proposals.

§ 1020.10-5 Responsibilities for implementing NEPA.

(a) *Environmental Affairs Officer.* The Director shall appoint a Headquarters Environmental Affairs Officer and each Regional Director shall appoint a Regional Environmental Affairs Officer. These Officers will be responsible for the following in their respective Regions or at Headquarters:

(1) Advising responsible agency personnel regarding the need for an environmental assessment or environmental impact statement.

(2) Reviewing all agency actions (except categorical exclusions) to determine (i) if an environmental assessment is required and recommending such action to the responsible CSA officials; and (ii) if consultation with other Federal agencies responsible for the environmental act is required.

(3) Recommending alternative methods of agency action which may have a lower probability of negative environmental impact.

(4) Advising all applicants of studies or other information forseeably required for later Federal action.

(5) Providing guidance on a project-by-project basis to applicants seeking assistance.

(6) Serving as the point of contact for persons interested in information or status reports on environmental impact statements and other elements of the NEPA process.

(7) Directing all environmental impact statements received by CSA from other Federal Agencies to the appropriate Headquarters or Regional Office for comment and assuring that comments or a statement of "no comment" are submitted within the time period specified.

(b) *Headquarters Environmental Affairs Officer.* This Officer will be responsible for overall review of agency NEPA compliance.

(c) *Other agency personnel.* Other Agency personnel have responsibilities within the NEPA process. These responsibilities are outlined in § 1020.10-6 of this subpart.

§ 1020.10-6 Implementing procedures.

(a) *Early involvement by CSA.* (1) § 1501.2 of the NEPA regulations requires Federal Agencies to provide for early involvement in order to insure appropriate consideration of NEPA's policies and to eliminate delays in actions which, while planned by private applicants or other non-Federal entities, require some form of Federal approval. Actions planned elsewhere but requiring CSA approval include grants, contracts, and cooperative agreements.

(2) To implement the requirements of 40 CFR 1501.2, CSA requires that the following actions be taken:

(i) Upon receipt of a proposal or an application for assistance, the CSA staff person responsible for the initial substantive review of the document, i.e. the field representative, or project manager, will make an initial determination of whether the action falls under the categorical exclusion category, whether it requires an environmental assessment, or whether it requires an environmental impact statement. (See § 1020.10-7.) In unusual or questionable cases the staff person should consult with the Environmental Affairs Officer prior to making a determination.

(ii) Upon determination of the need to develop a rule or regulation, the head of the office with primary responsibility for development of the document will make an initial determination of whether the actions resulting from such a rule would fall under either of the non-excluded categories and, therefore, whether there is a need to develop an environmental assessment or environmental impact statement relating to the requirements of the rule.

(b) *Early involvement by applicants.* To facilitate compliance with the requirements of § 1501.2(d) of the NEPA regulations, applicants for assistance under the Economic Opportunity Act are expected to:

(1) Contact the appropriate CSA Regional or Headquarters funding office as early as possible in the planning process for guidance on the scope and level of environmental information required to be submitted in support of their application.

(2) Conduct any studies which are deemed necessary and appropriate by CSA to determine the impact of the proposed action on the human environment.

(i) If the action normally requires an environmental assessment, the applicant should summarize the environmental impact including any brief documentation or opinion from local environmental organizations or branchs of local or state governments explaining such organization's view of the impact. Alternative methods of performance of the project should be discussed with a cost breakdown of any budget increases resulting from environmental considerations.

(ii) If the action is one which normally requires an environmental impact statement, the applicant should explain

fully each environmental impact expected. In addition the explanation should be fully supported with cost documentation. Any alternatives which might lessen any negative environmental impact should also be submitted with the cost breakdown of increases.

(3) Consult with appropriate Federal, regional, State and local agencies and other potentially interested parties during preliminary planning stages to ensure that all environmental factors are identified.

(4) Submit applications for all Federal, regional, State and local approvals as early as possible in the planning process.

(5) Notify CSA as early as possible of all other Federal, regional, State, local and Indian tribe actions required for project completion so that CSA may coordinate all Federal environmental reviews.

(6) Notify CSA of all known parties potentially affected by or interested in the proposed action.

(c) *Development of environmental documents.* Pursuant to 40 CFR 1501.4(b), for all agency actions which are not categorically excluded (see § 1020.10–7(b)), CSA shall prepare either an environmental assessment or an environmental impact statement.

(1) An environmental impact statement shall be prepared by CSA for all agency actions which may have a significant impact on the environment. (See § 1020.10–7(d).)

(i) When preparing a draft environmental impact statement procedures and policies outlined in 40 CFR Parts 1500–1508 shall be followed. In addition CSA shall obtain comments from:

(A) Any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved or which is authorized to develop and enforce environmental standards.

(B) Appropriate State and local agencies which are authorized to develop and enforce environmental standards;

(C) Indian tribes, when the effects may be on a reservation;

(D) Any agency which has requested that it receive statements on actions of the kind proposed;

(E) The applicant; and

(F) The public, affirmatively soliciting comments from those persons or organizations who may be interested or affected.

(ii) When preparing a final environmental impact statement, CSA shall assess and consider comments both individually and collectively, and shall respond by one or more of the means listed in 40 CFR 1503.4. All substantive comments received on the draft statement should be attached to the final statement.

(2) An environmental assessment must be prepared by CSA for all other non-excluded actions. (See § 1020.10–7(c).)

(i) If the responsible CSA official determines based upon an environmental assessment, that a proposed agency action will not significantly affect the quality of the human environment, a finding of no significant impact shall be prepared pursuant to 40 CFR 1508.13 briefly stating the reasons for this finding. The document shall be attached to the environmental assessment and upon demand be made available to the public pursuant to 40 CFR 1501.4(c)(1) and (2) and shall accompany the document in all stages of the decision-making process.

(ii) In the case of proposed agency regulations published in the Federal Register, such statement along with the environmental assessment must accompany each publication.

(d) *Consideration of environmental documents in CSA's decision-making process.*

(1) If an environmental assessment or an environmental impact statement is prepared, it and other relevant documents, comments, and responses must accompany the proposed agency action through all phases of the decision-making process.

(2) The decision-making process for any non-excluded agency action must include review by the Environmental Affairs Officer.

(3) In making a final decision the responsible official will consider the range of altenatives discussed in the relevant environmental documents and the alternatives described in the environmental impact statement.

§ 1020.10–7 How to determine if actions require an environmental assessment and/or an environmental impact statement.

(a) *Classes of action.* An agency action will fall into one of three classes for purposes of determining its treatment under NEPA, that is:

(1) Actions normally not requiring either an environmental assessment or an environmental impact statement.

(Note: For the NEPA process, these actions are known as "Categorical Exclusions").

(2) Actions normally requiring environmental assessments but not necessarily environmental impact statements.

(3) Actions normally requiring environmental impact statements.

(b) *Actions which normally will not require environmental assessments or environmental impact statements (categorical exclusions).* (1) Amendments to actions for which either an environmental assessment or an environmental impact statement has been prepared which do not alter the impact previously described in either intensity or context.

(2) Extensions of time without any environmental consequences when there have been no new significant developments or information (such as no cost grant extensions).

(3) Programmatic functions with no potential for significant environmental impacts including but not limited to: minor adjustments to program plans and budgets; technical assistance programs; evaluation studies, sociological or economic research and information gathering and dissemination projects; advocacy activities; designation or dedesignation of community action agencies; routine administrative and management support including legal counsel, public affairs, program evaluation, monitoring, and individual personnel actions; grants for administrative overhead support; grants for social services (e.g. senior citizens programs, accidental hypothermia) except projects involving construction, renovation and/or changes in land use; maintenance (e.g. undertaking repairs necessary to insure the functioning of an existing facility), except for properties on the National Register of Historic Places; education and training grants (e.g. grants to create and support fellowships for grantee personnel); except projects involving construction, renovation, and/or changes in land use.

(4) Actions taken in response to emergency situations such as natural disasters and weather-related crises.

(5) Adoption of rules and regulations pertaining to the above mentioned activities.

(c) *Actions which normally require an environmental assessment but not necessarily an environmental impact statement.* The following actions will normally require preparation of at least an environmental assessment:

(1) Major amendments to actions for which an environmental impact statement has already been published such as construction modification to a large physical economic development project where the amendment will not result in significantly different environmental impacts from those indicated in the original environmental impact statement.

(2) Awards of grants, loans or loan guarantees for land acquisition or physical construction such as those

awarded pursuant to Title VII of the Economic Opportunity Act of 1964, where such actions may result in environmental impacts.

(3) Adoption of regulations or guidelines under the EOA for the control of any development program receiving CSA assistance.

(4) Acquisition, construction or significant modification of existing CSA facilities or major relocations of CSA personnel requiring acquisition of new facilities or housing, either by purchase or construction.

(5) Proposals for legislation to aid the poor which agency personnel reasonably expect will have an impact on the environment.

(d) *Actions which normally will require an environmental impact statement.* The following actions normally will require preparation of an environmental impact statement:

(1) Those which may have a significant impact on the human environment, e.g. large construction projects.

(2) Major changes in land use.

(3) Major or substantial affect on navigable rivers, wetlands, or other ecosystems.

§ 1020.10-8 Environmental Information.

Interested persons may contact the appropriate CSA Headquarters or Regional Environmental Affairs Officer regarding CSA's compliance with NEPA.

Subpart C—Procedures for Implementing the National Historic Preservation Act [Reserved]

Subpart D—Procedures for Implementing Executive Order 11988 Re Floodplains Management [Reserved]

Subpart E—Procedures for Implementing Executive Order 11990 Re Protection of Wetlands [Reserved]

[FR Doc. 80-40073 Filed 12-24-80; 8:45 am]
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DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 50, 54, 56, 58, and 61

[CGD 77-147]

Marine Engineering Regulations for Merchant Vessels; Acceptance of ASME U or UM Symbol Stamp for Pressure Vessels, Fittings, and Accumulators

AGENCY: Coast Guard, DOT.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: These proposed regulations would replace the current Coast Guard requirements for plan approval and shop inspection of certain pressure vessels with requirements that they be inspected and stamped in accordance with the American Society of Mechanical Engineer's Boiler and Pressure Vessel Code. These regulations would apply to Class I, II, and III pressure vessels that do not contain dangerous substances. The proposal would also require (1) certification of pressure vessel design drawings and analyses by a registered professional engineer, (2) Coast Guard inspection of completed pressure vessels prior to installation and (3) compliance with certain Coast Guard design requirements that are optional under the ASME Code. Several pressure vessel manufacturers have requested a changeover to ASME inspection and stamping because of frequent delays involved in having plan approval and shop inspections performed by the Coast Guard. ASME inspectors are more readily available to perform shop inspections in a timely manner, and the use of registered professional engineers to certify plans would minimize the time needed for Coast Guard pre-installation inspections.

DATES: Comments on these proposed rules must be received on or before February 12, 1981.

ADDRESSES: Comments should be mailed to Commandant (G-CMC/TP24), (CGD 77-147), U.S. Coast Guard, Washington, D.C. 20593. The comments, draft evaluation, and materials referenced in this notice will be available for examination and copying between 7 a.m. and 5 p.m., Monday through Thursday, except holidays, at the Marine Safety Council (G-CMC/TP24), Room 2418, Coast Guard Headquarters, 2100 Second Street, SW., Washington, D.C. 20593. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Mr. Howard Hime, c/o Commandant (G-MMT-TP12), U.S. Coast Guard, Washington, D.C. 20593 (202) 426-2160.

SUPPLEMENTARY INFORMATION: The public is invited to participate in this proposed rulemaking by submitting written views, data, or arguments. Persons submitting comments should include their names and addresses, identify this notice as CGD 77-147 and the specific sections of the proposal to which the comments apply, and give reasons for the comments. If acknowledgment of receipt of a comment is desired, a stamped, self-addressed postcard or envelope should be enclosed. The proposal may be changed in light of comments received. All comments received will be considered before final action is taken on this proposal. No public hearing is planned, but one will be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information

The principal persons involved in drafting this document are Mr. Howard Hime, Office of Merchant Marine Safety, and Mr. William R. Register, Office of the Chief Counsel.

Discussion of Proposed Rules

General

1. Part 54 of Title 46, Code of Federal Regulations, contains design, construction, and inspection requirements for pressure vessels installed on merchant vessels. Part 54 adopts the requirements of Section VIII, Division 1, of the ASME (American Society of Mechanical Engineers) Code with certain modifications that provide for specific marine application. Further, Part 54 requires that detailed plans be submitted for Coast Guard review and approval and that each pressure vessel be inspected during fabrication by a Coast Guard inspector.

2. In recent years a large number of pressure vessels inspected by the Coast Guard have also been inspected and stamped in accordance with ASME Code requirements. As a result, the Coast Guard has received several requests to accept ASME inspection and stamping in lieu of Coast Guard shop inspection and plan approval. The two principal reasons for these requests are: (1) The time spent by the Coast Guard in plan review and approval is too long; and (2) some manufacturing shops are located several hundred miles from the nearest Coast Guard inspector, whereas, an inspector authorized to perform ASME inspections is usually within an hour's drive and visits the shops frequently.

3. The proposed regulations would require Class I, II, and III pressure vessels not containing dangerous substances to be inspected and stamped in accordance with ASME Code requirements and would eliminate the existing requirements for these pressure vessels to be shop inspected and have their plans approved by the Coast Guard. The ASME Code requires the inspector to be an independent "third party" inspector employed by a state, municipality, or insurance company that

writes boiler and pressure vessel insurance. The inspector cannot be employed by the manufacturer of the pressure vessel. In lieu of Coast Guard plan approval and shop inspection, the proposal would also require (1) certification of pressure vessel plans by a registered professional engineer, (2) Coast Guard inspection of completed pressure vessels prior to installation, and (3) continued compliance with design requirements in Part 54 that are optional under the ASME Code. These additional design requirements are discussed in paragraph 6 below.

4. The proposed regulations do not apply to Class I-L and II-L pressure vessels and pressure vessels containing dangerous substances. Part 54 contains safety requirements for these pressure vessels that modify ASME Code requirements. Continued Coast Guard plan review and shop inspection is needed for these pressure vessels since ASME inspection and stamping would not verify compliance with the modified requirements.

Discussion of Specific Sections in the Proposal

5. *Sections 54.01-5(c)(3), -5(d), and* -5(e), 54.01-15(a)(4), 54.10-3(c), 54.10-25(c), and 58.60-3. These provisions contain the basic proposal to convert from Coast Guard plan approval and shop inspection to ASME inspection and stamping. The proposed amendment to S/58.60-3 would make the proposal equally applicable to mobile offshore drilling units (MODU's). Pressure vessels on MODU's are already required by existing regulations to meet ASME requirements and the requirements in proposed §§ 54.01-5(d)(3) and -5(d)(5). The additional requirements proposed for MODU pressure vessels are principally those in §§ 54.01-5(d)(2), -5(d)(6), and -5(d)(7). These additional requirements represent general safety measures that in large part are already being followed voluntarily; and, accordingly, additional costs to comply with them are expected to be minimal.

6. *Sections 54.01-5(d)(2), -5(d)(3),* -5(d)(5), -5(d)(6), and -5(d)(7). These provisions reference design requirements in Part 54 that are not also included in the ASME Code. Compliance with these requirements is necessary to provide for safe operation of pressure vessels in a marine environment. These requirements are listed as owner-option alternatives in the ASME Code.

7. *Section 54.01-5(c)(4).* This paragraph provides for ASME stamping of Class II and III pressure vessels not containing dangerous substances with a "U" or "UM" symbol if they have a net internal volume of less than 0.14 cubic meters (5 cubic feet). Section 54.01-15(a)(4) in the existing regulations allows this practice but does not specify whether the limiting internal volume is a net volume or a gross volume. The proposal adopts a recent ASME interpretation, VIII-78-83, which states that the internal volume should be calculated as a net volume.

8. *Table 54.01-5(b) and Section 54.01-5(b).* These provisions divide all pressure vessels, both welded and non-welded, into one of several classes. Under current regulations only welded pressure vessels are classed and reference is made to classed pressure vessels only in regulations in Part 54 that impose welding requirements. However, industry practice has been to refer to both welded and non-welded pressure vessels as being classed and this practice is adopted in proposed § 54.01-5 and the proposed revisions to Table 54.01-5(b). These provisions, as revised, include both welding and non-welding requirements for classed pressure vessels.

9. *Sections 54.10-3(c) and 54.10-25(c).* Section 54.10-3(c) proposes Coast Guard inspection procedures for pressure vessels described in § 54.01-5(c)(3), except pressure vessels on MODU's. The procedures for inspecting pressure vessels on mobile offshore drilling units are in § 58.60-13 of Part 58. As provided in proposed § 54.10-3(c), the inspection includes a visual examination of each completed pressure vessel prior to installation, and a review of the associated plans and manufacturer's data reports.

10. *Section 56.15-1(e).* Existing § 56.15-1(e)(1) requires certain nonstandard fluid conditioner fittings to meet Part 54, except the shop inspection requirements in Subpart 54.10. Proposed § 56.15-1(e)(1) would require these fittings to meet either the applicable requirements in proposed § 54.01-5 or the requirements in Part 54 (except shop inspection). This change would allow optional use of either ASME inspection and stamping or Coast Guard plan approval. Coast Guard plan approval is being retained as an option since many nonstandard fluid conditioner fittings are mass produced by manufacturers who do not hold an ASME Stamp and for whom the cost to obtain it would be prohibitive because of small sales volumes in the marine industry.

11. *Section 58.30-25(a).* Proposed § 58.30-25(a) would allow accumulators that do not contain dangerous substances to meet either the applicable requirements in Proposed § 54.01-5 or the remaining requirements in Part 54. The rationale for this proposal is the same as the rationale provided in paragraph 10 for nonstandard fluid conditioner fittings.

12. *Miscellaneous changes.* Several of the proposed changes are necessary to avoid redundancy and to provide a clearer presentation of existing requirements. For example, existing S/S/54.10-17 and 54.01-16 would be deleted since they are included in proposed S/54.01-5, and existing S/54.20-10 would be deleted since it is non-regulatory and has little useful meaning. The remaining provisions affected are: § 50.05-1(e); § 50.15-5(c); § 54.01-1; § 54.01-5(a) through (c)(2), -5(c)(4), -5(f) and -5(g); footnotes 6 and 7 to Table 54.01-5(b); § 54.10-3(b); § 54.10-20(a) and -20(c)(1); § 54.20-3(c); 54.20-10; § 56.15-1(f); § 61.10-5(b); § 61.10-5(e)(6); and § 61.10-5(h)(1).

Draft Evaluation

13. These proposed regulations are considered to be nonsignificant and, accordingly, a draft evaluation has been prepared and placed in the public docket as required by the Department of Transportation's Policies and Procedures for Simplification, Analysis, and Review of Regulations (DOT Order 2100.5). The DOT order requires that each draft evaluation include an economic analysis which quantifies, to the extent practicable, the estimated cost of the regulations to the private sector, consumers, and Federal, State and local governments as well as the anticipated benefits and impacts of the regulations.

14. As stated in the draft evaluation, this proposal would result in an approximate annual dollar savings of $0.5 million for manufacturers and $0.34 million for the Coast Guard. The expected benefit of this proposal, in addition to the $.84 million annual saving, would be the substantial amount of time saved by manufacturers in obtaining required inspections of pressure vessels. Also, Coast Guard inspectors would acquire more time in which to perform required inspections of other types of marine equipment that cannot effectively be inspected by independent parties.

In accordance with the foregoing, the Coast Guard proposes to amend the Marine Engineering Regulations in Subchapter F of Title 46, Code of Federal Regulations, as follows:

PART 50—GENERAL PROVISIONS

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

Authority: S/5, 49 Stat. 1384 (46 U.S.C. 369); R.S. 4405, as amended (46 U.S.C. 375); S/3, 70 Stat. 152, as amended (46 U.S.C. 390b); S/5, Pub. L. 95-474, 92 Stat. 1480 (46 U.S.C. 391a); S/1, Pub. L. 85-739, 72 Stat. 833, as amended

(46 U.S.C. 404); Pub. L. 93-370, 88 Stat. 423 (46 U.S.C. 4110; R.S. 4462, as amended (46 U.S.C. 416); S/1 Pub. L. 86-244, 73 Stat. 475 (46 U.S.C. 481); S/17, 54 Stat. 166 (46 U.S.C. 526p); S/4, 67 Stat. 462 (43 U.S.C. 1333(d)); S/3, 68 Stat. 675 (50 U.S.C. 198); S/6, 80 Stat. 938 (49 U.S.C. 1655(b)); E.O. 12234, 45 FR 58801; 46 CFR 1.46.

§ 50.05-1 [Amended]

2. In § 50.05-1(e) remove the words "§ 54.01-16 and".

3. Revise § 50.15-5(c) to read as follows:

§ 50.15-5 ASME Boiler and Pressure Vessel Code.

* * * * *

(c) Except as required in S/54.01-5 of this chapter, manufacturers constructing boilers, pressure vessels, and safety valves for installation on vessels subject to the regulations in this subchapter need not hold the applicable ASME Code symbol stamps.

* * * * *

PART 54—PRESSURE VESSELS

4. The authority citation for Part 54 is revised to be the same as the authority stated above for Part 50.

§ 54.01-1 [Amended]

5. In § 54.01-1, remove the last sentence of paragraph (a) and delete paragraph (a)(1).

6. Revise § 54.01-5 to read as follows:

§ 54.01-5 Scope (modifies U-1 and U-2).

(a) This part contains requirements for pressure vessels. Table 54.01-5(a) gives a breakdown by parts in this subchapter of the regulations governing various types of pressure vessels, boilers, and thermal units.

(b) Pressure vessels are divided into Classes I, I-L (low temperature), II, II-L (low temperature), and III. Table 54.01-5(b) describes these classes and sets out additional requirements for welded pressure vessels.

(c) The requirements for pressure vessels by class are as follows:

(1) Class I-L and II-L pressure vessels must meet the applicable requirements in this part.

(2) Pressure vessels containing dangerous substances must meet either the applicable requirements in this part or in Part 146 of this chapter.

(3) Except as provided in paragraph (c)(4) of this section, Class I, II, and III pressure vessels not containing dangerous substances must be designed and constructed in accordance with the requirements in Section VIII, division 1, of the ASME Code and must be stamped with the ASME "U" symbol. These pressure vessels must also comply with the requirements that are listed or prescribed in paragraphs (d) through (g) of this section. Compliance with other provisions in this part is not required.

(4) Class II and III pressure vessels that have a net internal volume of less than 0.14 cubic meters (5 cubic feet) and do not contain dangerous substances must be stamped with either the ASME "U" or "UM" symbol. Compliance with other provisions in this part is not required.

(d) Pressure vessels described in paragraph (c)(3) of this section must—

(1) Have detailed plans that include the information required by § 54.01-18;

(2) Meet § 54.01-35 and § 54.25-3;

(3) Have pressure relief devices required by subpart 54.15;

(4) Meet the applicable requirements in §§ 54.10-3, 54.10-20, and 54.10-25 for inspection, reports, and stamping;

(5) If welded, meet the post weld heat treatment and minimum joint and radiography requirements in Table 54.01-5(b);

(6) If a heat exchanger, meet § 54.01-2; and

(7) If a steam generating pressure vessel, meet § 54.01-10.

(e) The plans required by paragraph (d)(1) of this section must be certified by a registered professional engineer to meet the design requirements in paragraph (d) of this section and in section VIII, division 1, of the ASME Code. The certification must appear on all drawings and analyses. The plans must be made available to the Coast Guard prior to the inspection required by § 54.10-3(c).

(f) If a pressure vessel has more than one independent chamber and the chambers have different classifications, each chamber must, as a minimum, meet the requirements for its classification. If a single classification for the entire pressure vessel is preferred, the classification selected must be one that is required to meet all of the regulations applicable to the classification that is not selected. For example, if one chamber is Class I and one chamber is Class II-L, the only single classification that can be selected is Class I-L.

(g) The design pressure for each interface between two chambers in a multichambered pressure vessel must be—

(1) The maximum allowable working pressure (gage) in the chamber with the higher pressure; or

(2) If one chamber is a vacuum chamber, the maximum allowable working pressure (absolute) in the other chamber minus the least operating pressure (absolute) in the vacuum chamber.

7. Revise the heading of Table 54.01-5(b) to read as follows:

Table 54.01-5(b)—Pressure Vessel Classification

(Special heat exchanger requirements excluded, see S/54.01-2)

8. In Table 54.01-5(b) add a reference to footnotes 6 and 7 after the phrase "Minimum joint requirements[1]". As revised, the phrase would read "Minimum joint requirements[1,6,7]".

9. In Table 54.01-5(b) add a reference to footnote 7 after the phrases "Minimum radiography requirements, section VIII, ASME Code" and "Post Weld heat treatment required[5]". As revised, the phrases would read "Minimum radiography requirements, Section VIII, ASME Code[7]" and "Post weld heat treatment required[5,7]".

10. In Table 54.01-5(b) add a reference to footnote 4 after the word "yes" the first time it appears under the column entitled "Shop Inspection Required", and the first time it appears under the column entitled "Plan approval Required", to denote that certain Class I pressure vessels are exempt from plan approval and shop inspection.

11. Add new footnotes 6 and 7 to Table 54.01-5(b) to read as follows:

A butt-welded joint with one plate edge offset (see Figure UW-13.1(k) and table UW-12 of the ASME Code) may only be used in the fabrication of Class II and III pressure vessels.

These requirements apply only to welded pressure vessels.

12. Revise the heading and paragraph (a)(4) in § 54.01-15 to read as follows:

§ 54.01-15 Exemptions from shop inspection and plan approval (replaces U-1(c)(6) through (9)).

(a) * * *

(4) Class I, II, and III pressure vessels that meet the requirements of § 54.01-5(c)(3), and -5(c)(4).

* * * * *

§ 54.01-16 [Removed]

13. Remove § 54.01-16.

§ 54.10-3 [Amended]

14. Remove the second sentence in § 54.10-3(b).

15. Add a new § 54.10-3(c) to read as follows:

§ 54.10-3 Marine inspectors (replaces UG-90 and UG-91, and modifies UG-92 through UG-103).

* * * * *

(c) Pressure vessels described in § 54.01-5(c)(3), except pressure vessels in systems regulated under § 58.60 of this chapter, must be visually examined by a marine inspector prior to installation. The marine inspector also reviews the associated plans and manufacturers' data reports. If, upon

inspection, the pressure vessel complies with the applicable requirements in § 54.01–5, the marine inspector stamps the pressure vessel with the Coast Guard Symbol.

§ 54.10–17 [Removed]

16. Remove § 54.10–17.

17. Revise § 54.10–20(a) to read as follows:

§ 54.10–20 Marking and stamping.

(a) *Pressure vessels (replaces UG–116, except paragraph (k), and UG–118).* Pressure vessels that are required by § 54.10–3 to be stamped with the Coast Guard Symbol must also be stamped with the following information:

* * * * *

(4) Maximum allowable working pressure ———kPa (———psig) at ———C (———F).

(7) Water capacity in liters (U.S. gallons), if a cargo carrying pressure vessel.

* * * * *

§ 54.10–20 [Amended]

18. In § 54.10–20(c)(1), insert the words "Coast Guard shop" after the word "requiring".

19. Add a new § 54.10–25(c) to read as follows:

§ 54.10–25 Manufacturers' data report forms (modifies UG–120).

* * * * *

(c) If a pressure vessel is required to be inspected in accordance with § 54.10–3(c), the manufacturer's data reports required by UG–120 must be made available to the Coast Guard inspector for review to inspection of the pressure vessel.

§ 54.20–3 [Amended]

20. Remove and reserve § 54.20–3(c).

§ 54.20–10 [Removed]

21. Remove § 54.20–10.

PART 56—PIPING SYSTEMS AND APPURTENANCES

22. The authority for Part 56 is revised to be the same as the authority stated above for Part 50.

23. In § 56.15–1, revise paragraphs (e) and (f) as follows:

§ 56.15–1 Fittings.

* * * * *

(e) The following requirements apply to nonstandard fluid conditioner fittings which do not contain dangerous substances:

(1) The nonstandard fluid conditioner fittings listed below must meet the applicable requirements in § 54.01–5(c)(3), –5(c)(4), and –5(d) of this chapter or the remaining provisions in Part 54, except that Coast Guard shop inspection is not required:

(i) Nonstandard fluid conditioner fittings that have a net internal volume greater than 0.04 cubic meters (1.5 cubic feet) and that are rated for temperatures or pressures exceeding those specified as minimums for Class I piping systems.

(ii) Nonstandard fluid conditioner fittings that have an internal diameter exceeding 15 centimeters (6 inches) and that are rated for temperatures or pressures exceeding those specified as minimums for Class I piping systems.

* * * * *

(f) Nonstandard fluid conditioner fittings rated above 103 kPa (15 psig), that contain dangerous substances regulated under Part 146 of this chapter must meet the applicable requirements of Part 54 of this chapter, except Subpart 54.10.

PART 58—MAIN AND AUXILIARY MACHINERY AND RELATED SYSTEMS

24. The authority for Part 58 is revised to be the same as the authority stated above for Part 50.

25. Revise the second sentence in § 58.30–25(a) to read as follows:

§ 58.30–25 Accumulator

(a) * * * Accumulators must meet the applicable requirements in § 54.01–5(c)(3), –5(c)(4), and –5(d) of this chapter or the remaining requirements in Part 54.

* * * * *

§ 58.60–3 [Amended]

26. In § 58.60–3, remove the citation "§ 54.01–16" and insert in its place the words "the applicable requirements in § 54.01–5 of this chapter".

PART 61—PERIODIC TESTS AND INSPECTIONS

27. The authority for Part 61 is revised to be the same as the authority stated above for Part 50.

§ 61.10–5 [Amended]

28. In the first sentence of § 61.10–5(b), remove the words "Pressure vessels that required initial shop inspection and pressure vessels that are accepted under § 54.01–16" and insert in their place the words "Pressure vessels that are stamped with the Coast Guard symbol and pressure vessels in systems regulated under Subpart 58.60 of this subchapter".

29. Revise § 61.10–5(e)(6) to read as follows:

§ 61.10–5 Periodic inspection

* * * * *

(e) * * *

(6) Pressure vessels not stamped with the Coast Guard Symbol.

* * * * *

§ 61.10–5 [Amended]

30. In the first sentence of § 61.10–5(h)(1), remove the words "have been pneumatically tested during shop inspection" and insert in their place the words "that were pneumatically tested before being stamped with the Coast Guard Symbol".

Dated: December 22, 1980.

Henry H. Bell,

Rear Admiral, U.S. Coast Guard, Chief, Office of Merchant Marine Safety.

[FR Doc. 80-40401 Filed 12-24-80; 8:45 am]

BILLING CODE 4910-14-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Ch. I

[CC Docket No. 80–632]

Overseas Communications Services; Correction

AGENCY: Federal Communication Commission.

ACTION: Correction in Notice of Proposed Rulemaking.

SUMMARY: This document corrects a proposed rule on Overseas Communications Services published on November 19, 1980 (45 FR 76498). Possibly misleading and nonessential language in paragraph 13 is deleted. Footnote 11 is modified.

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

FOR FURTHER INFORMATION CONTACT: Stuart Chiron, Common Carrier Bureau, 202–632–7265.

In the matter of Overseas Communications Services, CC Docket No. 80–632.

Released: December 9, 1980.

1. It has come to the staff's attention that language in paragraph thirteen in the subject Notice of Proposed Rulemaking may be misleading. We will therefore delete this nonessential language and change footnote 11. Footnotes 12 and 13 are unchanged.

Federal Communications Commission.

Philip L. Verveer,

Chief, Common Carrier Bureau.

The following corrections are made in FR Doc. 80–36092 appearing on page 76498 in the issue of November 19, 1980:

1. On page 76501, column one, paragraph 13 is corrected to read:

1964 to 1980

"13. Since 1964, the Commission has consistently protected the IRCs from competition by AT&T in the international record market. Moreover, the Commission has authorized the IRCs to provide enhanced Datel service in direct competition with AT&T's existing Dataphone service in the U.S. Mainland-Hawaii record market.[11] The Commission's *TAT-4* bar has not been absolute. Waivers have been issued under special circumstances such as NASA programs.[12] The major case between 1964 and 1980 concerning international record carriage is our 1980 *Dataphone* decision.[13] While this recent decision expressly did not modify the *TAT-4* decision, it indicated that the present international voice/record dichotomy is based on policy, not law. In authorizing AT&T to employ its overseas MTS network for the transmission of facsimile, data and other record communications on a secondary basis, the Commission emphasized that such use was an efficient utilization of facilities, satisfied an unmet need, and gave added flexibility to AT&T's customers. We stated that additional competition in the international record market would stimulate the IRCs to innovate and provide services more efficiently at cost-based rates in order to compete effectively. We also found that the introduction of overseas dataphone service would not undermine the IRCs."

2. On page 76501, footnote 11 is corrected to read:

[11] ITT World Communications Inc., 2 F.C.C. 2d 573 (1966).

[FR Doc. 80-39794 Filed 12-24-80; 8:45 am]
BILLING CODE 6712-01-M

Notices

Federal Register
Vol. 45, No. 250
Monday, December 29, 1980

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Oregon Subcommittee of the Pacific Crest National Scenic Trail Advisory Council; Meeting

The Oregon Subcommittee of the Pacific Crest National Scenic Trail Advisory Council will meet at 10:00 a.m. Wednesday, February 18, 1981. The meeting location will be room 690, Multnomah Building, 319 S.W. Pine Street, Portland, Oregon.

The purpose of the meeting is to review alternatives, issues and concerns from which to develop the Pacific Crest National Scenic Trail Comprehensive Plan for acquisition, management, development, and use of the trail.

The meeting will be open to the public. Persons who wish additional information should contact Roger Long, in care of Regional Forester, Pacific Northwest Region, Forest Service, P.O. Box 3623, Portland, Oregon 97208. Phone (503) 221-3611.

Dated: December 16, 1980.

Zane G. Smith, Jr.,

Regional Forester, Pacific Southwest Region.

[FR Doc. 80-40327 Filed 12-24-80; 8:45 am]

BILLING CODE 3410-11-M

Soil Conservation Service

Bullskin Township Parks Critical Area Treatment RC&D Measure, Pennsylvainia

AGENCY: Soil Conservation Service, U.S. Department of Agriculture.

ACTION: Notice of a Finding of No Significant Impact.

FOR FURTHER INFORMATION CONTACT: Mr. Graham T. Munkittrick, State Conservationist, Soil Conservation Service, Federal Building, 228 Walnut Street, Harrisburg, Pennsylvania 17108, telephone 717-782-2202.

NOTICE: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Bullskin Township Parks Critical Area Treatment RC&D Measure, Fayette County, Pennsylvania.

The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. Graham T. Munkittrick, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The measure concerns a plan for critical area treatment. The planned works of improvement include conservation practices such as waterways, rock riprap, subsurface drains, a catch basin, a surface inlet, and seeding. Estimated construction cost is $31,300.

The Notice of a Finding of No Significant Impact (FNSI) has been forwarded to the Environmental Protection Agency. The basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. Graham T. Munkittrick. The FNSI has been sent to various Federal, State, and local agencies and interested parties. A limited number of copies of the FNSI are available to fill single copy requests at the above address.

Implementation of the proposal will not be initiated until 30 days after the date of this publication in the Federal Register.

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program. Office of Management and Budget Circular No. A-95 regarding State and local Clearinghouse review of Federal and federally assisted programs and projects is applicable)

Dated: December 8, 1980.

Joseph W. Haas,

Deputy Chief for Natural Resource Projects.

[FR Doc. 80-40221 Filed 12-24-80; 8:45 am]

BILLING CODE 3410-16-M

DEPARTMENT OF COMMERCE

International Trade Administration

Purdue University; Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR Part 301).

A copy of the record pertaining to this decision is available for public review between 8:30 A.M., and 5:00 P.M. in Room 3109 of the Department of Commerce Building, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Docket Number 80-00314. Applicant: Purdue University, FREH Hall, W. Lafayette, IN 47907. Article: Superconducting 4.6T Wide Bore Solenold. Manufacture: Oxford Instruments, Ltd., United Kingdom. Intended use of article: The article is intended to be used to carry out a wide scope of health related projects, e.g., isolation and structure elucidation of novel antineoplastic agents from higher plants, structure and mobility of plastoquinone in membranes, structure elucidation of microbial natural products, the role of chlorophyll in photosynthesis, etc. Specific problems under investigation include:

(1) The active sites of serine proteinases;

(2) The mechanism of interactions between proteinase inhibitors and proteinases;

(3) The structures of glycoproteins;

(4) The mechanism of folding *staphylococoal and nuclease*; and

(5) The mechanism of electron transport in photosynthesis.

The article will also be used for educational purposes in the course Chemistry #696B which is designed as an introduction to the theory of NMR spectroscopy and its applications to biochemical problems.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended

to be used, is being manufactured in the United States.

Reasons: The application relates to a compatible accessory for an instrument that had been previously imported for the use of the applicant institution. The article is being furnished by the manufacturer which produced the instrument with which the article is intended to be used and is pertinent to the applicant's purposes.

The Department of Commerce knows of no similar accessory being manufactured in the United States, which is interchangeable with or can be readily adapted to the instrument with which the foreign article is intended to be used.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 80-40242 Filed 12-24-80; 8:45 am]

BILLING CODE 3510-25-M

Racing Plates (Aluminum Horseshoes) From Canada; Final Results of Administrative Review of Antidumping Finding

AGENCY: U.S. Department of Commerce, International Trade Administration.

ACTION: Notice of final results of administrative review of antidumping finding.

SUMMARY: On August 15, 1980, the Department of Commerce published the preliminary results of its administrative review of the antidumping finding on racing plates (aluminum horseshoes) from Canada. The scope of the review was limited to the only known exporter—the Canadian Racing Plate Co. Limited—and to three separate time periods.

Interested parties were given an opportunity to submit written comments on this preliminary determination. Based on comments received from the exporter, the Department made adjustments which resulted in new weighted-average margins.

FOR FURTHER INFORMATION CONTACT: Linda L. Pasden, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230 (202-377-4106).

SUPPLEMENTARY INFORMATION:

Background

On February 27, 1974, a dumping finding with respect to racing plates (aluminum horseshoes) from Canada was published in the Federal Register as Treasury Decision 74-77 (39 FR 54388). The Department has now completed its administrative review of that antidumping finding.

Scope of the Review

The imports covered by this review are described in the notice of preliminary results.

The Department knows of only one Canadian exporter of racing plates to the United States. That firm is the Canadian Racing Plate Co. Limited.

The review covered all time periods for which information is available, that is, all periods up to January 31, 1980, during which shipments by the Canadian Racing Plate Co. Limited may have been and for which appraisement instructions ("master lists") have not been issued.

The Department received written comments and supporting documentation only from the exporter, made adjustments to the United States price in light of those comments, and recalculated the margins. The adjustments to the United States price consisted of the addition of a duty drawback paid by the Canadian Government to the Canadian Racing Plate Co. Limited for the aluminum imported from the United States and the recalculation of the United States price to reflect that sales were transacted in U.S. dollars rather than Canadian dollars.

Results of the Review

As a result of our comparison of the adjusted United States price to foreign market value, we determine that the following weighted-average margins exist:

	Percent margin
October 1, 1976—September 30, 1977	11.65
December 1, 1978—November 30, 1979	31.94
December 1, 1979—January 31, 1980	*31.94

*No shipments during current period.

The Department shall determine, and the U.S. Customs Service shall assess duties on all entries made during the time periods involved. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions separately on each exporter directly to the Customs Service.

Further, as required by section 353.48(b) of the Commerce Regulations, a cash deposit based upon the most recent of the margins calculated above, that is, 31.94 percent of the entered value, shall be required on all shipments entered, or withdrawn from warehouse, for consumption on or after the date of publication of these final results. This latter requirement shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and section 353.53 of the Commerce Regulations (19 CFR 353.53, 45 FR 8205).

John D. Greenwald,

Deputy Assistant Secretary, Import Administration.

December 16, 1980.

[FR Doc. 80-40240 Filed 12-24-80; 8:45 am]

BILLING CODE 3510-25-M

Smithsonian Institution; Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR Part 301).

A copy of the record pertaining to this decision is available for public review between 8:30 a.m. and 5 p.m. in Room 3109 of the Department of Commerce Building, 14th Street and Constitution Avenue NW., Washington, D.C. 20230.

Docket Number 80-00257. Applicant: Smithsonian Institution, 1000 Jefferson Drive SW., Washington, D.C. 20560. Article: Model M5A Dissecting Microscope with Camera Lucida Drawing Attachment. Manufacturer: Wild Heerbrugg Instrument Co., Switzerland. Intended use of article: The article is intended to be used in a teaching laboratory for use by those of the public with an avocation in the sciences (individuals and classes) who would otherwise have no outlet for their interests. Most classes would be non-credit and would cover plant and animal identification and more technical studies related to ecology and the natural sciences. It is also anticipated that special advanced courses for credit would be offered to gifted high school students.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States.

Reasons: The foreign article provides a camera lucida which is an integral part of the apparatus. The Department of Health and Human Services advises

in its memorandum dated August 21, 1980 that (1) the capability of the foreign article described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign article for the applicant's intended use.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 80-40243 Filed 12-24-80; 8:45 am]

BILLING CODE 3510-25-M

Viscose Rayon Staple Fiber From Finland; Preliminary Results of Administrative Review of Antidumping Finding

AGENCY: U.S. Department of Commerce, International Trade Administration.

ACTION: Notice of preliminary results of administrative review of antidumping finding.

SUMMARY: This notice is to advise the public that the Department of Commerce has conducted an administrative review of the antidumping finding on viscose rayon staple fiber from Finland. The review covers the only known exporter to the United States, Kemira Oy Sateri, and covers two separate time periods, November 16, 1978, through December 31, 1978, and January 1, 1979, through February 29, 1980. The review indicates the existence of dumping margins on shipments during both time periods. As a result of the review, the Department has preliminarily determined to assess dumping duties equal to the calculated differences between foreign market value and United States price on shipments entered during these periods. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: December 29, 1980.

FOR FURTHER INFORMATION CONTACT: J. Linnea Bucher, or Michael Galbraith, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230 (202-377-2704).

SUPPLEMENTARY INFORMATION:

Procedural Background

On March 21, 1979, a dumping finding with respect to viscose rayon staple fiber from Finland was published in the Federal Register as Treasury Decision 79-87 (44 Federal Register 17156). On January 1, 1980, the provisions of Title I of the Trade Agreements Act of 1979 became effective. On January 2, 1980, the authority for administering the antidumping duty law was transferred from the Treasury Department to the Department of Commerce ("the Department"). The Department published in the Federal Register of March 28, 1980 (45 Fed Reg 20511-12) a notice of intent to conduct administrative reviews of all outstanding dumping findings. As required by section 751 of the Tariff Act of 1930 ("the Act"), the Department has conducted an administrative review of the finding on viscose rayon staple fiber from Finland.

Scope of the Review

This review covers imports of viscose rayon staple fiber (except solution dyed) in noncontinuous form, not carded, not combed, and not otherwise processed, wholly of filaments (except laminated filaments and plexiform filaments). These are currently classifiable under items 309.4320 and 309.4325 of the Tariff Schedules of the United States Annotated (TSUSA). The only known Finnish exporter to the United States is Kemira Oy Sateri.

The review covers the two time periods since suspension of liquidation for which information is available, that is, up to February 29, 1980, during which shipments by Kemira Oy Sateri were made and for which appraisement instructions ("master lists") have not been issued. These two time periods are: November 16, 1978, through December 31, 1978; January 1, 1979, through February 29, 1980.

United States Price

In calculating United States price, the Department has used purchase price as defined in section 772(b) of the Act and section 203 of the Antidumping Act of 1921, as amended (Antidumping Act) for periods prior to January 1, 1980, since all sales by Kemira Oy Sateri were made to unrelated purchasers. Purchase prices here are ex-factory and are derived from the C.I.F. duty paid price with deductions for U.S. and Finnish inland freight, ocean freight, insurance, U.S. duty and sales commissions, where applicable. No other adjustments were claimed or allowed.

Foreign Market Value

In calculating foreign market value, the Department has used home market price as defined in section 773(a) of the Act and section 205 of the Antidumping Act, since Kemira Oy Sateri sold such or similar merchandise in Finland in sufficient quantities to provide an adequate basis for comparison.

The firm sold 11% of its total production in Finland during the periods reviewed. The home market prices here are based on the F.O.B. net price less deductions for cash discounts and for selling expenses in the home market limited by the amount of the actual commissions paid on sales to the United States in accordance with § 353.15(c) of the Commerce Regulations.

An adjustment has also been made to reflect differences in moisture content. No other adjustments were claimed or allowed.

Preliminary Results of Review

As a result of our comparison of the United States price to foreign market value for all shipments reported by the exporter, we preliminarily determine that the following margins exist:

	Present margins
November 16, 1978, through December 31, 1978	8.7
January 1, 1979, through February 29, 1980	4.0

The Department shall determine, and the U.S. Customs Service shall assess, duties on all entries made during the time periods involved. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs Service.

Further, as required by § 353.48(b) of the Commerce Regulations, a cash deposit based on the most recent weighted average margin calculated, that is, 4.0 percent of the entered value, shall be required for all shipments from Kemira Oy Sateri entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results. This cash deposit requirement shall remain in effect until publication of the final results of the next administrative review.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 15 days of the date of publication. The Department will publish the final results of the administrative review including the results of its analysis of any such comments or hearing.

This administrative review and notice are in accordance with section 751(a)(1)

of the Act (19 U.S.C. 1675(a)(1)) and § 353.53 of the Commerce Regulations (19 CFR 353.53).

Dated: December 18, 1980.

John D. Greenwald,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 80-40241 Filed 12-24-80; 8:45 am]

BILLING CODE 3510-25-M

National Oceanic and Atmospheric Administration

Opportunity for Financial Assistance for Marine Pollution Research

AGENCY: National Oceanic and Atmospheric Administration.

ACTION: Notice.

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA) through its Office of Marine Pollution Assessment, announces programs of financial grants assistance for: (1) research related to effects of pollution and human-induced changes of marine ecosystems (including ecosystems of the Great Lakes) under Sections 201 and 202 of Public Law 95-532 (Marine Protection Research and Sanctuaries Act 1972), and (2) research and development and monitoring projects needed to meet priorities set forth by Section 6 of Public Law 95-273 (National Ocean Pollution Research and Development Monitoring Planning Act of 1978).

ADDRESSES: Interested persons may request information on proposal preparation and evaluation and FY-81 priorities and funding levels from: Long-Range Effects Research Program, Office of Marine Pollution Assessment (RD/MP2), National Oceanic and Atmospheric Administration, 325 Broadway, Boulder, CO 80303.

FOR FURTHER INFORMATION CONTACT: R. C. Farentinos, 303-497-6486.

SUPPLEMENTARY INFORMATION: Some of the general areas of research for which grants proposals may be requested include the following: processes by which contaminants such as synthetic organics, petroleum products, inorganic or organic wastes interact with marine systems and affect living resources; role of resuspended particulates in marine ecosystems; coastal land-use practices; municipal sewage disposal; development of risk analysis methods; ecosystem processes and living marine resources. Although efforts supported will have an applied orientation and may include work related to specific waste disposal operations, research of a more basic nature may also be addressed, especially in regard to ecosystem function and stability.

Eligible applicants: individuals, corporations, educational institutions and others, including local, State and Federal agencies are eligible to submit proposals.

Dated: December 18, 1980.

Francis J. Balint,

Acting Director, Office of Management and Computer Systems.

[FR Doc. 80-40335 Filed 12-24-80; 8:45 am]

BILLING CODE 3510-12-M

[Department Organization Order 35-1A; Transmittal 533]

Department Organization Order; Bureau of Economic Analysis

Office of the Secretary

Effective Date: November 18, 1980.

This order effective November 18, 1980 supersedes the material appearing at 40 FR 42766 of September 16, 1975, 41 FR 8520 of February 27, 1976, 42 FR 23676 of May 10, 1977, 43 FR 43534 of September 26, 1978, and 45 FR 69534 of October 21, 1980.

Section 1. Purpose

.01 This Order delegates authority to the Director of the Bureau of Economic Analysis and prescribes the functions of the Bureau of Economic Analysis.

.02 This revision incorporates outstanding amendments to the Order, deletes the authority for functions under the Foreign Investment Study Act of 1974, which has expired, and makes the following additional changes:

a. Functions under the International Investment Survey Act of 1976 are incorporated (paragraph 4.a.).

b. Functions concerning the maintenance and improvement of measures relating to environmental change and to welfare are incorporated (paragraph 4.b.).

c. Functions related to foreign demographic and economic studies are deleted. These functions are now handled by the Bureau of the Census.

Section 2. Status and Line of Authority

01 The Bureau of Economic Analysis is hereby continued as a primary operating unit of the Department of Commerce.

.02 The Bureau of Economic Analysis shall be headed by a Director who shall report and be responsible to the Chief Economist of the Department. The Director shall be assisted by a Deputy Director who shall perform the functions of the Director during the former's absence.

Section 3. Delegation of Authority

.01 Pursuant to the authority vested in the Secretary of Commerce by law, including Reorganization Plan No. 5 of 1950 and 15 U.S.C. 1516, and subject to such policies and directives as the Secretary may prescribe, the Director is hereby delegated authority to perform the following functions vested in the Secretary of Commerce under:

a. Section 1516 of Title 15, United States Code, which relates to gathering and distributing statistical information, as applicable to the functions assigned herein;

b. Chapter 5 of Title 15, United States Code, which relates to the authorities and functions of the former Bureau of Foreign and Domestic Commerce, as applicable to the functions assigned herein;

c. Executive Order 10033 of February 8, 1949, which relates to the provision of statistical information to inter-governmental organizations, as applicable to the functions assigned herein; and

d. Section 3 of Executive Order 11961 of January 19, 1977, as amended by E.O. 12013 of October 7, 1977, which delegates to the Secretary of Commerce the authority of the President under Section 4(a)(1), (2), (4), and 4(b), of the International Investment Survey Act of 1976 (Public Law 94-472, 90 Stat. 2059, 22 U.S.C. 3101-3108). The functions thereunder shall be carried out in coordination with the Under Secretary for International Trade (Department Organization Order 10-3), including, to the extent feasible, the division or assignment of responsibilities. All regulations established by the Bureau of Economic Analysis to carry out functions under the Act shall be issued by the Director of the Bureau in consultation with the Under Secretary for International Trade. All reports required to be undertaken pursuant to the Act shall be issued by the Secretary.

.02 The Director may exercise other authorities of the Secretary as applicable to performing the functions assigned in this Order.

.03 The Director may delegate the authority conferred by this Order to any employee of the Bureau subject to the conditions in the exercise of such authority that the Director may prescribe.

Section 4. Function

The Bureau of Economic Analysis shall perform the following functions:

a. Maintain and improve the economic accounts of the United States including the national income and product, wealth, input-output, balance of

payments, international investment, and regional accounts;

b. Maintain and improve economic measures of environmental change and national well-being within the framework of the economic accounts;

c. Maintain and improve econometric and other research techniques for analyzing the economic situation and short- and long-term outlook;

d. Conduct selected surveys to obtain information necessary to maintain and improve the accounts and to analyze the economic situation and outlook;

e. Develop and maintain a system of leading, lagging, and coincident business cycle indicators;

f. Analyze the economic situation and outlook, publish reports thereon, and brief Federal officials and public and private groups on the present and projected state of the economy;

g. Provide special analyses to officials of the Government, as may be requested, on the economic impact of alternative economic policies; and

h. Serve as the central economic research organization of the Department on the functioning of the economy, and collaborate with other elements of the Department and private and public research which require or can contribute to this research.

Elsa A. Porter,

Assistant Secretary for Administration.

[FR Doc. 80-40246 Filed 12-24-80; 8:45 am]

BILLING CODE 3510-17-M

Department Organization Order; National Oceanic and Atmospheric Administration

[Department Organization Order 25-5A; Amendment 1; Transmittal 531]

Effective Date: November 6, 1980.

This order effective November 6, 1980 amends the material appearing at 44 FR 49005 of August 21, 1979.

Department Organization Order 25-5A, dated July 12, 1979 is hereby amended as shown below. The purpose of this amendment is to delegate the authority of the Secretary to the Administrator, NOAA, under Title II of Public Law 96-199, Channel Islands National Park.

Section 3. Delegation of Authority

A new subparagraph .01mm. is added to read as follows:

"mm. The functions contained in Title II of Public Law 96-199, March 5, 1980, 94 Stat. 74."

David Farber,

Deputy Assistant Secretary for Operations.

[FR Doc. 80-40247 Filed 12-24-80; 8:45 am]

BILLING CODE 3510-17-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcing Import Levels For Certain Cotton, Wool and Man-Made Fiber Textile Products from Taiwan, Effective on January 1, 1981

December 19, 1980.

AGENCY: Committee for the Implementation of Textile Agreements.

ACTION: Establishing import levels for certain cotton, wool and man-made fiber textile products from Taiwan, effective on January 1, 1981.

SUMMARY: The Bilateral Textile Agreement of June 8, 1978, as amended, concerning cotton, wool and man-made fiber textile products from Taiwan establishes specific ceilings for cotton, wool and man-made fiber textile products in Categories 331, 333/334/335, 338/339, 340, 341, 347/348, 445/446, 633/634/635, 638, 639, 640, 641, 645/646, 648, and 659 pt., produced or manufactured in Taiwan and exported during the agreement year which begins on January 1, 1981 and extends through December 31, 1981. The United States Government will also control down and feather-filled jackets, coats and vests in T.S.U.S.A. numbers 748.4042, 748.4044, 748.4054 and 748.4062 during the year which begins on January 1, 1981. In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs, in accordance with the bilateral agreement, to prohibit entry into the United States for consumption, or withdrawal from warehouse for consumption, of textile products in the foregoing categories and T.S.U.S.A. numbers, produced or manufactured in Taiwan and exported during the twelve-month period which begins on January 1, 1981 and extends through December 31, 1981, in excess of the designated levels. In accordance with consultations held during the week of December 1, 1980, it has been agreed to establish five-month interim levels for man-made fiber textile products in Category 645/646 and down and feather-filled apparel during the period beginning on January 1, 1981 and extending through May 31, 1981. (A detailed description of the textile categories in terms of T.S.U.S.A. numbers was published in the Federal Register on February 28, 1980 (45 FR 13172), as amended on April 23, 1980 (45 FR 27463), and August 12, 1980 (45 FR 53506)).

This letter and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

EFFECTIVE DATE: January 1, 1981.

FOR FURTHER INFORMATION CONTACT: Ronald Sorini, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, Washington, D.C. 20230 (202/377-5423).

Paul T. O'Day,

Chairman, Committee for the Implementation of Textile Agreements.

United States Department of Commerce, International Trade Administration, Washington, D.C. 20230

December 19, 1980.

Committee for the Implementation of Textile Agreements

Commissioner of Customs, Department of the Treasury,

Washington, D.C.

Dear Mr. Commissioner: Under the terms of the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977; pursuant to the Bilateral Textile Agreement of June 8, 1978, as amended, concerning cotton, wool and man-made fiber textile products from Taiwan; and in accordance with the provisions of Executive Order 11951 of January 6, 1977, you are directed to prohibit, effective on January 1, 1981 and for the twelve month period extending through December 31, 1981, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in Taiwan, in excess of the indicated levels of restraint:

Category	12-mo. level of restraint
331	469,311 doz. pairs
333/334/335	106,651 doz. of which not more than 55,855 doz. shall be in Cat. 333/334 and not more than 66,796 doz. shall be in Cat. 335.
338/339	519,849 doz.
340	633,150 doz.
341	359,692 doz.
347/348	832,414 doz. of which not more than 433,332 doz. shall be in Cat. 347 and not more than 669,635 doz. shall be in Cat. 348.
445/446	125,033 doz.
633/634/635	1,432,933 doz. of which not more than 845,079 doz. shall be in Cat. 633/634 and not more than 702,857 doz. shall be in Cat. 635
638	1,610,499 doz.
639	5,033,179 doz.
640	3,190,085 doz.
641	636,741 doz.
648	3,058,934 doz.

Category	12-mo. level of restraint
659 pt.[1]	3,061,810 lb.

In Category 659, only T.S.U.S.A. numbers 703.0500 and 703.1000.

You are further directed, effective on January 1, 1981 and for the five-month period extending through May 31, 1981, to prohibit entry into the United States for consumption and withdrawal from warehouse for consumption of feather-filled jackets, coats and vests in T.S.U.S.A. numbers 748.4042, 748.4044, 748.4054 and 748.4062, in excess of a five-month interim level of restraint of 100,457 dozen. The five-month interim level for Category 645/646 will be 1,973,511 dozen.

In carrying out this directive entries of textile products in the foregoing categories, which have been exported to the United States on and after January 1, 1980 and extending through December 31, 1980, shall to the extent of any unfilled balances, be charged against the levels of restraint established for such goods during the twelve-month period beginning on January 1, 1980 and extending through December 31, 1980. In the event that the levels of restraint established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this letter.

The levels of restraint set forth above are subject to adjustment in the future pursuant to the provisions of the bilateral agreement of June 8, 1978, as amended, which provide in part, that: (1) within the aggregate and applicable group limits, specific levels of restraint may be exceeded by designated percentages; (2) these same levels may be increased for carryover and carryforward up to 11 percent of the applicable category limit; (3) adminstrative arrangements or adjustments may be made to resolve problems arising in the implementation of the agreement. Any appropriate adjustments under the provisions of the bilateral agreement referred to above will be made to you by letter.

A detailed description of the textile categories in terms of T.S.U.S.A. numbers was published in the Federal Register on February 28, 1980 (45 F.R. 13172), as amended on April 23, 1980 (45 F.R. 27463), and August 12, 1980 (45 F.R. 53506).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The actions taken with respect to the aut. orities in Taiwan and with respect to imports of cotton, wool, and man-made fiber textile products from Taiwan have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the Federal Register.

Sincerely,

Paul T. O'Day,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 80-40244 Filed 12-23-80; 8:45 am]

BILLING CODE 3510-25-M

Announcing Import Levels for Certain Cotton, Wool and Man-Made Fiber Textile Products From the Republic of the Philippines, Effective on January 1, 1981

December 19, 1980.

AGENCY: Committee for the Implementation of Textile Agreement.

ACTION: Establishing import levels for certain cotton, wool and man-made fiber textile products imported from the Philippines, effective on January 1, 1981.

SUMMARY: The Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of August 22 and 24, 1978, as amended, between the Governments of the United States and the Republic of the Philippines establishes specific ceilings for cotton, wool, and man-made fiber textile products in Categories 331, 333/334, 335, 338/339, 340, 341 pt., 442, 445/446, 604, 631, 635 pt., 636 pt., 640, 641, 645/646 pt., and 649, among categories, during the agreement year which begins on January 1, 1981, and extends through December 31, 1981. In the letter published below, the Chairman, Committee for the Implementation of Textile Agreements, directs the Commissioner of Customs to prohibit entry into the United States for consumption, or withdrawal from warehouse for consumption, of textile products in the foregoing categories, produced or manufactured in the Philippines and exported during the twelve-month period which begins on January 1, 1981, in excess of the designated levels. As agreed between the two governments, the level for Category 645/646 has been reduced by 5,000 dozen to account for overshipments in the category in previous years. (A detailed description of the textile categories in terms of T.S.U.S.A. numbers was published in the Federal Register on February 28, 1980 (45 FR 13172), as amended on April 23, 1980 (45 FR 27463), and August 12, 1980 (45 FR 53506)).

This letter and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

EFFECTIVE DATE: January 1, 1981.

FOR FURTHER INFORMATION CONTACT:

Carl Ruths, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, Washington, D.C. 20230 (202/377-5423).

Paul T. O'Day,

Chairman, Committee for the Implementation of Textile Agreements.

United States Department of Commerce

International Trade Administration

December 19, 1980.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,

Department of the Treasury, Washington, D.C. 20229

Dear Mr. Commissioner: Under the terms of the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of August 22 and 24, 1978, as amended, between the Governments of the United States and the Republic of the Phillippines; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended by Executive Order 11951 of January 6, 1977, you are directed to prohibit, effective on January 1, 1981 and for the twelve-month period extending through December 31, 1981, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in Categories 331, 333/334, 335, 338/339, 340, 341pt., 442, 445/446, 604, 631, 635pt., 636pt., 640, 641, 645/646pt. and 649, produced or manufactured in the Philippines, in excess of the following levels of restraint:

Category	12-mo. level of restraint (dozen)
331	[9] 602,603
333/334	[10] 75,741
335 pt.[1]	33,539
335 pt.[2]	32,480
338/339	738,766
340	227,107
341 pt.[3]	83,110
442	6,517
445/446	17,595
604	[11] 2,094,110
631	[12] 1,557,306
635 pt.[4]	202,312
636 pt.[5]	41,457
640	95,845
641 pt.[6]	64,759
641 pt.[7]	168,244
645/646 pt.[8]	66,942
649	3,715,713

[1] In Category 335, only T.S.U.S.A. numbers 382.1202, 382.1204, 382.1206, 382.1217, and 382.1223.

[2] In Category 335, all T.S.U.S.A. numbers except those listed in footnote 1.

[3] In Category 341, all T.S.U.S.A. numbers except 382.0045, 382.3304, 382.3307 and 382.3311.

[4] In Category 635, all T.S.U.S.A. numbers in the Category except 382.7828.

[5] In Category 636, all T.S.U.S.A. numbers except 382.0414, 382.0467, 382.7833 and 382.8175.

[6] In Category 641, only T.S.U.S.A. numbers 382.0460 and 382.8139.

[7] In Category 641, all T.S.U.S.A. numbers except those listed in footnote 6.

[8] In Category 645/646, all T.S.U.S.A. numbers in the category except 382.0427 and 382.7670.

[9] Dozen pairs.

[10] Dozen of which not more than 29,504 dozen shall be in Cat. 333.

[11] Pounds.

[12] Dozen pairs.

In carrying out this directive entries of textile products in the foregoing categories, except Categories 333/334 and 338/339 which have been exported to the United States on and after January 1, 1980 and extending through December 31, 1980, shall, to the extent of any unfilled balances, be charged against the levels of retraint established for such goods during the twelve-month period beginning on January 1, 1980 and extending through December 31, 1980. In the event that the levels of restraint established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this letter. Textile products in Categories 333/334 and 338/339 exported prior to January 1, 1981, shall not be subject to this directive.

The levels of restraint set forth above are subject to adjustment according to the provisions of the bilateral agreement of August 22 and 24, 1978, as amended, between the Governments of the United States and the Republic of the Philippines which provide, in part, that: (1) three percent growth shall be applied to certain specified ceilings during the second and each successive agreement year; and (2) administrative arrangements or adjustments may be made to resolve problems arising in the implementation of the agreement. Any appropriate adjustments under the provisions of the bilateral agreement referred to above will be made to you by letter.

A detailed description of the textile categories in terms of T.S.U.S.A. numbers was published in the Federal Register on February 28, 1980 (45 FR 13172), as amended on April 23, 1980 (45 FR 27463), and August 12, 1980 (45 FR 53506).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The actions taken with respect to the Government of the Republic of the Philippines and with respect to imports of cotton, wool and man-made fiber textile products from the Philippines have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the Federal Register.

Sincerely,

Paul T. O'Day,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 80-40245 Filed 12-24-80; 8:45 am]

BILLING CODE 3510-25-M

DEPARTMENT OF DEFENSE

Department of the Air Force

USAF Scientific Advisory Board; Meeting

December 19, 1980.

The USAF Scientific Advisory Board Chief's Technical Advisory Group (CTAG) will convene on 13–14 January 1981 from 9:00 a.m. to 4:30 p.m. at the Pentagon, Washington, DC.

The Advisory Group will receive classified briefings and participate in classified discussions relating to Air Force Research and Development Programs. The meetings concern matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly the meetings will be closed to the public.

For further information contact the Scientific Advisory Board Secretariat at (202) 697–4648.

Carol M. Rose,

Air Force Federal Register, Liaison Officer.

[FR Doc. 80-40346 Filed 12-24-80; 8:45 am]

BILLING CODE 3910-01-M

USAF Scientific Advisory Board; Meeting

December 15, 1980.

The USAF Scientific Advisory Board Ad Hoc Committee on Project HEART will meet on January 16, 1981 at Pease AFB, New Hampshire. The purpose of the meeting will be to receive an update of the Air Force's Project HEART program. The meeting will convene at 8:30 a.m. and adjourn at 5:30 p.m.

The meeting will be open to the public. For further information contact the Scientific Advisory Board Secretariat at (202) 697–8404.

Carol M. Rose,

Air Force Federal Register Liaison Officer.

[FR Doc. 80-40209 Filed 12-24-80; 8:45 am]

BILLING CODE 3910-01-M

Department of the Army

Command and General Staff College Advisory Committee; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463) announcement is made of the following committee meeting:

Name: Command and General Staff College (CGSC) Advisory Committee
Date: 14–16 January 1981
Place: College Conference Room, Bell Hall, Ft. Leavenworth, KS 66027
Time: 2000–2200, 14 January 1981; 0900–1630, 15 January 1981; 0900–1400, 16 January 1981.
Proposed Agenda: 2000–2200, 14 January 1981: Review of CGSC educational program. 0900–1630, 15 January 1981: Continuation of review. 0900–1000, 16 January 1981: Continuation of review. 1000–1130, 16 January 1981: Executive session. 1300–1430, 16 January 1981: Report to Commandant.

The purpose of the meeting is for the Advisory Committee to examine the entire range of College operations and, where appropriate, to provide advice and recommendations to the College Commandant and Faculty.

The meeting will be open to the public to the extent that space limitations of the meeting space permit. Because of these limitations, interested parties are requested to reserve space by contacting the Committee's Executive Secretary.

Philip J. Brookes,

Executive Secretary, CGSC Advisory Committee.

[FR Doc. 80-40323 Filed 12-24-80; 8:45 am]

BILLING CODE 3710-08-M

Office of the Secretary

Defense Science Board Task Force on Anti-Tactical Missiles; Advisory Committee Meeting

The Defense Science Board Task Force on Anti-Tactical Missiles (ATM) will meet in closed session on 27–28 January 1981 in Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Research and Engineering on scientific and technical matters as they affect the perceived needs of the Department of Defense.

At its meeting on 27–28 January 1981 the Defense Science Board Task Force on ATM will review the potential enemy development of new ballistic and cruise missiles and propose and evaluate options for countering such threats.

In accordance with 5 U.S.C. App. 1 § 10(d) (1976), it has been determined that this Defense Science Board Task Force meeting concerns matters listed in 5 U.S.C. § 552b(c)(1)(1976), and that accordingly, this meeting will be closed to the public.

M. S. Healy,

OSD Federal Register Liaison Officer, Washington Headquarters Services, Department of Defense.

December 22, 1980.

[FR Doc. 80-40250 Filed 12-24-80; 8:45 am]

BILLING CODE 3810-70-M

Defense Science Board Task Force on ECM; Advisory Committee Meeting

The Defense Science Board Task Force on ECM will meet in closed session 15–16 January 1981 at the Pentagon, Washington, D.C.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Research and Engineering on scientific and technical matters as they affect the perceived needs of the Department of Defense.

The Task Force will review and finalize the draft report and make preparations for publication of the final report in April 1981.

In accordance with 5 U.S.C. APPI § 10(d) (1976), it has been determined that this Defense Science Board Task Force meeting concerns matters listed in 5 U.S.C. § 552b(c)(1) (1976); and that accordingly, this meeting will be closed to the public.

M. S. Healy,

OSD Federal Register Liaison Officer, Washington Headquarters Services, Department of Defense.

December 22, 1980.

[FR Doc. 80-40251 Filed 12-24-80; 8:45 am]

BILLING CODE 3810-70-M

Department of Defense Wage Committee; Closed Meetings

Pursuant to the provisions of section 10 of Pub. L. 92–463, the Federal Advisory Committee Act, effective January 5, 1973, notice is hereby given that a meeting of the Department of Defense Wage Committee will be held on Tuesday, February 10, 1981; and Tuesday, February 24, 1981 at 10 a.m. in Room 3D–325, 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, the Federal Advisory Committee Act, meetings may be closed to the public when they are "concerned with matters listed in section 552b of Title 5, United States Code." 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) 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(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 3D–281, The Pentagon, Washington, D.C.

M. S. Healy,

OSD Federal Register Liaison Officer, Washington Headquarters Services, Department of Defense.

December 22, 1980.

[FR Doc. 80-40252 Filed 12-24-80; 8:45 am]

BILLING CODE 3810-70-M

DEPARTMENT OF EDUCATION

National Advisory Council on Bilingual Education; Meeting

AGENCY: National Advisory Council on Bilingual Education.

ACTION: Notice.

SUMMARY: This notice sets forth the schedule and proposed agenda of forthcoming meetings of the National Advisory Council on Bilingual Education. Notice of these meetings is required under the Federal Advisory Committee Act (U.S.C. Appendix 1, 10(a)(2)). This document is intended to notify the general public of their opportunity to attend.

DATES: January 10, 11, 12, 1981, 10:00 a.m. to 5:00 p.m.

ADDRESS: Council meetings will be held at the Reporters Building, Room 402, 300 7th Street, S.W., Washington, DC. For further information contact: Joan Cassidy, Office of Bilingual Education and Minority Languages Affairs, 400 Maryland Avenue, S.W., Reporters Building, Room 421, Washington, DC (202–245–2595).

The National Advisory Council on Bilingual Education is established under Section 732(a) of the Bilingual Education Act (20 U.S.C. 880b–11) to advise the Secretary of Education and the Director of the Office of Bilingual Education and Minority Languages Affairs concerning matters arising in the administration of the Bilingual Education Act.

The meetings of January 10, 11, and 12 will be open to the public beginning at 10:00 a.m.

January 10, 1981: A meeting of the Council on the following subjects is scheduled from 10:00 a.m. until 5:00 p.m. The proposed agenda includes the following:

Business Meeting

a. Call to Order
b. Swearing-in of New Member
c. Approval of Minutes
d. Chairperson's Report

10:30–11:00—Report on Coordination Policy OBEMLA Staff
11:00–11:30—Bilingual Vocational Education, Richard Nabor
11:30–12:00—Refugee Program, Jim Lockhart
12:00–1:15—Lunch
1:30–2:00—National Advisory Council on the Educationally Disadvantaged, Alice Baum
2:00–2:30—Migrant Education, Vic Rivera
2:30–3:00—Bureau of Indian Affairs, Oren Dabney
3:00–3:30—Office of Indian Education, Gay Lawrence
3:30–4:00—National Institute of Education, TBA
4:00–4:30—General Discussion
4:30–5:00—Public Participation

January 11, 1981: The proposed agenda includes the following:

9:00–11:00—Committee Reports, OBEMLA Report
11:00–12:00—Colloquium Orientation, Jack Levy
12:00–1:00—Lunch
1:00–4:30—Old Business, New Business
4:30–5:00—Public Participation

January 12, 1981:

9:00–5:00—OBEMLA Colloquium, Participation

Records will be kept of all Council proceedings and shall be available for public inspection after approval, by the Full Council, of said records, has been obtained. These records will be available in Room 421, Reporters Building, 300 7th Street, S.W., Washington, DC. Written requests for such records should be sent to 400 Maryland Avenue, S.W., Reporters Building, Room 421, Washington, DC 20202.

In the event that the proposed agenda is completed prior to the projected date or time, the Council will adjourn the meeting.

Signed at Washington, DC on December 19, 1980.

Josué M. González,

Director, Office of Bilingual Education and Minority Languages Affairs.

FR Doc. 80-40304 Filed 12-24-80; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

Contract Award

AGENCY: Economic Regulatory Administration.

ACTION: Notice of Proposed Contract Award.

SUMMARY: In accordance with Department of Energy Procurement Regulations, the Economic Regulatory Administration gives public notice that a contract is being awarded, after taking into account the existence of potential organizational conflicts of interest, because this procurement is determined to be in the best interest of the United States.

FOR FURTHER INFORMATION CONTACT: Ms. Linda K. Mansfield, Office of Fuels Conversion, Economic Regulatory Administration, Room 3112-I, 2000 M Street, N.W., Washington, D.C. 20461.

SUPPLEMENTARY INFORMATION: Upon the basis of the following findings, mitigation and determination, the proposed contract described below is being awarded, after taking into account the existence of potential organizational conflicts of interest, because this procurement is determined to be in the best interest of the United States pursuant to the authority of Department of Energy Procurement Regulation 41 CFR 9-1.5409(a)(3).

Findings

(1) The Department of Energy (DOE), Economic Regulatory Administration (ERA), Office of Fuels Conversion implements the provisions of the Powerplant and Industrial Fuel Use Act of 1978 (the "Act") (Pub. L. 95-988). A primary purpose of the Act is to reduce the importation of petroleum and increase the Nation's capability to use indigenous energy resources of the United States by encouraging the greater use of coal and other alternate fuels, in lieu of natural gas and petroleum, as a primary energy source by utilities and major fuel burning installations. In implementing the Act, ERA, on an individual facility basis: (1) issues prohibition orders against the further use of petroleum or natural gas, and (2) processes petitions for exemption from the prohibitions against petroleum or natural gas use contained in the Act.

(2) To implement the Act it is necessary for ERA to obtain, by contract, technical support services regarding aspects of the economic and financial issues associated with acting on individual prohibition orders and exemption petitions. An important part of these analyses will involve collection and validation of cost data. The contractor will also perform other similar financial and economic analyses, provide computer program support, and conduct special studies as appropriate. Without such financial and economic analyses Federal decisions cannot be made and the authorities of the Act would remain unimplemented.

A notice of the issuance of the Request for Proposal (RFP) was published in the Commerce Business Daily and the RFP was sent to approximately 200 prospective offerors. Proposals were received from nine (9) firms. As a result of the evaluation process, it was determined that three (3) firms were in the competitive range. After receipt of revised proposals, only one (1) firm among the three (3) was found to have presented a technically acceptable proposal and was selected for award. The selected firm was Energy and Environmental Analysis, Inc., and its proposed subcontractor, Hagler, Bailly & Company.

(3) In accordance with 41 CFR 9-1.5405, all three (3) offerors in the competitive range provided disclosure of information concerning their interests related to the contract work to be performed. To aid in the information-gathering process, questions concerning the nature of their businesses were provided to each contractor. As a result of this process, DOE was furnished with information concerning whether possible organizational conflicts of interest exist with respect to (1) a contractor's ability to render impartial, technically sound and objective assistance or advice, and (2) whether an unfair competitive advantage may be conferred on a contractor as a result of performing specific tasks.

(4) As Energy and Environmental Analysis, Inc., was selected for award, DOE thoroughly reviewed the information submitted by Energy and Environmental Analysis, Inc., and its proposed subcontractor, Hagler, Bailly & Company. After this review, DOE was unable to find that there is little or no likelihood that a possible organizational conflict of interest exists for the selected offeror or its proposed subcontractor. This result is due to the nature of the business in which the offeror and its subcontractor are engaged. Both the offeror and subcontractor actively seek work with private industry to provide financial and economic services similar to that required by this procurement. Any such firm could stand to benefit economically in that the firm's financial and economic support services could become more attractive to those companies for which the firm has performed company-specific financial and economic analyses under this procurement.

(5) By this award to the selected offeror, the possibility exists that the firm would be simultaneously performing similar financial and economic services both for the Government and for private clients in support of different actions occurring under the Act.

Mitigation

(1) The following mitigation procedure will be implemented under this procurement to avoid an organizational conflict of interest to the maximum feasible extent. Prior to performing a task, the contractor will submit a statement as to whether performing that task for the Government would create a conflict because of work performed for the company in question under a past, present, or currently planned relationship. The contractor will also be required to state whether performing that task would require the firm to review any work the firm had previously performed for the Government. Similar information will be required from the subcontractor. DOE will independently review that statement and, if a conflict is found, the contractor will be disqualified and the task will be assigned to another contractor or will be completed with other resources at DOE's disposal. In the case of a prohibition by rule for a class of powerplants or major fuel buring installations, DOE will prior to the contractor's performing any task establish that no conflict exists for any facility included in the class.

(2) As stated in the RFP, all work performed by the contractor under this procurement will be independently reviewed by DOE. All policy decisions and judgments will be made by the Government and the contractor will play an advisory role only. In addition, all contactor analyses pertinent to the financial and economic findings will become a part of the public record of the particular action in question and thus will be subject to close third-party scrutiny for the validity of the financial and economic analyses presented.

(3) Similarly, any work which the contractor might perform for a private client and which is submitted by that

company as part of an action under the Act will also become part of the public record subject to a confidentiality determination, and will be subject to review and comment. Furthermore, any information so developed for and submitted by a company would be independently evaluated and verified by DOE (either by other support contractors or by another resource at DOE's disposal) before it is used in support of a Government decision.

(4) The contract awarded under this procurement will include the Organizational Conflicts of Interest Special Clause (41 CFR 9-1. 5408-2(b)) which will apply to both the contractor and subcontractor. The primary purpose of this clause is to aid in ensuring that the contractor is not biased because of its past, present, or currently planned interests (financial, contractual, organizational, or otherwise) which relate to the work under this contract, and does not obtain any unfair competitive advantage over other parties by virtue of its performance of this contract.

(5) The contractor and subcontractor will be specifically prohibited from securing business from or contracting with any company for which company-specific financial or economic analyses have been performed by the contractor for ERA under this contract for (a) the period of performance of this contract (including the option year if exercised by DOE), or (b) one year after the completion of such analysis, whichever provides the longer prohibition interval.

(6) The contractor and subcontractor will be specifically prohibited from securing business from or contracting with any company for which company-specific financial or economic analyses have been performed by the contractor for ERA under this contract, for financial and economic analyses of issues under the Act for a period of three (3) years after completion of the analyses for ERA.

Determination

In light of the above findings and mitigation, I hereby determine in accordance with 41 CFR 9-1.5409(a)(3) that award of this contract would be in the best interests of the United States.

Dated: December 16, 1980.

Hazel R. Rollins,

Administrator, Economic Regulatory Administration.

[FR Doc. 80-40232 Filed 12-24-80; 8:45 am]

BILLING CODE 6450-01-M

Domestic Crude Oil Allocation Program; Entitlements Notice for October 1980

AGENCY: Department of Energy, Economic Regulatory Administration.

ACTION: October 1980 entitlements notice.

SUMMARY: Under the Department of Energy's (DOE) Domestic Crude Oil Allocation (Entitlements) Program, this is the monthly Entitlements Notice which sets forth the entitlements purchase or sale requirements of domestic refiners and eligible firms for October 1980.

DATES: Payments for entitlements required to be purchased under this notice must be made by December 31, 1980. The monthly transaction report specified in § 211.66(i) shall be filed with the DOE by January 10, 1981.

FOR FURTHER INFORMATION CONTACT:

David A. Welsh (Entitlements Program Office), Economic Regulatory Administration, 2000 M Street NW., Room 6212C, Washington, D.C. 20461, (202) 653-3873

Jeffrey Stoermer (Office of General Counsel), Department of Energy, Forrestal Building, 1000 Independence Avenue SW., Room 6A-127, Washington, D.C. 20585, (202) 252-6754.

SUPPLEMENTAL INFORMATION: In accordance with the provisions of 10 CFR 211.67 relating to the Domestic Crude Oil Allocation Program of the Department of Energy (DOE), administered by the Economic Regulatory Administration (ERA), the monthly notice specified in § 211.67(i) is hereby published.

Based on reports for October 1980 submitted to the DOE by refiners and other firms as to crude oil receipts, crude oil runs to stills, eligible product imports, eligible petroleum substitutes, and imported naphtha utilized as a petrochemical feedstock in Puerto Rico; application of the entitlements adjustment for residual fuel oil production shipped in foreign flag tankers for sale in the East Coast market and Michigan provided in § 211.67(d)(4); application of the entitlement adjustments for California lower tier and upper tier crude oil provided in § 211.67(a)(4), November 1980 deliveries of crude oil to the Strategic Petroleum Reserve; and application of the entitlement adjustment for small refiners provided in § 211.67(e), the national domestic crude oil supply ratio for October is calculated to be .119815.

In accordance with § 211.67(b)(2), to calculate the number of barrels of deemed old oil included in a refiner's adjusted crude oil receipts for the month of October 1980 each barrel of old oil is equal to one barrel of deemed old oil, each barrel of upper tier crude oil (excluding ANS upper tier crude oil) is equal to .692778 of a barrel of deemed old oil and each barrel of ANS upper tier crude oil is equal to .354811 of a barrel of deemed old oil.

The issuance of entitlements for the month of October 1980 to refiners and other firms is set forth in the Appendix to this notice. The Appendix lists the name of each refiner or other firm to which entitlements have been issued, the number of barrels of deemed old oil included in each such refiner's adjusted crude oil receipts, the number of entitlements issued to each such refiner or other firm, and the number of entitlements required to be purchased or sold by each such refiner or other firm.

Pursuant to 10 CFR § 211.67(i)(4), the price at which entitlements shall be sold and purchased for the month of October 1980 is hereby fixed at $26.08, which is the exact differential as reported for the month of October 1980 between the weighted average per barrel costs to refiners of old oil and of imported and exempt domestic crude oil.

In accordance with 10 CFR § 211.67(b), each refiner that has been issued fewer entitlements for the month of October 1980 than the number of barrels of deemed old oil included in its adjusted crude oil receipts is required to purchase a number of entitlements for the month of October 1980 equal to the difference between the number of barrels of deemed old oil included in those receipts and the number of entitlements issued to and retained by that refiner. Refiners which have been issued a number of entitlements for the month of October 1980 in excess of the number of barrels of deemed old oil included in their adjusted crude oil receipts for the month and other firms issued entitlements shall sell such entitlements to refiners required to purchase entitlements.

The listing of refiner's old oil receipts contained in the Appendix reflects any adjustments made by ERA pursuant to § 211.67(h).

Included in the Appendix are entitlements issued pursuant to the provisions of 10 CFR 211.67(a)(5) under which ERA may approve a firm's application for designation as a producer of a petroleum substitute.

In accordance with 10 CFR 211.67(a)(7), adopted effective August 29, 1980 (45 FR 56788, August 25, 1980), the Strategic Petroleum Reserve (SPR) has been issued entitlements for crude oil purchased, delivered and accepted for

delivery into the SPR in the month of November 1980. An entry in the Appendix for the SPR has been included.

The listing contained in the Appendix identifies, in a separate column labeled "Exceptions and Corrections", additional entitlements issued to refiners pursuant to relief granted by the Office of Hearings and Appeals (prior to March 30, 1978, the Office of Administrative Review of the Economic Regulatory Administration). Also set forth in this column are adjustments for relief granted by the Office of Hearings and Appeals for 1975 and 1976, which adjustments are reflected in monthly installments. The number of installments is dependent on the magnitude of the adjustment to be made. For a full discussion of the issues involved, see *Beacon Oil Company, et al.*, 4 FEA par. 87,024 (November 5, 1976).

The listing contained in the Appendix continues the "Consolidated Sales" entry initiated in the October 1977 entitlements notice. The "Consolidated Sales" entry is equal to the October 1980 entitlements purchase requirement of Arizona Fuels. The purpose of providing for the "Consolidated Sales" entry is to ensure that Arizona Fuels is not relieved of its October 1980 entitlements purchase requirement and that no one firm will be unable to sell its entitlements by reason of a default by Arizona Fuels. For a full discussion of the issues involved, see *Entitlements Notice for October 1977* (42 FR 64401, December 23, 1977).

For the month of October 1980, imports of residual fuel oil eligible for entitlement issuances totaled 21,209,882 barrels.

In accordance with § 211.67(a)(4), the number of barrels of California lower tier and upper tier curde oil, as reported by refiners to the DOE, and the weighted average gravity thereof are as follows:

	Volumes	Weighted average gravity (degrees)
California lower tier crude oil	997,187	25
California upper tier crude oil	2,212,893	28

The total number of entitlements required to be purchased and sold under this notice is 19,369,320.

Based on reports submitted to the DOE by refiners as top their adjusted crude oil receipts for October 1980 the pricing composition and weighted average costs thereof are as follows:

	Volumes in thousands of B/D	Weighted average cost	Percent of total volumes[1]
Lower tier	893	$7.40	6.4
Upper tier (excluding ANS)	1,331	14.21	9.6
ANS upper tier	790	24.23	5.7
Exempt domestic:			
Other ANS	834	30.41	5.9
Heavy and market tier	1,876	32.59	13.5
Naval petroleum reserve	95	32.93	0.7
Newly discovered	473	36.15	3.4
Stripper	2,047	31.90	14.7
Tertiary	51	31.93	0.4
Total domestic	8,390	26.21	60.3
Imported	5,528	34.63	39.7
Total uncontrolled (exempt domestic and imported)	10,904	33.48	78.3
Total reported crude oil receipts	13,918	29.56	
Total reported crude oil runs to stills	13,288		

[1] Volumes may not total 100 percent due to rounding.

Payment for entitlements required to be purchased under 10 CFR 211.67(b) for October 1980 must be made by December 31, 1980.

On or prior to January 10, 1981, each firm which is required to purchase or sell entitlements for the month of October 1980 shall file with the DOE the monthly transaction report specified in 10 CFR 211.66(i) certifying its purchases and sales of entitlements for the month of October 1980.

The monthly transaction report forms (ERA–116) for the month of October 1980 have been mailed to all reporting firms. Firms that have been unable to locate other firms for the required entitlements transactions by December 31, 1980, are requested to contact the ERA at (202) 653–3873 to expedite consummation of these transactions. For firms that have failed to consummate required entitlement transactions on or prior to December 31, 1980, the ERA may direct sales and purchases of entitlements pursuant to the provisions of 10 CFR 211.67(k).

This notice is issued pursuant to Subpart G, 10 CFR Part 205. Any person aggrieved hereby may file an appeal with the Office of Hearings and Appeals in accordance with Subpart H of 10 CFR Part 205. Any such appeal shall be filed on or before January 28, 1981.

Issued in Washington, D.C. on December 18, 1980.

Hazel R. Rollins,

Administrator, Economic Regulatory Administration.

BILLING CODE 6450-01-M

NOTICE OF ENTITLEMENTS FOR DOMESTIC CRUDE OIL
OCTOBER 1980

REPORTING FIRM SHORT NAME	DEEMED OLD OIL ADJUSTED RECEIPTS	********** TOTAL ISSUED	ENTITLEMENT POSITION EXCEPTIONS AND CORRECT.	ENTITLEMENTS PRODUCT	ENTITLEMENTS CALIFORNIA	REQUIRED TO BUY	********** REQUIRED TO SELL
-CONSOLID-SALES	0	0	0	0	0	0	0 1/
A-JOHNSON	0	54,599	0	6,225	0	0	54,599
ADM	0	6,807	0	0	0	0	6,807
AKRON-OHIO	0	1,568	0	0	0	0	1,568
ALEXANDRIA-VA	0	37	0	0	0	0	37
ALLIED	3,664	35,235	0	0	0	0	31,571
AMER-AGRI-FUELS	0	139	0	0	0	0	139
AMER-PETROFINA	286,995	506,998	0	0	0	0	220,003
AMERADA-HESS	1,365,781	1,872,078	0	67,769	0	0	506,297
AMERICAN-CAN-CO	0	10,081	10,081 5/	0	0	0	10,081
AMES-IOWA	0	442	0	0	0	0	442
AMOCO	6,199,131	3,377,964	0	0	0	2,821,167	0
ANCHOR	0	29,336	0	0	0	0	29,336
APEX	0	52,128	12,479 5/	39,649	0	0	52,128
ARCO	1,711,052	1,868,516	0	0	4,446	0	157,464
ARIZONA	36,014	36,014	22,009 4/	0	229	0 1/	0
ARIZONA-CHEM	0	8,731	7,175 4/5/	0	0	0	8,731
ASAMERA	53,516	87,862	0	0	0	0	34,346
ASHLAND	675,497	1,291,296	0	3,595	0	0	615,799
AZUSA-LAND	0	3,284	0	0	0	0	3,284
BALTIMORE-MD	0	19,171	0	0	0	0	19,171
BAYOU	0	9,756	0	0	0	0	9,756
BEACON	9,746	76,575	0	0	246	0	66,829
BELCHER	0	32,943	0	32,943	0	0	32,943
BELOIT-WI	0	5	0	0	0	0	5
BERGEN-COUNTY	0	993	844 5/	0	0	0	993
BI-PETRO	0	2,164	0	0	0	0	2,164
BOISE-IDAHO	0	620	0	0	0	0	620
BOSTON-QUINCY	0	278	0	0	0	0	278
BRAINTREE	0	5,742	0	0	0	0	5,742
BRONCO	0	5,544	0	0	0	0	5,544
BRUIN	20,291	48,669	0	0	0	0	28,378
CADENCE-CHEM	0	3,160	1,723 5/	0	0	0	3,160
CALCASIEU	-3,500	43,431	0	0	0	0	46,931
CALUMET	-7,642	6,059	0	0	0	0	13,701
CANAL	1,054	29,590	0	0	0	0	28,526
CARBONIT	8,554	31,434	0	0	0	0	22,880
CARIBOU	-22,085	56,890	41,743 5/	0	0	0	78,975
CASTLE	0	31,386	0	31,386	0	0	31,386
CEA	0	530	0	0	0	0	530
CHAMPLIN	-220,898	580,726	0	0	-21,746	0	801,624
CHARTER	0	305,547	0	0	0	0	305,547
CHEVRON	4,828,386	4,069,086	0	14,786	44,201	759,300	0

NOTICE OF ENTITLEMENTS FOR DOMESTIC CRUDE OIL PAGE: 12
OCTOBER 1980

REPORTING FIRM SHORT NAME	DEEMED OLD OIL ADJUSTED RECEIPTS	********** TOTAL ISSUED	ENTITLEMENT POSITION EXCEPTIONS AND CORRECT.	ENTITLEMENTS PRODUCT	ENTITLEMENTS CALIFORNIA	REQUIRED TO BUY	********** REQUIRED TO SELL
CIBRO	0	101,158	0	30,783	0	0	101,158
CITGO	732,196	741,161	0	0	0	0	8,965
CITY-OF-SEWARD	0	6	6 5/	0	0	0	6
CITY-OF-WICHITA	0	450	300 5/	0	0	0	450
CLAIBORNE	27,228	17,853	0	0	0	9,375	0
CLARK	355,680	398,496	0	0	0	0	42,816
COASTAL	134,891	576,216	0	19,473	0	0	441,325
COASTAL-PETRO	0	34,262	951 5/	0	0	0	34,262
COLDWATER	0	98	0	0	0	0	98
COLONIAL	0	14,150	0	14,150	0	0	14,150
COLONIAL-OIL	0	8,029	8,029 5/	0	0	0	8,029
COLUMBUS-OHIO	0	198	0	0	0	0	198
CONOCO	1,145,184	1,008,514	0	15,401	11,920	136,670	0
CONSUMERS-POWER	0	184,251	154,189 4/	30,062	0	0	184,251
COPANO	0	26,991	0	0	0	0	26,991
CORAL	0	212,902	4,511 5/	0	0	0	212,902
CORCO	0	540,140	-31,782 5/	287,437	0	0	540,140
CRA-FARMLAND	189,161	231,936	0	0	0	0	42,775
CROSS	10,643	37,723	0	0	0	0	27,080
CROWN	167,829	345,680	0	0	0	0	177,851
CRYSTAL-OIL	54,163	77,473	0	0	0	0	23,310
CRYSTAL-REF	0	10,099	0	0	0	0	10,099
CUMBERLAND	0	5	0	0	0	0	5
DELTA	69,384	203,199	0	0	0	0	133,815
DEMENNO	0	42,722	0	0	0	0	42,722
DETROITED	0	24,510	0	24,510	0	0	24,510
DIAMOND	268,182	234,851	0	0	0	33,331	0
DILLMAN	0	141	0	0	0	0	141
DORCHESTER	7,698	72,587	14,747 5/	0	0	0	64,889
DOW	-21,850	719,926	400,098 5/	0	0	0	741,776
E-SEABOARD	0	31,473	0	31,473	0	0	31,473
EAGLE-REFINING	0	5,117	0	0	0	0	5,117
EAST-BAY-MUD	0	107	0	0	0	0	107
EASTERN-MUD	0	15	0	0	0	0	15
ECO	59	49,553	0	0	3*	0	49,494
EDDY	21,634	15,586	0	0	0	6,048	0
EL-PASO-TX	0	1,899	0	0	0	0	1,899
ELGIN-IL	0	13	10 5/	0	0	0	13
ENERGY-COOP	0	242,986	0	0	0	0	242,986
ENTERPRISE	0	7,535	0	7,535	0	0	7,535
ERGON	-1,290	55,708	0	0	0	0	56,998
ERICKSON	1,166	141,197	0	0	0	0	140,031
ESSEX-UNION	0	75	0	0	0	0	75

NOTICE OF ENTITLEMENTS FOR DOMESTIC CRUDE OIL PAGE 13
OCTOBER 1980

REPORTING FIRM SHORT NAME	DEEMED OLD OIL ADJUSTED RECEIPTS	********** TOTAL ISSUED	ENTITLEMENT POSITION EXCEPTIONS AND CORRECT.	ENTITLEMENTS PRODUCT	ENTITLEMENTS CALIFORNIA	REQUIRED TO BUY	********** REQUIRED TO SELL
EVANGELINE	0	11,930	0	0	0	0	11,930
EWING-LAWRENCE	0	21	0	0	0	0	21
EXXON	7,295,946	4,301,824	0	305,395	0	2,994,122	0
EZ-SERVE	19,419	77,251	0	0	0	0	57,832
FARMERS-UN	184,721	96,687	0	0	0	88,034	0
FLETCHER	13,151	110,178	0	0	531	0	97,027
FLINT	3,708	3,370	0	0	0	338	0
FORT-WORTH-TX	0	1,442	0	0	0	0	1,442
FRIENDSWOOD	19,283	39,672	0	0	0	0	20,389
FUNDING	61,515	20,133	0	0	0	41,382	0
GARY	29,758	38,325	0	0	0	0	8,567
GETTY	746,978	855,272	0	0	5,373	0	108,294
GETTY-SYN	0	481	0	0	0	0	481
GIANT	8,167	37,512	4,511 5/	0	0	0	29,345
GIBSON	0	19,859	0	0	0	0	19,859
GLACIER-PARK	-11,171	0	0	0	0	0	11,171
GLADIEUX	1,802	44,464	0	0	0	0	42,662
GLENCOE-MN	0	19	0	0	0	0	19
GLENROCK	0	8,126	0	0	0	0	8,126
GOLDEN-EAGLE	0	54,301	0	0	0	0	54,301
GOLDKING	11,452	66,381	0	0	0	0	54,929
GOOD-HOPE	5,377	261,356	0	0	0	0	255,979
GUAM	0	146,297	0	0	0	0	146,297
GULF	4,142,261	2,266,833	0	22,872	11,523	1,875,428	0
GULF-STS	24,712	87,436	0	0	0	0	62,724
HARRISBURG-PA	0	2,802	0	0	0	0	2,802
HEALTH-CARE	0	59	0	0	0	0	59
HEMPSTEAD-TOWN	0	3,382	1,215 5/	0	0	0	3,382
HIRI	0	271,425	25,872 4/	0	0	0	271,425
HOWELL	424,484	141,436	0	0	0	283,048	0
HRR	0	16,925	16,925 5/	0	0	0	16,925
HUDSON-OIL	-50,328	70,277	0	0	0	0	120,605
HUNT	182,890	123,134	0	0	0	59,756	0
HUNTWAY	0	21,442	0	0	0	0	21,442
HUSKY	418,225	418,225	288,042 2/	0	0	0	0
INDEPENDENT-REF	0	62,399	0	0	0	0	62,399
INDIANA-FARM	16,148	62,064	0	0	0	0	45,916
INDUST-FUEL	0	5,891	0	0	0	0	5,891
INTER-PETRO	0	7,227	0	7,227	0	0	7,227
INTER-PROCESS	0	66,526	0	0	0	0	66,526
IRVING	0	22,742	10,036 5/	12,706	0	0	22,742
KENCO	33,460	11,815	0	0	0	21,645	0
KENTUCKY	13,625	15,283	8,443 5/	0	0	0	1,658

NOTICE OF ENTITLEMENTS FOR DOMESTIC CRUDE OIL
OCTOBER 1980

REPORTING FIRM SHORT NAME	DEEMED OLD OIL ADJUSTED RECEIPTS	********** TOTAL ISSUED	ENTITLEMENT POSITION EXCEPTIONS AND CORRECT.	ENTITLEMENTS PRODUCT	ENTITLEMENTS CALIFORNIA	REQUIRED TO BUY	********** REQUIRED TO SELL
KERN	-94,754	81,605	-10,094 5/	0	-765	0	176,359
KERR-MCGEE	880,339	760,741	0	0	0	119,598	0
KOCH	32,919	204,259	0	26,226	0	0	171,340
LA-COUNTY	0	2,525	0	0	0	0	2,525
LA-CROSSE	0	13	0	0	0	0	13
LAGLORIA	204,865	188,720	0	0	0	16,145	0
LAKE-CHARLES	0	53,147	0	0	0	0	53,147
LAKESIDE	288	13,498	0	0	0	0	13,210
LAKETON	100,939	112,784	83,756 5/	0	0	0	11,845
LAKEWOOD-OH	0	410	0	0	0	0	410
LIQUID-ENERGY	19,167	33,594	0	0	0	0	14,427
LITTLE-AMER	43,808	274,256	0	0	0	0	230,448
LOS-ANGELES-CA	0	9,629	6,715 5/	0	0	0	9,629
LOUISIANA-LAND	1,307,719	167,575	0	0	0	1,140,144	0
MACMILLAN	8,005	88,473	0	0	424	0	80,468
MADISON-CHATHAM	0	6	0	0	0	0	6
MADISON-CITY-WI	0	648	0	0	0	0	648
MADISON-AL	0	95	0	0	0	0	95
MALLARD	497	19,045	0	0	0	0	18,548
MANATEE	70,859	81,259	40,261 7/	0	0	0	10,400
MARATHON	2,844,681	1,262,327	0	0	0	1,582,354	0
MARION	10,526	101,169	0	0	0	0	90,643
MARLEX	1,188	50,354	0	0	89	0	49,166
METRO-DENVER	0	155	0	0	0	0	155
METRO-SEATTLE	0	201	0	0	0	0	201
METROPOLITAN	0	46,810	0	46,810	0	0	46,810
MIAMI-DADE	0	2,909	0	0	0	0	2,909
MID-AMER	2,887	23,716	9,380 5/	0	0	0	20,829
MIDWEST-SILV	0	1,591	1,145 5/	0	0	0	1,591
MILWAUKEE-WI	0	1,593	1,171 5/	0	0	0	1,593
MOBIL	4,349,463	2,469,008	0	0	9,006	1,580,455	0
MOBIL-BAY	1,750	18,411	0	0	0	0	16,661
MONOCO	0	3,953	0	3,953	0	0	3,953
MONSANTO	216,995	85,920	0	0	0	131,075	0
MOORHEAD-MN	0	116	0	0	0	0	116
MORRISON	-608	12,541	0	0	0	0	13,149
MOUNTAINEER	2,605	2,490	0	0	0	115	0
MSDGC	0	882	0	0	0	0	882
MT-AIRY	1,546	35,548	0	0	0	0	34,002
MURPHY	363,223	343,828	0	0	0	19,395	0
N-AMER-PETRO	0	36,345	0	0	0	0	36,345
N-LITTLE-ROCK	0	396	0	0	0	0	396
N-SAN-MATEO	0	4	0	0	0	0	4

NOTICE OF ENTITLEMENTS FOR DOMESTIC CRUDE OIL
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REPORTING FIRM SHORT NAME	DEEMED OLD OIL ADJUSTED RECEIPTS	********** TOTAL ISSUED	ENTITLEMENT POSITION EXCEPTIONS AND CORRECT.	ENTITLEMENTS PRODUCT	ENTITLEMENTS CALIFORNIA	REQUIRED TO BUY	********** REQUIRED TO SELL
NASHVILLE-TENN	0	8,637	6,991 5/	0	0	0	8,637
NASSAU-COUNTY	0	206	0	0	0	0	206
NATCHEZ	0	19,380	0	0	0	0	19,380
NATL-COOP	117,689	158,373	0	0	0	0	40,684
NAVAJO	251,185	190,940	70,177 5/	0	0	60,245	0
NEPTUNE	0	7	0	0	0	0	7
NEVADA	1,391	7,427	0	0	0	0	6,036
NEW-EDGINGTON	24	98,049	0	0	3	0	98,025
NEW-ENGL-PETRO	0	102,393	0	102,393	0	0	102,393
NEW-ENGL-POWER	0	44,351	0	44,351	0	0	44,351
NEW-YORK-EP	0	1,933	0	0	0	0	1,933
NEWHALL	316	69,753	0	0	13	0	69,437
NORTHEAST-PETRO	0	33,917	11,205 5/	22,712	0	0	33,917
NY-SANITATION	0	990	0	0	0	0	990
OCEAN-TOWNSHIP	0	4	0	0	0	0	4
OCEAN-UTILITIES	0	35	0	0	0	0	35
OCONOMOWOC-WI	0	5	0	0	0	0	5
OKC	11,590	72,871	0	0	0	0	61,281
OKLA-REF	-4,231	60,077	0	0	0	0	64,308
OMAHA	0	7,067	0	0	0	0	7,067
ORANGE-COUNTY	0	3,410	2,650 5/	0	0	0	3,410
OSCEOLA-AR	0	145	0	0	0	0	145
OXNARD	0	14,359	0	0	0	0	14,359
PEERLESS	0	4,249	4,249 5/	0	0	0	4,249
PENNZOIL	150,918	141,449	0	0	0	9,469	0
PEORIA-IL	0	338	338 5/	0	0	0	338
PESTER	3,465	106,433	0	0	0	0	102,968
PETRACO-VALLEY	0	28,867	13,110 4/	0	0	0	28,867
PHILADELPHIA-PA	0	3,773	3,549 5/	0	0	0	3,773
PHILLIPS	837,626	982,619	0	0	0	0	144,993
PHILLIPS-PR	0	118,518	0	118,518	0	0	118,518
PIONEER	43,488	26,588	0	0	0	16,900	0
PLACID	285,955	150,022	0	0	0	135,933	0
PLATEAU	105,296	67,947	18,475 5/	0	0	37,349	0
PORT	0	23,483	0	0	0	0	23,483
POWERINE	30,600	144,706	8,997 5/	0	1,710	0	114,106
PRIDE	0	114,747	0	0	0	0	114,747
QUAKER-ST	12,711	98,824	0	0	0	0	86,113
QUITMAN	0	22,216	0	0	0	0	22,216
RAHWAY	0	69	0	0	0	0	69
RESCO	0	5,989	0	0	0	0	5,989
RICHARDS	0	249	0	0	0	0	249
ROAD-OIL	0	1,070	0	0	0	0	1,070

NOTICE OF ENTITLEMENTS FOR DOMESTIC CRUDE OIL
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REPORTING FIRM SHORT NAME	DEEMED OLD OIL ADJUSTED RECEIPTS	********** TOTAL ISSUED	ENTITLEMENT POSITION EXCEPTIONS AND CORRECT.	ENTITLEMENTS PRODUCT	ENTITLEMENTS CALIFORNIA	REQUIRED TO BUY	********** REQUIRED TO SELL
ROCK-ISLAND	30,582	102,225	0	0	0	0	71,643
SABER-TEX	12,774	54,642	0	0	0	0	41,868
SABRE-CAL	0	36,136	-3,144 5/	0	0	0	36,136
SAGE-CREEK	1,857	502	408 5/	0	0	1,355	0
SALEM-VA	0	295	0	0	0	0	295
SAN-JOAQUIN	0	41,251	-14,646 5/	0	0	0	41,251
SAN-JOSE-CA	0	677	0	0	0	0	677
SANTA-CRUZ-CA	0	50	0	0	0	0	50
SCALLOP	0	102,498	0	102,498	0	0	102,498
SCANOIL	0	46,169	0	46,169	0	0	46,169
SCHULZE	0	3,782	0	0	0	0	3,782
SEAVIEW	0	78,970	0	0	0	0	78,970
SEMINOLE	17,217	53,097	0	0	0	0	35,880
SENTRY	0	74,654	0	0	0	0	74,654
SHELL	4,479,977	2,812,700	0	0	4,029	1,667,277	0
SHEPHERD	2,333	6,592	0	0	0	0	4,259
SIGNOR	10,408	89,893	0	0	0	0	79,485
SILVER-EAGLE	0	4,577	0	0	0	0	4,577
SIOUX-FALLS	0	129	0	0	0	0	129
SLAPCO	-910	47,683	0	0	0	0	48,593
SMRSA	0	26	9 5/	0	0	0	26
SO-HAMPTON	8,281	55,713	0	0	0	0	47,432
SOHIO	2,585,230	1,596,051	0	0	0	989,179	0
SOMERSET	13,639	17,431	0	0	0	0	3,792
SOONER	0	22,534	0	0	0	0	22,534
SOUND	-763	31,112	0	0	0	0	31,875
SOUTHERN-UNION	90,010	128,853	0	0	0	0	38,843
SOUTHLAND	161,445	255,227	158,993 5/	0	0	0	93,782
SOUTHWEST-PETRO	0	13,910	0	0	0	0	13,910
SOUTHWESTERN	4,573	1,167	12 5/	0	0	3,406	0
SPR	0	5,685,061	5,685,061 6/	0	0	0	5,685,061
SPRAGUE	0	47,482	0	47,482	0	0	47,482
ST&SAN-CHICAGO	0	12,447	4,914 5/	0	0	0	12,447
ST-CLOUD-MINN	0	163	144 5/	0	0	0	163
ST-JOSEPH-MO	0	266	0	0	0	0	266
STEVENS-PT-WI	0	11	0	0	0	0	11
STOCKTON-CA	0	319	0	0	0	0	319
SUNLAND	1,893	45,635	0	0	44	0	43,742
SUNOCO	2,842,788	1,625,454	0	32,996	0	1,217,334	0
SWANN	0	15,950	0	15,950	0	0	15,950
T&S	0	980	0	0	0	0	980
TACOMA-WA	0	391	0	0	0	0	391
TARCO	19,783	10,549	0	0	0	9,234 3/	0

NOTICE OF ENTITLEMENTS FOR DOMESTIC CRUDE OIL
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REPORTING FIRM SHORT NAME	DEEMED OLD OIL ADJUSTED RECEIPTS	TOTAL ISSUED	ENTITLEMENT POSITION EXCEPTIONS AND CORRECT.	ENTITLEMENTS PRODUCT	ENTITLEMENTS CALIFORNIA	REQUIRED TO BUY	REQUIRED TO SELL
TARRICONE	0	15,934	9,957 5/	5,977	0	0	15,934
TENNECO	124,758	310,362	0	0	2,763	0	185,604
TESORO	50,137	237,955	0	0	0	0	187,818
TEXACO	4,553,231	3,079,702	0	52,107	169	1,473,529	0
TEXAS-AMERICAN	7,952	29,445	0	0	0	0	21,493
TEXAS-CITY	251,136	291,535	0	0	0	0	40,399
TEXAS-STANDARD	0	2,937	0	0	0	0	2,937
THAGARD	6,341	45,708	0	0	430	0	39,367
THORN-CREEK	0	36	19 5/	0	0	0	36
THRIFTWAY	11,859	10,030	5,505 5/	0	0	1,829	0
THUNDERBIRD	25,804	38,037	0	0	0	0	12,233
TIPPERARY	351	17,308	0	0	0	0	16,957
TONKAWA	0	54,883	0	0	0	0	54,883
TOSCO	637,252	635,515	0	0	12,928	1,737	0
TOTAL-PETROLEUM	-119,608	389,065	0	0	0	0	508,673
UCC-CARIBE	0	57,057	0	57,057	0	0	57,057
UNI-REF	0	73,869	0	0	0	0	73,869
UNION-OIL	1,222,372	1,333,290	0	0	881	0	110,918
UNTO-REF	84,254	177,176	0	0	0	0	92,922
URBANA-IL	0	574	0	0	0	0	574
US-OIL	-1,297	70,646	0	0	0	0	71,943
USA-PETROCHEM	11,528	51,020	0	0	318	0	39,492
VAL-VERDE	0	4,794	3,814 5/	0	0	0	4,794
VICKSBURG	0	17,592	0	0	0	0	17,592
WALLER	0	4,714	1,651 5/	3,063	0	0	4,714
WARRIOR	31,000	5,381	-9,875 5/	0	0	25,619	0
WATSON	0	399	0	0	0	0	399
WEST-COAST	0	89,441	0	0	0	0	89,441
WEST-MONMOUTH	0	12	0	0	0	0	12
WESTCHESTER-NY	0	160	0	0	0	0	160
WESTERN	0	44,594	3,158 5/	0	0	0	44,594
WINSTON	50,074	58,381	0	0	0	0	8,307
WINSTON-SALEM	0	2,133	0	0	0	0	2,133
WIREBACK	0	250	0	0	0	0	250
WITCO	1,078	79,496	0	0	2	0	78,418
WOOSTER	0	20	0	0	0	0	20
WYOMING	18,628	33,351	0	0	0	0	14,723
YETTER	0	223	223 5/	0	0	0	223
YOUNG	21,026	81,088	61,953 5/	0	0	0	60,062
TOTAL	60,889,030	60,889,030	7,182,388	1,733,639	89,070	19,369,320	19,369,320

1/ See discussion in Notice.

2/ This is consistent with the Court's order prohibiting any further entitlement purchase requirements by this firm pursuant to the terms of the Court's judgment in Husky Oil Co. v. DOE, et. al., Civ. Action No. C77-190-B (D. Wyo., filed March 4, 1978), remanded 582 F.2D 644 (TECA, August 10, 1978).

3/ This does not include the purchase obligation stayed by court order in Texas Asphalt & Refinery Co. v. FEA, Civ. Action No. 4-75-268 (N.D. Tex., filed October 31, 1975).

4/ Correction of prior month.

5/ Exception from Office of Hearings and Appeals.

6/ Value accrued from SPR deliveries. See discussion in Notice.

7/ These entitlements are issued pursuant to a Stipulation and Dismissal and Order of Dismissal entered in Manatee Energy Co. v. DOE, Civ. Action No. TCA 80-0716 (N.D. Fla., April 7, 1980).

[FR Doc. 80-40231 Filed 12-24-80; 8:45 am]

BILLING CODE 6450-01-C

Federal Energy Regulatory Commission

Delegation of Authority by the Federal Energy Regulatory Commission to the Office of the Federal Inspector

AGENCY: Federal Energy Regulatory Commission.

ACTION: Delegation.

SUMMARY: Notice is hereby given of a delegation, by the Federal Energy Regulatory Commission to the Office of the Federal Inspector (OFI), of the Commission's authority under Sections 4, 5, 7, and 8 of the Natural Gas Act (15 U.S.C. Sections 717c, d, f, and g) and related regulations to review and approve costs and related accounts of the Alaska Natural Gas Transportation System (the ANGTS) for inclusion in the ANGTS sponsors' rate base.

DATE: The Delegation Order is effective December 29, 1980.

FOR FURTHER INFORMATION CONTACT: Barry Smoler, Office of the General Counsel, Room 8600B, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, (202) 357-8433 or Ned Hengerer, General Counsel, Office of the Federal Inspector, Room 2413, Post Office Building, 1200 Pennsylvania Avenue, N.W., Washington, D.C. 20044, (202) 275-1144.

SUPPLEMENTARY INFORMATION:

I. Background

Control of capital costs during construction is perhaps the most complex regulatory issue facing the ANGTS. Two Federal agencies, the Commission and the Office of the Federal Inspector (OFI), have cost control authority, sometimes mutual and sometimes discrete. Cost control has two primary purposes: protection of the U.S. gas consumer from excessive transportation rates; and assistance to private financing of the ANGTS.

The Commission's cost control responsibilities come from two sources. First, under Section 7 of the Natural Gas Act (15 U.S.C. Section 717f), the Commission must, pursuant to certification, assure that credible capital cost estimates (and a financing plan) for a proposed pipeline project are "in the public convenience and necessity." Once the pipeline is in operation, the Commission must act pursuant to Sections 4 and/or 5 of the Natural Gas Act (15 U.S.C. Sections 717c and 717d) to assure that rates to be charged are "just and reasonable", which indirectly entails approval of capital costs for rate base. Second, the President's *Decision and Report to Congress on the Alaska Natural Gas Transportation System (Decision)* imposes similar requirements, which are specifically tailored to the ANGTS. The Commission must develop the Incentive Rate of Return (IROR); it must approve rate base inclusions on a timely basis; and it must assure that the certification cost estimate does not "materially and unreasonably exceed" the March 1977 cost estimate, upon which the *Decision* was based.

The OFI's cost control responsibilities come from three sources. (1) Under Section 7(a)(5)(C) of the Alaska Natural Gas Transportation Act (ANGTA), 15 U.S.C. Section 719e, the OFI must monitor, among other things, actions taken to assure cost control. (2) Under Section 5 of the President's *Decision* the OFI must enforce a number of construction cost and schedule conditions, as well as, under Section 7 of the *Decision*, review procurement for general competitiveness. (3) Reorganization Plan No. 1 of 1979 transferred to the OFI responsibility to enforce the requirements imposed on the ANGTS by the Commission pursuant to the Natural Gas Act.

The cost control responsibilities of the Commission and the OFI are more or less split between the certification and construction phases, respectively. This is in keeping with the Reorganization Plan. The only aspect of cost control oversight which requires further delineation concerns rate base audit and approval. Both agencies agree that, due to the OFI's ongoing cost control responsibilities, the continued process of project rate base audit and approval during pre-construction and construction should rest there. In this manner, once the ANGTS has been completed and commences operations, the Commission will include the initial, OFI-approved project rate base in the project cost-of-service tariff for each ANGTS leg, and then commence its ongoing rate regulation of ANGTS, in accordance with Sections 4 and 5 of the Natural Gas Act. Whether or not an explicit delegation is now required to achieve this result, caution dictates such an interagency action at this time.

The OFI finds adequate authority for its rate base audit and approval actions in the Reorganization Plan. While subsection 102(d) of the Reorganization Plan explicitly transferred enforcement of the ANGTS certificates of public convenience and necessity (issued under Section 7 of the Natural Gas Act), Section 102 begins by expanding the transfer of the specifically cited statutory authority, as "including but not limited to the specific sections of the statute cited." Moreover, Section 102(h)(3) transfers enforcement of the terms and conditions established in Section 5 of the President's *Decision* (at page 37); the second finance term and condition found therein mandates that the "applicant shall, however, submit to the FPC for approval on a timely basis all components of construction work in progress." In light of the expansive scope of the Reorganization Plan—transferring to the OFI "exclusive responsibility for enforcement of all Federal statutes relevant in any manner to pre-construction, contruction, and initial operation" of ANGTS—the OFI regards such a transfer as encompassing the rate base process.

The Commission believes that this particular function is extremely important, that it should be performed by a single agency, and that all uncertainty as to responsibility for its performance should be eliminated. Because Section 202(b) affords both agencies the ability to aassure that this function will be centralized in the OFI until construction is completed, it will be utilized to authorize the present delegation. Section 202(b) specifically provides that:

> Upon agreement between the Federal Inspector and the head of any agency, that agency may delegate to the Federal Inspector any statutory function vested in such agency related to the functions of the Federal Inspector.

This delegation provision has already been employed by the Commission to delegate to the OFI certain certificate conditioning authority. 45 FR 24224 (April 9, 1980).

II. Delegation Order

Paragraph (a) of the attached Delegation Order delegates to the Federal Inspector the Commission's authority to review and approve ANGTS construction work in progress (for inclusion in rate base) pursuant to Sections 4, 5, and 7 of the Natural Gas Act.

Paragraph (b) of the Delegation Order delegates to the Federal Inspector the Commission's authority to review and approve the ANGTS sponsors' accounts, records, and other papers, pursuant to Section 8 of the Natural Gas Act and to the Commission's Uniform System of Accounts, 18 CFR Part 201, and to monitor compliance with procurement policy and practices, 18 CFR Part 160.

The determinations of the Federal Inspector with respect to the prudence of costs incurred, and approval of their inclusion in rate base, shall be final and

shall not be subject to review or revision by the Commission.

III. Effective Date

Pursuant to Paragraph (e) of the Delegation Order, the delegation becomes effective upon publication in the Federal Register, and shall include all project costs incurred on or after January 1, 1980.

(Department of Energy Organization Act, 42 U.S.C. Section 7101, *et seq.;* Natural Gas Act, 15 U.S.C. Section 717, *et seq.;* Reorganization Plan No. 1 of 1979, 44 FR 33663)

By the Commission.

Kenneth F. Plumb,

Secretary.

Delegation Order No. ANGTS-2 to the Office of the Federal Inspector

Pursunt to the authority vested in the Federal Energy Regulatory Commission ("the Commission") and in the Office of the Federal Inspector ("the Federal Inspector") by Section 202(b) of Reorganization Plan No. 1 of 1979—

(a) The Commission hereby delegates to the Federal Inspector the Commission's authority under Sections 4, 5 and 7 of the Natural Gas Act (15 U.S.C. Section 717 *et. seq.*) to the extent necessary to enable the Federal Inspector to review and approve the construction costs for the Alaskan Natural Gas Transportation System ("the ANGTS"), for inclusion in the respective rate bases of Alaska Northwest Natural Gas Transportation Company, Northern Boarder Pipeline Company, and Pacific Gas Transmission Company. The Federal Inspector shall perform this function consistent with the Commission's Uniform System of Accounts, 18 CFR Part 201, and Order Nos, 31 and 31-B issued in Docket No. RM79-12 on June 8 and September 6, 1979, including any amendments adopted by the Commission subsequent to the date of issuance of this order.

(b) The Commission here delegates to the Federal Inspector the Commission subsequent authority under Section 8 of the Natural Gas Act and the Commission's Uniform System of Accounts, 18 CFR Part 201, to the extent necessary to enable the Federal Inspector to review and approve the ANGTS project sponsors' accounts, records and papers pertinent to the construction of the ANGTS, including the monitoring of compliance with procurement policy of practices pursuant to 18 CFR Part 160.

(c) The Federal Inspector shall perform the above delegated functions pursuant to whatever procedures he shall determine to be consistent with applicable provisions of law, including, but not limited to, the U.S. Constitution, the U.S. Code, and the President's *Decision and Report to Congress on the Alaska Natural Gas Natural Gas Transportation System* (September 1977)("the President's *Decision*").

(d) Nothing in this order shall be construed to delegate any of the Commission's authority to issue or condition certificates of public convenience and necessity pursuant to Section 7 of the Natural Gas Act, to determine the respective certification cost estimates for the Alaska and Northern Border segments of the ANGTS, to approve or modify any tariffs, or to perform any functions allocated to the Commission by the President's *Decision* (except for the functions allocated in the last sentence in Finance Condition No. 2 on page 37 of the *Decision*).

(e) The Federal Inspector hereby accepts the authority delegated by this order, and agrees to perform all of the function delegated herein.

(f) This order shall become effective upon publication in the Federal Register, and shall include all project costs (as defined above) incurred on or after January 1, 1980.

Issued in Washington, D.C., on December 19, 1980.

Georgiana Sheldon,

Acting Chairman, Federal Energy Regulatory Commission, (By agreement of the Commission).

John T. Rhett,

Federal Inspector.

[FR Doc. 80-40390 Filed 12-24-8:45 am]

BILLING CODE 6450-85-M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-51140; FRL 1625-4]

Certain Chemicals; Premanufacture Notices

Correction

In FR Doc. 80-30810 appearing on page 65662, in the issue of Friday, October 3, 1980, make the following correction:

On page 65663, third column, in the third line from the bottom of the page, the symbol "<" should have read ">".

BILLING CODE 1505-01-M

FEDERAL COMMUNICATIONS COMMISSION

[FCC 80-657; BC Docket Nos. 80-712 Through 80-718; File Nos. BP-20,581 et al.]

Alan K. Levin et al., Designating Application for Hearing on Stated Issues; Memorandum Opinion and Order

In re applications of Alan K. Levin, Dillon, Colorado, Req: 1130 kHz, 5 kW, Day (BC Docket No. 80-712; File No. BP-20,581); Summit Radio, Inc., Dillon-Frisco-Silverthorne, Colorado, Req: 1130 kHz, 10 kW, 5 kW, (CH), DA, Day (BC Docket No. 80-713; File No. BP-780728AN); Dillon Broadcasting Company, Dillon, Colorado, Req: 1130 kHz, 5 kW, Day (BC Docket No. 80-714; File No. BP-780728AO); Eagle Radio, Inc., Vail, Colorado, Req: 1360 kHz, 5 kW, Day (BC Docket No. 80-715; File No. BP-20,626); Mountain Wireless Limited, Vail, Colorado, Req: 1360 kHz, 5 kW, Day (BC Docket No. 80-716; File No. BP-20,882); Grand Radio, Inc., Fraser, Colorado, Req: 1250 kHz, 500 W, 5 kW-LS, DA-2, U (BC Docket No. 80-717; File No. BP-21,129); Jefferson Wireless Company, Golden, Colorado, Req: 1250 kHz, 500 W, 5kW-LS, DA-2, U (BC Docket No. 80-718; File No. BP-781205AH) for construction permit.

Adopted: November 6, 1980.

Released: December 1, 1980.

By the Commission:

1. The Commission has before it for consideration (a) the above-captioned applications for new AM broadcast stations in various Colorado communities; (b) a petition to dismiss the Dillon-Frisco-Silverthorne application of Summit Radio, Inc., filed by Dillon applicant Alan K. Levin; and (c) related pleadings. The two Dillon applications and the one for Dillon-Frisco-Silverthorne are mutually exclusive; the Vail applications are mutually exclusive; and the Fraser and Golden aplications are mutually exclusive. All seven are considered herein because of common questions relating to the Commission's ownership rule for AM stations.

The Gayer Applications

2. *Petition to dismiss.* Various members of the Gayer family hold significant interests in the Summit (Dillon-Frisco-Silverthorne), Eagle (Vail), and Grand (Fraser) applications, and there is substantial primary service contour overlap among the three proposals and with the Gayers' KBCR, Steamboat Springs, Colorado. The Summit principals include John G. Gayer and his wife Carol; the Eagle principals

include John H. Gayer (the other Gayer's father) and his wife Dorothy; and the Grand principals include Dwight H. and Diane E. Gayer (brother and sister of John G. Gayer).[1] These relationships and other factors led applicant Levin to file a petition to dismiss the Summit application, in which he argues that the Gayer proposals violate Section 73.35 of the Commission's Rules, which limits the ownership of multiple broadcast stations by single parties. Levin supports his argument by describing the joint family ownership and operation of other broadcast stations in Colorado, father John's role in merger discussions with Levin, father John's role in a site search for the Summit proposal, and financial support father John and mother Dorothy are entending son Dwight and daughter Diane in their Grand application. In response, Summit concedes that father John provided limited assistance to son John and his co-principal (not a Gayer), but maintains that it was provided at the request of and for the convenience of the latter two. Summit also states that father John has not and will not exercise any control over Summit, and that the proposed station will be operated independently of the other Gayer stations.

3. Generally, family relationships standing alone do not create a presumption of common control. *KTRB Broadcasting Co., Inc.*, 46 FCC 2d 605 (1974). Hoever, the circumstances in a particular case may raise questions which can only be answered through the hearing process. *Stuart W. Epperson*, 44 FCC 2370 (1961). Therefore, the facts of each case that comes before us must be carefully considered. Here, an appropriate starting point is a review of the various Gayer broadcast interests.

4. *Background.* (a) Father John Gayer began with a 32⅓% interest in AM station KFNF, Shenandoah, Iowa, and later increased it to 85%. Mother Dorothy served as secretary-treasurer and director. The station began operation in 1971, and Gayer sold his interest in 1977. (b) The second Gayer station was KAAT(AM), Denver. Father John originally owned half the stock, but later took 100% ownership. Mother Dorothy served as secretary and director. Son Dwight, then a high school student, assisted in constructing the station. KAAT went on the air in 1972, and Gayer sold it in 1978. (c) In 1972 the Gayers formed Big Country Radio, Inc. to apply for AM and FM stations at Steamboat Springs, Colorado. The firm was owned in equal shares by all five members of the Gayer family, and father John, mother Dorothy, and son John were officers and (except son John) directors. To finance the stations, father John and mother Dorothy agreed to lend Big Country up to $145,000, and father John personally guaranteed bank loans of $145,000. The FM application was granted first, in 1973; the AM application was mutually exclusive with one other, but an agreement was reached by which the competing applicant dropped out and its principal shareholder acquired a 25% interest in Big Country. Son John, who had no prior broadcasting experience, became general manager of both stations when they commenced operation. The Gayers still control these stations, though the family members' interests have changed. In 1977 son Dwight and daughter Diane sold their 6.25% interests to son John for $500 each, and in 1978 father John sold his 12.5% interest to mother Dorothy for $1,000. Son John is now president and director, with 43.75% of the stock, and mother Dorothy is secretary and director, with 31.25% of the stock. (d) Also in 1972, a group including father John, mother Dorothy, and son John formed Radio Vail, Inc. and applied for a new FM station at Vail, Colorado. The three Gayers guaranteed a loan for up to $70,000 for this station, and father John agreed to loan the applicant $25,000. Agreement with a competing applicant led to grant of Radio Vail's application, and KVMT began operation in 1975. Son John relinquished his 15% interest when he assumed his duties at KBCR-AM-FM. Radio Vail applied for a new AM station at Vail in 1976 (it has since changed its corporate name to Eagle Radio, Inc.), and sold KVMT in 1979.

5. *Current proposals.* (e) Son John owns 50% of the stock and is president and director of Summit, applicant for Dillon-Frisco-Silverthorne. His wife, Carol, is secretary and director. Son John has subscribed for $10,000 of additional stock and proposes to loan the applicant $10,000. These proposed contributions and equal ones by his co-principal are backed by a $40,000 bank loan offered by the Gering National Bank & Trust Company in Gering, Nebraska. Father John is the chairman of the board and president of the bank's holding company, and along with mother Dorothy has a substantial ownership and management interest in it. In addition, Summit relies on a loan commitment for $90,000 from the Summit County Bank of Frisco, Colorado, which was obtained after son John and his co-principal were introduced to bank officials by father John, who was "previously acquainted" with them. The terms of this loan appear favorable, allowing for no principal or interest payments in the first year and semi-annual payments thereafter.

6. (f) Father John owns 48% of the stock and is president and director of Eagle, applicant for Vail. Mother Dorothy holds 27% of the stock and is secretary-treasurer and director. The two propose to loan the applicant about $63,000 and $36,000, respectively. However, if any of the contributors is unable to meet his or her commitment, Eagle relies on letters of credit for $100,000 from the First Bank of Vail and for $75,000 from the Gering National Bank & Trust Company. (g) Son Dwight owns 50% of the stock and is president, treasurer, and director of Grand, applicant for Fraser. Daughter Diane owns the other 50% of the stock and is vice-president, secretary, and director. Each has subscribed for an additional $5,000 of stock and proposes to loan the applicant $12,500. In partial support of these commitments, the Gering National Bank & Trust Company has agreed to lend each of them $12,500. The applicant also relies on a $75,000 loan commitment from the Middle Park Bank of Granby, Colorado. Earlier, the applicant relied on a $25,000 loan commitment by father John and mother Dorothy, and father John and mother Dorothy agreed to guarantee the Middle Park Bank Loan.

7. (h) There is also pending an application by Colorado Television, Inc. for a new television station in Denver, Colorado. Father John owns all the stock and is president, treasurer, and director; mother Dorothy is secretary and director; and son Dwight is assistant treasurer and director. Father John has agreed to loan the applicant $100,000, and he and mother Dorothy have agreed to secure a $200,000 bank loan with their stock in the Gering National Bank & Trust Company. (i) In addition, there is pending an application by Family Television, Inc. for a new television station in Omaha, Nebraska. Father John owns 24% of the stock and is president and treasurer; son Dwight is vice-president. Father John has subscribed for $16,500 in additional stock, has apparently agreed to loan the applicant $168,000, and has agreed to guarantee a $700,000 bank loan (with the other stockholders). (j) Finally, there is pending an application by Family Television, Inc. (but a different corporation) for a new television station in Boulder, Colorado. As originally filed, father John was 80% stockholder, president, and director of this corporation; he subscribed for $36,000 in additional stock; and he had some unspecified role in securing $300,000 in

[1] For the sake of clarity, the principal Gayers will be referred to as father John, mother Dorothy, son John, son Dwight, and daughter Diane.

stockholder and bank loans. Gayer disposed of his interests in this corporation in 1979.

8. In addition to the matters noted above, analysis of the materials filed with the various Gayer applications reveals the following:

—The articles of incorporation for Summit, Eagle, Grand, Big Country, and Colorado Television are verbatim identical.

—The corporate bylaws for Summit, Eagle, Grand, Big Country, and Colorado Television are verbatim identical, excepting only the number of directors for each.

—Summit, Eagle, Grand, Big Country, and Colorado Television are all authorized 50,000 shares of $1-par-value stock.

—The annual stockholder meeting dates for Summit, Eagle, Grand, and Colorado Television are the same, the third Tuesday in February.

—The initial registered agent for Grand was mother Dorothy, though she ostensibly held no official ownership or management position with the applicant. The initial and present registered office of the corporation is the home of father John and mother Dorothy.[2]

—Minnie Tomicich, the former business manager of KAAT, who is also assistant secretary and proposed business manager of Colorado Television, notarized the articles of incorporation of Summit, Grand, and Family (Boulder), and notarized the February 9, 1979 amendment to Colorado Television's articles.

—All Gayer family broadcast interests are represented by the same Washington communications counsel.

—All Gayer family radio applications were prepared by the same engineering counsel.

—Daughter Diane furnished the calculations, drawings, and photographs for Colorado Television's application, though she has no record interest in the applicant.

—Eagle and Grand respond identically to Question 16 in Section IV–A of their applications regarding proposed station policies relating to the Fairness Doctrine.

—Statements made by Eagle and Grand in response to Question 18 regarding program diversity are verbatim identical.

—The responses of Eagle and Grand to Question 29 regarding compliance with the Communications Act and the Rules of the Commission are nearly verbatim identical, and very similar to Summit's response.

9. *Discussion.* The reason that the Commission has consistently held that family relationships standing alone are insufficient to give rise to a presumption of control is that most of them are typified by an independence of one member from another. However, where there has been shown to be a sufficiently close relationship among the parties to a family unit, the Commission has found a degree of control to be present. *Lady Sarah McKinney-Smith and J. Shelby McCallum,* 59 FCC 2d 398 (1976).

10. Of course, a family relationship combined with other indicia of control may result in a finding of de facto common control. Thus, we have specified an ownership issue where an applicant depended upon a loan from his mother to finance the proposed station. *Stuart W. Epperson, supra.* And we did the same in *East Arkansas Broadcasters,* 25 FED. Reg. 10746, 20 RR 934 (1960), where the applicants were the daughter and son-in-law of a couple owning several broadcast stations. In the latter case the family members had been applicants for broadcast stations in the past, the various family stations had almost identical statements of policy, and certain family members had undertaken to act on behalf of other family members regarding Commission matters in which they had no record interest. In addition, the son-in-law was general manager of a station owned by his wife's parents.

11. Our analysis of present and past Gayer family interests gives rise to sufficient questions of common control to warrant further exploration. The principal factors cited in *East Arkansas* are also present here. The history of the Gayer interests and the striking parallels among supposedly independent stations and proposals suggest at least an informal family business operation revolving around the senior Gayers. We do not agree with Summit's opposition to the petition to dismiss that this case presents a situation similar to *Alabama Radio Corporation,* 69 FCC 2d 1256 (1978). There we were considering a possible violation of our duopoly rule, not a regional concentration of control problem. Further, the cross-interest involved was relatively small; and there was no indication of concerted family action, financial support for multiple applications, cross control, or other interests proscribed by our cross-interest policy. The questions presented by the Gayher interests and activities can only be resolved through hearing on an evidentiary issue.

The Dillion Applications

12. *Alan K. Levin.* Analysis of the financial data applicant Levin submitted reveals that $65,536 will be required to construct the proposed station and operate for three months, itemized as follows:

Equipment down payment	$8,157
Equipment payments	5,230
Other equipment	2,999
Building	5,000
Other construction costs	29,000
Operating costs	15,150
Total	65,536

Levin plans to finance the station with $30,000 in existing capital and a $75,000 bank loan, but none of these funds have been shown to be available. The most recent balance sheet Levin submitted is undated and does not show that his current assets exceed current liabilities. Further, the bank's loan commitment letter does not specify the collateral required. A limited financial issue will therefore be specified.

13. Levin has failed to comply with the requirements of the *Primer on Ascertainment of Community Problems by Broadcast Applicants,* 27 FCC 2d 650 (1971). His compositional study describes Summit County in some detail, but is not appropriately informative as to the composition of Dillon, particularly with regard to the racial make-up of the town, its governmental activities, and its public service organizations. Dillon's small size (less than 500 permanent residents) and the likely lack of formal studies of the town do not excuse the applicant from determining and describing its composition. In addition, from the information before us, it appears that the applicant has failed to survey leaders of several significant Dillon population groups. Specifically, no leaders of the following groups were interviewed: charities, elderly, minorities, professsions, women, and youth. Further, Levin's survey of the general public is not sufficiently described for us to determine whether a reasonable number of residients of Dillon—as opposed to Summit County generally—were interviewed. Finally, the time segments of the programs Levin proposes to meet ascertained problems are not indicated, and the programs themselves are not sufficiently described to allow us to determine whether they are in fact related to the problems. A limited ascertainment issue will be specified.

14. Applicants for new broadcast stations are required by Section 73.3580 of the Commission's Rules to give local

[2] Information concerning the present registered office and agent of Grand was requested from the Colorado Department of State.

notice of the filing of their applications. They must then file with the Commission the statement described in Section 73.3580(h). We have no evidence that Levin published the required notice. To remedy this deficiency, Levin will be required to demonstrate his compliance with the rule.

15. *Summit Radio, Inc.* Analysis of the financial data Summit submitted reveals that $90,839 will be required to construct the proposed station and operate for three months, itemized as follows:

Equipment lease payments	$11,564
Land and building	57,000
Other construction costs	11,000
Operating costs	11,275
Total	90,839

Summit plans to finance the station with $5,000 in existing capital, a $90,000 bank loan, stockholder loans and subscriptions amounting to $40,000, and advertising pledges of $21,325. The availability of the existing capital has been established, as has stockholder Crass' commitment for $20,000 capital and loans. However, stockholder Gayer's balance sheet does not show sufficient net liquid assets to meet his commitments, and a bank letter offering to loan him the funds he needs has expired. The direct bank loan has also not been shown to be available, since that bank's commitment letter has also expired. Finally, since the advertising pledges submitted are merely non-binding statements of intent, we cannot consider them as assets of the applicant. A limited financial issue will be specified.

16. Summit has not fully met the requirements of the ascertainment *Primer*. Its compositional study contains extensive information about Summit County, but practically nothing about the three communities to be served. In addition, leaders of the following groups were not interviewed: business, charities, consumers, elderly, minorities, professions, and women. A limited ascertainment issue will be specified.

17. Summit has applied for authorization to serve three communities: Dillon, Frisco, and Silverthorne. Section 73.1120(b) of the Commission's Rules (formerly Section 73,30(b)) requires that applicants seeking to serve more than one community make a special three-part showing as to the public interest aspects of their proposals.[3] In lieu thereof, an applicant may request a waiver of that showing and instead show that the communities it desires to serve clearly enjoy an "identity of interests for programming and other purposes." *Hymen Lake*, 46 FCC 2d 560 (Rev. Bd. 1974). See also *Saul M. Miller*, 4 FCC 2d 150 (1966). However, Summit has neither made the showing required by the rule nor asked for a waiver. An appropriate issue will therefore be specified.

18. *Dillon Broadcasting Company.* DBC has also failed to comply with the ascertainment *Primer's* requirements. Its compositional study does not include a breakdown of the racial and ethnic make-up of Dillon, nor does it describe Dillon's economic activities. DBC also failed to include certain groups in its survey of community leaders, specifically business, consumers, culture, and minorities. Next, DBC's statement of the methodology employed in its general public survey is insufficient to allow us to determine whether the required random sample was achieved. In addition, the time segments of the applicant's proposed responsive programs are not stated. A limited ascertainment issue will be specified.

19. *Other matters.* Because two of the applicants propose Dillon as their principal community, while Summit proposes Dillon-Frisco-Silverthorne, a Section 307(b) issue will be specified in the event it is determined that Summit has met its Section 73.1120(b) burden or has shown that a waiver of that rule is warranted. Further, since all the applicants serve substantial areas in common, a contingent comparative issue will also be specified.

The Vail Applications

20. *Eagle Radio, Inc.* Analysis of the financial data Eagle subm' 'ed indicates that $108,000 will be required to construct the proposed station and operate for three months, itemized as follows:

Equipment down payment	$7,314
Equipment payments	6,686
Building and emergency generator	35,000
Other construction costs	41,000
Operating costs	18,000
Total	108,000

However, Eagle's equipment costs are based on a proposal for a guyed tower, whereas it now proposes a self-supporting tower, which we would expect to cost more. Eagle plans to finance its station with $1,370 existing capital and loans totaling $125,000 from three of its principals. In the event these three cannot meet their commitments, Eagle would rely on bank loans of $100,000 and $75,000. Except for the existing capital, though, none of these funds have been shown to be available. The three principals' balance sheets do not show sufficient net liquid assets to meet their obligations. Further, the letter concerning the $100,000 loan only solicits a loan application; and the commitment for the $75,000 loan fails to state the security required and, in any event, has expired. A limited financial issue will be specified.

21. Eagle has also failed to comply with the requirements of the ascertainment *Primer*. First, its compositional study does not include sufficient data to indicate the population characteristics, governmental activities, and public service organizations of Vail. Furthermore, this applicant has failed to survey leaders of significant Vail groups, namely charities, Hispanics, labor, professions, and women. In addition, its description of its general public survey does not provide enough information for us to determine whether a random sample of the Vail population was achieved. A limited ascertainment issue will be specified.

22. In response to Question 26, Section IV-A of FCC Form 301, the applicasnt has indicated that on some occasions it might exceed its normal commercial ceiling of 18 minutes per hour, but has not stated the limits that would apply in those circumstances, as the question requires. An amendment is needed to supply the missing information.

23. Section 73.3580 of the Commission's Rules requires applicants for new stations who file major amendments to their applications (*e.g.*, a change in frequency or a power increase) to publish local notice of the amendment and to file with the Commission the statement described in Section 73.3580(h). Although Eagle amended its application to change frequency and increase power, we have no evidence it published the required notice. To remedy this deficiency, the applicant will be required to demonstrate its compliance with the rule.

24. *Mountain Wireless Limited.* On February 6, 1980 Mountain tendered an amendment to change its antenna site and system. The applicant maintains the amendment was necessary because the availability of the original site on public land was placed in considerable doubt after the cut-off date for amendments as a matter of right (August 27, 1979) by its confirmation that a site on private land was available. Eagle argues that good cause has not been shown for the late

[3] Section 73.1120(b) requires AM applicants proposing to serve multiple communities to show (a) that a satisfactory main studio is provided for each community, (b) that the station can and will provide a sustantial number of local live programs from each community, and (c) that the program origination requirements of Section 73.1130 would place an unreasonable burden on the station if it were licensed to serve only one community.

amendment, since Mountain first knew in mid-August 1979 that the private site might be available, and since it is not certain that the availability of the private site precludes the availability of the one on public land.

25. The pleadings filed indicate that Mountain waited until the availability of the private site was confirmed (in October 1979) before making inquiries to the Bureau of Land Management (in November 1979) about the continued availability of public land, and was apparently advised that the BLM "could . . . insist that the applicant fully explore the availability of appropriate sites on private land as a prerequisite to further consideration of their request for a right-of-way on public lands." Concluding that this placed the availability of public land in doubt, Mountain proceeded to prepare and file the subject amendment. Applicant's characterization of events does not raise any question of misrepresentation, and its course of action and conclusion about the availability of the originally proposed site do not appear unreasonable. We therefore believe good cause has been shown for the late specification of a new site. Consequently, the amended site will be considered for both basic qualification and comparative purposes.

26. However, when Mountain specified the new site, it also specified a taller, more efficient antenna tower, thereby improving its coverage and overcoming an earlier apparent disadvantage in comparison with Eagle's coverage. Since the applicant has not shown good cause for voluntarily amending this aspect of its proposal after the deadline for amendments as a matter of right, the increased radiation efficiency will not be taken into account for comparative purposes.[4] (However, should any question of Mountain's basic technical qualifications arise, the entire amended proposal will be considered for the purpose of such question.) Since it appears that for comparative purposes there would be a significant difference in the areas and populations which would receive primary service, those areas and populations and the availability of other primary aural services in such areas will be considered under the standard comparative issue for the purpose of determining whether a comparative preference should accrue to either of the applicants.

[4] In response to Eagle's motion to strike its amendment, Mountain agreed to waive any comparative advantage attributable to the site change.

27. Mountain's amended technical proposal calls for a self-supporting tower, but this applicant has also not amended its financial showing to reflect the greater cost of this tower (which is, in addition, much taller than the tower formerly proposed). However, Mountain's financial data shows a substantial cushion, which should easily absorb the increase. Consequently, while an appropriate amendment is required, a financial issue is not indicated.

28. As does Eagle's, Mountain's composition study fails to describe the population characteristics, governmental activities, or public service organizations of Vail. Further, it does not appear the applicant interviewed leaders of the following groups in Vail: charities, civic, elderly, Hispanic, labor, professions, and women. Mountain also has not specified the anticipated time segments for the presentation of its programming in response to ascertained problems. A limited ascertainment issue will be specified.

The Fraser and Golden Applications

29. *Grand Radio, Inc.* As amended on April 21, 1980, Grand's daytime proposal apparently involves a small amount of mutual 0.5 mV/m contour overlap with first-adjacent-channel station KFBC, Cheyenne, Wyoming, in violation of Sections 73.24(b) and 73.37(a) of the Commission's Rules. Rather than wait for a corrective pre-designation amendment, as we would normally do, we will give Grand an opportunity to correct this minor deficiency by a post-designation amendment, in order not to delay commencement of the hearing.

30. Analysis of the financial portion of Grand's application indicates that $88,172 will be required to construct the proposed facility and operate for three months, itemized as follows:

Equipment down payment	$9,295
Equipment payments	7,877
Building	29,500
Other construction costs	23,200
Operating costs	18,300
Total	88,172

The applicant proposes to finance this with $10,000 existing capital, $10,000 new capital, a $75,000 bank loan, and $25,000 in stockholder loans. However, none of these sources has been shown to be available in the amount indicated. Applicant's balance sheet shows current assets of $10,000, but they include $8,697 in application expenses apparently not listed as projected costs, leaving only $1,303 of existing capital available. The new capital and stockholder loans are to be contributed equally by principals Dwight and Diane Gayer, $17,500 each, and they rely in part on bank loans of $12,500 each to raise these funds. However, the bank's letters require unspecified security for the loans, and so are not sufficient to establish that these loans are available. Further, Dwight's balance sheet shows only $8,300 net liquid assets, and Diane's shows none. Therefore, they have not shown the capacity to invest the $35,000 claimed. Finally, with respect to the $75,000 bank loan directly to the applicant, the bank's commitment letter requires its loan to be secured by marketable stocks, but the Gayers' ability to satisfy this condition has not been shown. A limited financial issue will be specified.

31. Grand's ascertainment does not comply fully with the requirements of the *Primer*. Despite a lengthy compositional study, there is little information about Fraser, the proposed community of license. For example, there is no indication of the community's racial, ethnic, or minority composition, its governmental activities, or its public service organizations. We are therefore unable to assess the significance of applicant's failure to ascertain minority leaders. A limited ascertainment issue will be specified.

32. Grand also failed to answer Question 26 of Section IV–A of its application, regarding its proposed commercial limits. A correcting amendment must be filed.

33. *Jefferson Wireless Company.* Jefferson's nighttime interference-free contour (19.3 mV/m) would not serve a small (0.3-square km) area of Golden. However, the unserved area is only about 1.5 percent of the total area of the city, and is described by the applicant as unpopulated. The proposal therefore substantially complies with the principal-city coverage requirements of Section 73.24(j) of our Rules. See, *e.g.*, *San Francisco Wireless Talking Machine Co., Inc.*, FCC 80–260, Mimeo No. 27330, 47 RR 2d 889 (1980).

34. Jefferson's application projects that $96,500 will be required to construct its proposed station and operate for three months, itemized as follows:

Equipment	$55,000
Land lease	1,000
Other construction costs	13,500
Operation costs	27,000
Total	96,500

The applicant relies on $300 existing capital and a $140,000 bank loan for funds, but none of it has been shown to be available. Jefferson's balance sheet is undated, and its banks loan commitment letter does not set out the terms of the

loan. (Exhibit 5 to the application indicates that Listeners' Network, 50-percent stockholder, will loan the applicant up to $80,000, but the terms of the loan and Network's capacity to make it are not shown.) A limited financial issue will be specified.

35. Jefferson has also failed to comply with the requirement of the ascertainment *Primer*. Its compositional study does not describe the economic activities of Golden. And while the study indicates there is a small minority population in Golden, there is no discussion of whether minorities are a significant population group, and Jefferson apparently interviewed no leaders of local minorities. In addition, we cannot determine whether the applicant interviewed leaders of outlying communities its proposed station would serve. Further, Jefferson failed to list all the problems reported in its leader interviews, and did not describe its responsive programming as fully as required by the *Primer*. A limited ascertainment issue will be specified.

36. *Other matters*. These two proposals, although for different communities, would serve substantial areas in common. Consequently, in addition to determining pursuant to Section 307(b) of the Communications Act of 1934, as amended, which of the proposals would better provide a fair, efficient, and equitable distribution of radio service, a contingent comparative issue will also be specified.

Conclusion and Orders

37. Except as indicated by the issues specified below, all seven applicants are qualified to construct and operate as proposed. However, since each of the proposals is mutually exclusive with one or two of the others, and since questions relating to the Gayers are common to all three mutuallty exclusive combinations, they all must be designated for hearing in a consolidated proceeding.

38. Accordingly, it is ordered, That pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine whether grant of the application of Summit Radio, Inc., Eagle Radio, Inc., or Grand Radio, Inc., or any combination thereof, would violate Section 73.35(a) of the Commission's Rules with respect to multiple ownership or control of broadcast stations or Section 73.35(b) of the Commission's Rules with respect to regional concentration of control.

2. To determine with respect to Alan K. Levin:

a. The source and availability of sufficient funds to meet anticipated costs; and

b. Whether, in light of the evidence adduced pursuant to (a) above, the applicant is financially qualified.

3. To determine with respect to the efforts of Alan K. Levin to ascertain the needs of this proposed service area:

a. Whether the applicant adequately determined the racial, ethnic, or minority composition; govermental activities; and public service organizations of Dillion;

b. Whether the applicant interviewed leaders of charities, elderly, minorities, professions, women, and youth in Dillon;

c. Whether the applicant interviewed a sufficient number of members of the Dillon general public to assure a generally random sample; and

d. Whether the applicant's programming proposal reflects an evaluation of his ascertained problems and needs.

4. To determine with respect to Summit Radio, Inc.:

a. The source and availability of sufficient funds to meet anticipated costs; and

b. Whether, in light of the evidence adduced pursuant to (a) above, the applicant is financially qualified.

5. To determine with respect to the efforts of Summit Radio, Inc. to ascertain the needs of its proposed service area:

A. Whether the applicant adequately determined the composition of Dillon, Frisco, and Silverthorne; and

b. Whether the applicant interviewed leaders of business, charities, consumers, elderly, monorities, professions, and women in the communities it proposes to serve.

6. To determine whether the proposal of Summit Radio, Inc. to serve three communities is in compliance with Section 73.1120 of the Commission's Rules, and if not whether circumstances exist which warrant a waiver of that Section.

7. To determine with respect to the efforts of Dillon Broadcasting Company to ascertain the needs of its proposed service area:

a. Whether the applicant adequately determined the racial, ethnic, or minority composition, and the economic activities of Dillon;

b. Whether the applicant interviewed leaders of business, consumers, culture, and minorities in Dillon;

c. Whether the applicant's interviews with members of the Dillon general public assured a generally random sample; and

d. Whether the programming the applicant proposes in response to its ascertained problems and needs is scheduled at times when it could reasonably be expected to be effective.

8. To determine the areas and populations which would receive primary aural service from the proposals of Alan K. Levin, Summit Radio, Inc., and Dillon Broadcasting Company, and the availability of other primary service to such areas and populations.

9. To determine, in light of Section 307(b) of the Communications Act of 1934, as amended, whether the Dillon-Frisco-Silverthorne proposal or one of the Dillon proposals would better provide a fair, efficient, and equitable distribution of radio service.

10. To determine, in the event it be concluded that a choice among the Dillon and Dillon-Frisco Silverthorne applications should not be based solely on considerations relating to Section 307(b), which of the proposals would on a comparative basis best serve the public interest.

11. To determine with respect to Eagle Radio, Inc.:

a. Wether the amount it proposes for its antenna tower is sufficient to meet that purpose;

b. The source and availability of sufficient funds to meet anticipated costs; and

c. Whether, in light of the evidence adduced pursuant to (a) and (b) above, the applicant is financially qualified.

12. To determine with respect to the efforts of Eagle Radio, Inc. to ascertain the needs of its proposed service area:

a. Whether the applicant adequately determined the population characteristics, governmental activities, and public service organizations of Vail;

b. Whether the applicant interviewed leaders of charities, Hispanics, labor, professions, and women in Vail; and

c. Whether the applicant's interviews with members of the Vail general public assured a generally random sample.

13. To determine with respect to the efforts of Mountain Wireless Limited to ascertain the needs of its proposed service area:

a. Whether the applicant adequately determined the population characteristics, governmental activities, and public service organizations of Vail;

b. Whether the applicant interviewed leaders of charities, civic groups, elderly, Hispanics, labor, professions, and women in Vail; and

c. Whether the programming the applicant proposes in response to its ascertained problems and needs is scheduled at times when it could reasonably be expected to be effective.

14. To determine which of the Vail proposals would, on a comparative basis, better serve the public interest.

15. To determine with respect to Grand Radio, Inc.:

a. The source and availability of sufficient funds to meet anticipated costs; and

b. Whether, in light of the evidence adduced pursuant to (a) above, the applicant is financially qualified.

16. To determine with respect to the efforts of Grand Radio, Inc. to ascertain the needs of its proposed service area:

a. Whether the applicant adequately determined the composition of Fraser; and

b. Whether the applicant interviewed minority leaders in Fraser.

17. To determine with respect to Jefferson Wireless Limited:

a. The source and availability of sufficient funds to meet anticipated costs; and

b. Whether, in light of the evidence adduced pursuant to (a) above, the applicant is financially qualified.

18. To determine with respect to the efforts of Jefferson Wireless Limited to ascertain the needs of its proposed service area:

a. Whether the applicant adequately determined the racial, ethnic, or minority composition, and the economic activities of Golden;

b. Whether the applicant interviewed minority leaders in Golden;

c. Whether the applicant adequately ascertained community problems outside of Golden;

d. Whether the applicant listed all ascertained community problems; and

e. Whether the applicant's programming proposal reflects an evaluation of its ascertained problems and needs.

19. To determine the areas and populations which would receive primary aural service from the proposals of Grand Radio, Inc. and Jefferson Wireless Limited, and the availability of other primary service to such areas and populations.

20. To determine, in light of Section 307(b) of the Communications Act of 1934, as amended, whether the Fraser or the Golder proposal would better provide a fair, efficient, and equitable distribution of radio service.

21. To determine, in the event it be concluded that a choice between the Fraser and Golden applications should not be based solely on considerations relating to Section 307(b), which of the proposals would on a comparative basis better serve the public interest.

22. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications, if any, should be granted.

39. It is further ordered, That Eagle Radio, Inc., Mountain Wireless Limited, and Grand Radio, Inc. shall file the amendments specified in paragraphs 22, 27, 29, and 32 above, within 30 days after this Order is published in the Federal Register.

40. It is further ordered, That Alan K. Levin and Eagle Radio, Inc. shall publish local notice of their application and amendment, respectively (if they have not already done so), and shall file statements of publication with the presiding Administrative Law Judge within 40 days after this Order is published in the Federal Register.

41. It is further ordered, That the petition to dismiss Alan K. Levin filed against the application of Summit Radio, Inc. IS GRANTED to the extent indicated herein, and IS DENIED in all other respect.

42. It is further ordered, That to avail themselves of the opportunity to be heard, the applicants herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, file with the Commission in triplicate a written appearance stating an intention to appear on the date fixed for the hearing and to present evidence on the issues specified in this Order.

43. It is further ordered, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing (either individually or, where consistent with the Rules, jointly) within the time and in the manner prescribed in such rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules. Inasmuch as this proceeding involves three mutually exclusive combinations, for each of which most of the issues relating to the other two are irrelevant, applicants Levin, Summit, and DBC need not publish issues 11 through 21, applicants Eagle and Mountain need not publish issues 2 through 10 and 15 through 21, and applicants Grand and Jefferson need not publish issues 2 through 14.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 80-40230 Filed 12-24-80; 8:45 am]

BILLING CODE 6712-01-M

[FCC 80-583; Transmittal Nos. 7566 and 892; I-T-C-3005; CC Docket No. 80-639]

Western Union Telegraph Co. and TRT Telecommunications Corp.; Memorandum Opinion and Order

Adopted: October 9, 1980.

Released: October 29, 1980.

In the matter of the Western Union Telegraph Company (Transmittal No. 7566), Tariff F.C.C. No. 272, Overseas Telex Routing Service (OTRS); and Application for authority to operate facilities to provide telex service to overseas points (I-T-C-3005), and TRT Telecommunications Corporation (Transmittal No. 892), Tariff F.C.C. No. 72, Express International Telex Service (EITS), and Development of formula for distribution of international telex traffic (CC Dkt. No. 80-639).

By the Commission:

1. On August 25, 1980 the U.S. Court of Appeals for the Second Circuit vacated and set aside this Commission's Order [1] allowing Western Union Telegraph Company to continue providing overseas worldwide telex service in conjunction with Canadian and Mexican carriers (CNCP and Telecomex, respectively) and TRT Telecommunications Corporation (TRT).[2] The Court determined that the service, variously known as Western Union International Telex Service (WUITS), Low Cost Routing (LCR), or Overseas Telex Routing Service (OTRS), violates Section 222 of the Communications Act, 47 U.S.C. § 222. The Court directed the Commission on remand to order Western Union to terminate overseas service via CNCP or Telecomex and to cease any other international telegraph operations as well. In its subsequent order, released September 12, 1980, the Court further prescribed that "any effort by Western Union to continue its WUITS or LCR service by via TRT alone [rather than including other International Record Carriers (IRCs) pursuant to a Commission-approved traffic distribution formula] is clearly prohibited by Section 222." [3]

2. Consistent with those judicial pronouncements, this order solicits comment on development of a Commission-approved Telex distribution formula, and effectuates the Court's mandate to terminate the

[1] *Western Union Telegraph Co., New Telex Service Arrangements via Mexico and Canada*, 75 FCC 2d 461 (1980).

[2] *ITT World Communications, Inc. et al v FCC*, Nos. 79-4220, 80-4003, and 80-4016, decided August 25, 1980; on motion for an order adjudging Western Union to be in contempt, decided September 12, 1980.

[3] September 12 slip decision, at 5547.

WUITS service. Specifically, this order implements the Court's decision with respect to the suspended WUITS service,[4] development of a distribution formula for international telex traffic, and TRT's international telex service currently offered in close cooperation with Western Union (Express International Telex Service or EITS). The latter service was not directly addressed by the court but its decision clearly affects an international telex offering pursuant to contract between TRT and Western Union.

WUITS Tariff Matters

3. In accordance with the Court's holding that Western Union's WUITS service, Tariff FCC No. 272, violates Section 222 of the Communications Act, 47 U.S.C. § 222, we order Western Union to file revisions terminating that service immediately. Applications for review of the Bureau Chief's order denying petitions to reject that tariff *(Western Union Transmittal No. 7566: Overseas Telex Routing Service (OTRS)*, FCC Mimeo 32458, released June 9, 1980), will be dismissed as moot.[5]

4. On September 11, 1980, Western Union applied for authority under § 214 of the Act. 47 U.S.C. § 214, to discontinue use of Canadian and Mexican overseas telex routings. As the Court held Western Union's provision of OTRS service is illegal under Section 222 of the Act, no purpose would be served by a separate evaluation of its discontinuance pursuant to Section 214. The application filed September 11 by Western Union will be returned under separate cover.

5. In addition, because the Court's interpretation of § 222 proscribes any offering of direct international service by Western Union, that carrier's application for authority to extend direct telex service to overseas points, File No. I-T-C-3005, is beyond the Commission's jurisdiction. That application, too, will be dismissed.

Formula for Telex Traffic Distribution

6. The Court's September 12 decision also prohibits Western Union from providing the domestic portion of overseas service in connection with a single international carrier, and requires that the distribution of traffic among the IRCs is according to a formula approved by the FCC. Until now the Commission has never expressly approved a telex distribution formula, because it was felt that the statutory purpose of Section 222(e) was served by the longstanding practice of allowing individual consumers to make routine decisions free of pressures to favor any one IRC. We undertake in this order to develop a formula for the distribution of international telex traffic by Western Union, consonant with the Court's instructions.[6]

7. It is our understanding that most international telex traffic is transmitted by an IRC of the customer's explicit selection. In such circumstances Western Union neither directly offers the international telex service nor exercises any influence over the customer's routing of such traffic to particular IRCs. In effect, the distribution to IRCs of substantially all overseas telex traffic has for some time been accomplished by individual subscribers' routing decisions. The domestic carrier's distribution leverage, which Congress originally constrained by the formula requirement of Section 222(e), has effectively been supplanted in the telex area by technology and use patterns which require individual customers to specify an IRC at their terminals.

8. Only a very small residuum (much less than one per cent) of all international telex traffic is unrouted—i.e., submitted to Western Union for that carrier's selection of an IRC to complete the transmission. When Western Union receives such traffic for routing, our understanding is that it forwards each message on a strictly rotational basis pursuant to agreements with the several IRCs. An example of such unrouted traffic is the occasional distribution of an identical message to many different addresses, where the customer has not provided routing instruction for the few addresses involving international telex service. In such circumstances individual messages would be sent by different IRCs on a rotational basis.

9. In approaching the determination of a distributional formula pursuant to § 222(e), the Commission has taken into account the Court's statement in its August 25 decision (slip opinion, *supra* n.2, at 5187) that "nothing in the Act exempts routed traffic from the requirements of Section 222(e)(1)." The Court went on to point out that routing may be taken into account in "shaping" a formula and that the FCC has treated routed and unrouted traffic differently under Section 222(e). (Slip Opinion at 5187). In fact, the Commission always has respected specific customer routing in accepting or prescribing formulas.[7] While we have taken routed traffic volues into account in "shaping" our formulas, we have never used a formula to override the customer's choice of a route. In the case of Telex service, virtually all traffic is routed by the customer and not by Western Union. Thus, we have had no occasion to require a formula for the distribution of unrouted traffic. And, now that we have required Western Union to terminate its WUITS offering, there is no pressing need to impose an interim formula pending the further proceedings that we initiate in this order looking toward a Telex formula.

10. Pending final determination of a Telex formula pursuant to Section 222(e) of the Communications Act, 47 U.S.C. § 222(e), we intend to permit Western Union to continue distributing Telex traffic as it has in the past. Neither carriers nor customers have complained of this operation. Affected carriers are therefore authorized to continue present practices for distribution of routed and unrouted international Telex traffic on an interim basis, while we solicit comments to determine whether public interest factors warrant any variation in the present *de facto* allocational mechanism.[8] We will approve or prescribe a Telex formula pursuant to Section 222(e) on the basis of our evaluation of the comments we receive. The interested carrier parties may present for our consideration a negotiated arrangement,[9] including an arrangement that is similar to the *de facto* one that has governed Telex distribution.

[4] Western Union suspended its WUITS offering on September 12 in compliance with the Court's order released that date.

[5] On September 11 Western Union applied for special permission to revise the OTRS tariff on less than one day's notice. The proposed revision would have continued OTRS service on a restricted basis, using only TRT for the international transmission segment. In light of the Court's instructions and our actions herein, that application is dismissed as moot.

[6] We do not interpret the court's mandate to require the interim cessation of all international telex transmission in which Western Union performs the domestic landline haul function.

[7] See *Merger of Western Union and Postal Telegraph* (Separate Report on Formulas), 10 FCC 184, 191 (1943); *IRCs Scope of Operations*, 67 FCC 2d 877, 879, *aff'd sub nom. RCA Global Comm., Inc. v. FCC*, 574 F.2d 724, 729 (2d Cir. 1978). See also *Western Union Tel. Co. v. FCC*, 217 F. 2d 579, 581 (2d Cir. 1954).

[8] In initially adopting an international telegraph formula after the 1943 merger of Western Union and Postal Telegraph, the Commission referred to varied public interest factors, including but not limited to: (i) equities between the various carriers, (ii) the public's interest in maintaining the strength and service of all carriers in a position to render efficient service, (iii) development of new technology, (iv) revenue shares accruing to the United States under various types of operation, (v) problems of duplication of facilities, and (vi) the ability of carriers to obtain in-bound and out-bound traffic.

Merger of Western Union and Postal Telegraph, supra, 10 FC 184.

[9] See 47 U.S.C. § 222(e)(1).

TRT's Express International Telex Service (EITS)

11. Also pending before the Commission are applications for review of the Common Carrier Bureau Chief's order in *TRT Tariff FCC No. 72: Express International Telex Service (EITS),* released May 8, 1980. The Bureau Chief's order denied petitions to reject the TRT tariff and allowed it to become effective. This service arises from a contract between Western Union and TRT under which TRT offers through international service, using dometic private line facilities belonging to Western Union for the landline haul. Though offered by TRT, EITS nevertheless may run afoul of the Court's decision in the *Telecomex* case because of the special relationship between the dominant domestic telex carrier and a single IRC. In particular, EITS may have the same difficulties with respect to the formula that required the termination of WUITS as offered through TRT. We are requesting comments from Western Union and the IRCs with respect to EITS, to be filed within 10 days and replies 10 days later. These comments will be considered in the context of petitions for agency review of the Bureau Chief's order allowing EITS to become effective. After receipt of comments, we intend to act as soon as possible on the applications for review of the EITS decision, fully considering the Court's decision in the *Telecomex* case.

Ordering Clauses

12. Accordingly, it is ordered:

(i) that Western Union Telegraph Company shall immediately cease and desist from providing its LCR, WUITS or similar service via CNCP, Telecomex, or any carriers other than IRS;

(ii) that Western Union shall immediately cease the conduct of any international telegraphic operations; and

(iii) that Western Union shall not offer telex or TWX traffic via TRT or other IRCs to points outside the continental United States, except as approved by the Commission and according to a Commission-approved formula for the distribution of such traffic.

13. It is further ordered:

(i) that, Western Union's Telegraph Company shall withdraw its Tariff FCC No. 272, Overseas Telex Routing Service,

(ii) that Western Union's September 11, 1980 application No. 1787 for special permission to revise provisions of the OTRS service IS DENIED; and

(iii) that Western Union's application filed September 11, 1980 for authority under Section 214 of the Communications Act, 47 U.S.C. § 214, to partially terminate its OTRS service is returned.

14. It is further ordered that Western Union's application for authorization of direct overseas telex service, File No. I-T-C-3005, is dismissed.

15. It is further ordered that Western Union and the International Record Carriers currently receiving traffic from Western Union landhaul facilities shall jointly submit a proposed formula for distribution of all international telex traffic within 30 days of the release of this order, together with any comments necessary to explain and justify the proposed formula in terms of the standards set forth in Section 222(e). If the interested carriers cannot agree upon a proposed formula, they shall submit their individual proposals along with comments explaining and justifying those proposals within the same time limits. Any responses must be filed within 15 days after the opening proposals and comments.

16. It is further ordered that parties wishing to address the effects of the Court's decision in this matter on TRT's EITS service, Tariff FCC No. 72, shall file comments within 10 days, and any replies within 10 days after the filing of opening comments.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 80-40229 Filed 12-24-80; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL RESERVE SYSTEM

Bank of Boston International; Establishment of U.S. Branch of a Corporation Organized Under Section 25(a) of the Federal Reserve Act

Bank of Boston International, New York, New York, a corporation organized under section 25(a) of the Federal Reserve Act, has applied for the Board's approval under section 211.4(c)(1) of the Board's Regulation K (12 CFR 211.4(c)(1)), to establish a branch in Chicago, Illinois. Bank of Boston International operates as a subsidiary of The First National Bank of Boston.

The factors that are to be considered in acting on this application are set forth in section 211.4(a) of the Board's Regulation K (12 CFR 211.4(a)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Boston. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 to be received no later than January 16, 1981. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identify specifically any questions of fact that are in dispute, and summarize the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, December 19, 1980.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 80-40235 Filed 12-24-80; 8:45 am]

BILLING CODE 6210-01-M

Bank of Boston International of Miami; Establishment of U.S. Branch of a Corporation Organized Under Section 25(a) of the Federal Reserve Act

Bank of Boston International of Miami, Miami, Florida, a corporation organized under section 25(a) of the Federal Reserve Act, has applied for the Board's approval under section 211.4(c)(1) of the Board's Regulation K (12 CFR 211.4(c)(1)), to establish a branch in Dallas, Texas. Bank of Boston International of Miami operates as a subsidiary of The First National Bank of Boston, Boston, Massachusetts.

The factors that are to be considered in acting on this application are set forth in section 211.4(a) of the Board's Regulation K (12 CFR 211.4(a)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Boston. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 to be received no later than January 16, 1981. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identify specifically any questions of fact that are in dispute, and summarize the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, December 19, 1980.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 80-40234 Filed 12-24-80; 8:45 am]

BILLING CODE 6210-01-M

Bank Holding Companies; Notice of Proposed De Novo Nonbank Activities

The bank holding companies listed in this notice have applied, pursuant to section 4(c)(8) of the Bank Holding

Company Act (12 U.S.C. 1843(c)(8)) and section 225.4(b)(1) of the Board's Regulation Y (12 CFR 225.4(b)(1)), for permission to engage *de novo* (or continue to engage in an activity earlier commenced *de novo*), directly or indirectly, solely in the activities indicated, which have been determined by the Board of Governors to be closely related to banking.

With respect to each application, interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices." Any comment on an application that requests a hearing must include a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of that proposal.

Each application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank indicated for that application. Comments and requests for hearings should identify clearly the specific application to which they relate, and should be submitted in writing and, except as noted, received by the appropriate Federal Reserve Bank not later than January 19, 1981.

A. *Federal Reserve Bank of New York* (A. Marshall Puckett, Vice President) 33 Liberty Street, New York, New York 10045:

1. Citicorp, New York, New York (commercial lending and leasing activities; Colorado, Utah, Wyoming): to engage, through its subsidiary, Citicorp (USA), Inc., in commercial lending activities; and leasing personal or real property or acting as agent, broker, or advisor in leasing such property. These activities would be conducted from an office in Denver, Colorado, serving the states listed in the caption to this notice.

2. Citicorp, New York, New York (consumer and commercial finance and insurance activities; Virginia): to engage through its indirect subsidiary, Citicorp Person-to-Person Financial Center, Inc., in conducting the following activities: purchasing for its own account and servicing sales finance contracts; the sale of credit related life and accident and health or decreasing or level (in the case of single payment loans) term life insurance by licensed agents or brokers, as required; making or acquiring loans and other extensions of credit, secured or unsecured, for consumer and other purposes; and the extension of loans to dealers for the financing of inventory (floor planning) and working capital purposes. Credit related life, accident, and health insurance may be written by Family Guardian Life Insurance Company, an affiliate of Citicorp Person-to-Person Financial Center, Inc. These activities would be conducted from a *de novo* office in Vienna, Virginia serving the entire State of Virginia.

B. *Federal Reserve Bank of Chicago* (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

Continental Illinois Corporation, Chicago, Illinois (finance activities; Illinois): to engage through its subsidiary, Continental Illinois Commercial corporation, in commercial finance activities. These activities would be conducted from an office in Chicago, Illinois, serving the State of Illinois. Comments on this application must be received by January 12, 1981.

C. *Other Federal Reserve Banks:* None.

Board of Governors of the Federal Reserve System, December 19, 1980.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 80-40239 Filed 12-24-80; 8:45 am]

BILLING CODE 6210-01-M

Credit and Commerce American Holdings, N.V., Credit and Commerce American Investment, N.A.; Formation of Bank Holding Companies

Credit and Commerce American Holdings, N.V., Willemstad, Netherlands Antilles, and Credit and Commerce American Investment, B.V., Amsterdam, Netherlands, have applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become bank holding companies by acquiring up to 100 per cent of the voting shares of Financial General Bankshares, Inc., Washington, D.C., a multi-bank holding company controlling the following banks: Community State Bank, Albany, New York; Bank of Commerce, New York, New York; Eastern Shore National Bank, Pocomoke City, Maryland; First American Bank of Maryland; Silver Springs, Maryland; First American Bank, Washington, D.C., First American Bank of Virginia, Fairfax County, Virginia; Peoples National Bank of Leesburg, Leesburg, Virginia; The Round Hill National Bank, Round Hill, Virginia; Valley National Bank, Harrisonburg, Virginia; First National Bank of Lexington, Lexington, Virginia; Shenandoah Valley National Bank, Winchester, Virginia, and Valley Fidelity Bank and Trust Company, Knoxville, Tennessee. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Credit and Commerce American Holdings, N.V., Willemstad, Netherlands Antilles, and Credit and Commerce American Investment, B.V., Amsterdam, Netherlands, have also applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and section 225.4(b)(2) of the Board's Regulation Y (12 CFR 225.4(b)(2)), for permission to acquire voting shares of National Mortgage Corporation, Washington, D.C.

Applications state that the proposed subsidiary would engage in the activity of mortgage banking. This activity would be performed from offices of Applicant's subsidiary in Washington, D.C., and the geographic areas to be served are the Washington, D.C.-Maryland-Virginia SMSA. Such activities have been specified by the Board in section 225.4(a) of Regulation Y as permissible for bank holding companies, subject to Board approval of individual proposals in accordance with the procedures of section 225.4(b).

Interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweight possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

The applications may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Richmond.

Any views or requests for hearing should be submitting in writing and received by the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than January 16, 1981.

Board of Governors of the Federal Reserve System, December 19, 1980.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 80-40233 Filed 12-24-80; 8:45 am]

BILLING CODE 6210-01-M

First Union International Banking Corporation of North Carolina; Corporation to Do Business Under Section 25(a) of the Federal Reserve Act

An application has been submitted for the Board's approval of the organization of a corporation to do business under section 25(a) of the Federal Reserve Act ("Edge Corporation"); to be known as First Union International Banking Corporation of North Carolina, to be located in Charlotte, North Carolina, with a branch in New York City. First Union International Banking Corporation of North Carolina would operate as a subsidiary of First Union National Bank of North Carolina, Charlotte, North Carolina. The factors that are considered in acting on the application are set forth in section 211.4(a) of the Board's Regulation K (12 CFR 211.4(a)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Richmond. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 to be received no later than January 17, 1981. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identify specifically any questions of fact that are in dispute and summarize the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, December 19, 1980.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 80-40236 Filed 12-24-80 8:45 am]

BILLING CODE 6210-01-M

Griswold State Bancshares, Inc.; Proposed Retention of Lary Insurance Agency

Griswold State Bancshares, Inc., Griswold, Iowa, has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(2) of the Board's Regulation Y (12 CFR 225.4(b)(2)), for permission to retain its indirect interest, through Prokop Insurance Agency, Griswold, Iowa, in the Lary Insurance Agency, Griswold, Iowa.

Applicant states that the proposed agency would engage in providing general insurance services in a community with a population not exceeding 5,000. These activities would be performed from offices of Applicant's subsidiary in Griswold, Iowa, and the geographic areas to be served are the southwest corner of Cass County and the southeast corner of Pottawattamie County. Such activities have been specified by the Board in section 225.4(a) of Regulation Y as permissible for bank holding companies, subject to Board approval of individual proposals in accordance with the procedures of section 225.4(b).

Interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Chicago.

Any views or requests for hearing should be submitted in writing and received by the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than January 17, 1981.

Board of Governors of the Federal Reserve System, December 19, 1980.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 80-40237 Filed 12-24-80; 8:45 am]

BILLING CODE 6210-01-M

Inwood Bancorp, Inc.; Formation of Bank Holding Company

Inwood Bancorp, Inc., Rock Rapids, Iowa, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 100 percent of the voting shares of Inwood State Ban, Inwood, Iowa ("Bank"). The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Inwood Bancorp, Inc., Rock Rapids, Iowa, has also applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(2) of the Board's Regulation Y (12 CFR 225.4(b)(2)), to engage in general insurance activities in a community of less than 5,000. These activities would be performed from offices of Bank in Inwood, Iowa, and the geographic areas to be served are Inwood, Iowa. Such activities have been specified by the Board in section 225.4(a) of Regulation Y as permissible for bank holding companies, subject to Board approval of individual proposals in accordance with the procedures of section 225.4(b).

Interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Chicago.

Any views or requests for hearing should be submitted in writing and received by the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than January 16, 1981.

Board of Governors of the Federal Reserve System, December 19, 1980.

06Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 80-40238 Filed 12-24-80; 8:45 am]

68BILLING CODE 6210-01-M

American City Bancorp, Inc.; Formation of Bank Holding Company

American City Bancorp, Inc., Tullahoma, Tennessee, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring at least 80 percent of the voting shares of American City Bank of Tullahoma, Tullahoma, Tennessee. The factors that

are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Atlanta. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than January 18, 1981. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, December 19, 1980.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 80-40357 Filed 12-24-80; 8:45 am]

BILLING CODE 6210-01-M

Choctaw Bancorp; Formation of Bank Holding Company

Choctaw Bancorp, Choctaw, Oklahoma, has applied at least for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring at least 80 percent of the voting shares of Choctaw State Bank, Choctaw, Oklahoma. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The Application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Kansas City. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than January 19, 1981. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, December 19, 1980.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 80-40354 Filed 12-24-80; 8:45 am]

BILLING CODE 6210-01-M

First Community Bancshares, Inc.; Formation of Bank Holding Company

First Community Bancshares, Inc., Lone Grove, Oklahoma, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 100 percent of the voting shares of First Community Bank of Lone Grove, Lone Grove, Oklahoma. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Kansas City. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 to be received no later than January 19, 1981. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, December 19, 1980.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 80-40352 Filed 12-24-80; 8:45 am]

BILLING CODE 6210-01-M

First Community Bancorporation; Acquisition of Bank

First Community Bancorporation, Joplin, Missouri, has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire 80 percent or more of the voting shares of Merchants and Miners Bank of Webb City, Webb City, Missouri. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Kansas City. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 to be received not later than January 19, 1981. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, December 19, 1980.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 80-40350 Filed 12-24-80; 8:45 am]

BILLING CODE 6210-01-M

First Jefferson Corp.; Formation of Bank Holding Company

First Jefferson Corporation, Biloxi, Mississippi, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 80 percent or more of the voting shares of The Jefferson Bank, Biloxi, Mississippi. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Atlanta. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 to be received no later than January 16, 1981. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, December 19, 1980.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 80-40343 Filed 12-24-80; 8:45 am]

BILLING CODE 6210-01-M

First of Searcy, Inc.; Formation of Bank Holding Company

First of Searcy, Inc., Searcy, Arkansas, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 80 percent or more of the voting shares of First Security Bank, Searcy, Arkansas. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of St. Louis. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 to be received no later than January 19, 1981.

Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, December 19, 1980.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 80-40348 Filed 12-24-80; 8:45 am]

BILLING CODE 6210-01-M

First New Mexico Bankshare Corp., Acquisition of Bank

First New Mexico Bankshare Corporation, Albuquerque, New Mexico, has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire 100 percent of the voting shares of Southwest National Bank, Hobbs, New Mexico. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Kansas City. Any person wishing to comment on the application should submit views in writing to the Reserve Bank to be received not later than January 19, 1981. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, December 19, 1980.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 80-40351 Filed 12-24-80; 8:45 am]

BILLING CODE 6210-01-M

Marion Bancshares, Inc.; Formation of Bank Holding Company; Correction

This notice corrects a previous Federal Register notice (FR Doc. 80-37371) published at page 79909 of the issue for Tuesday, December 2, 1980. The comment period is extended to January 3, 1981.

Marion Bancshares, Inc., Jasper, Tennessee, has applied for the Board's approval under § 3(a)(1) of the Bank Holding Company Act (12 U.S.C. § 1842(a)(1)) to become a bank holding company by acquiring 80 percent or more of the voting shares of Marion Trust and Banking Company, Jasper, Tennessee. The factors that are considered in acting on the application are set forth in § 3(c) of the Act (12 U.S.C. § 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Atlanta. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 to be received no later than January 3, 1981. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, December 19, 1980.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 80-40358 Filed 12-24-80; 8:45 am]

BILLING CODE 6210-01-M

Sidney National Corp.; Formation of Bank Holding Company

Sidney National Corporation, Sidney, Nebraska, has applied for the Board's approval under 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 100 percent of the voting shares of Sidney National Bank, Sidney, Nebraska. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Kansas City. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than January 19, 1981. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, December 19, 1980.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 80-40355 Filed 12-24-80; 8:45 am]

BILLING CODE 6210-01-M

Southwest Bancshares, Inc.; Acquisition of Bank

Southwest Bancshares, Inc., Houston, Texas, has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire 100 percent (less directors' qualifying shares) of the voting shares of Texas Bank of Beaumont, Beaumont, Texas. The factors that are considered in acting on the application are set forth in secton 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Dallas. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than January 19, 1981. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, December 19, 1980.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 80-40353 Filed 12-24-80; 8:45 am]

BILLING CODE 6210-01-M

Sweet Springs Bancshares, Inc.; Formation of Bank Holding Company

Sweet Springs Bancshares, Inc., Sweet Springs, Missouri, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 80 percent or more of the voting shares of Chemical Bank, Sweet Springs, Missouri. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Kansas City. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than January 19, 1981. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, December 19, 1980.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 80-40356 Filed 12-24-80; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Florida; Resource Management Planning; Pine Island Sound-Sanibel Resource Management Plan

Pursuant to the responsibilities outlined in 43 CFR 1601.3(e)(2) and 1601.5-2(a), the Eastern States Office of the Bureau of Land Management, U.S. Department of the Interior, announces that draft issues and planning criteria have been developed for the Pine Island Sound-Sanibel Resource Management Plan (RMP) now in preparation. The RMP will cover public lands, islands, and Federal mineral ownership under Bureau of Land Management jurisdiction in Lee, Charlotte, and Collier Counties, Florida. Preparation of the RMP, along with a list of anticipated issues and planning steps, was announced in the October 22, 1980 Federal Register.

Copies of the draft issues and planning criteria are being mailed to an extensive list of Federal, State, and local agencies and planning councils; congressional offices; interest groups; and concerned individuals. Single copies of the draft issues and planning criteria are available from the Tuscaloosa Office, Bureau of Land Management, 1315 McFarland Blvd. East, Tuscaloosa, Alabama 35405. Copies are available for inspection at the Tuscaloosa Office and at the Eastern States Office, Bureau of Land Management, 350 S. Pickett St., Alexandria, Virginia 22304.

The public has thirty days in which to comment upon the draft issues and planning criteria. Comments received at the Tuscaloosa Office, at the above address, by January 30, 1981, will be considered in the development of the final issues and planning criteria, which will be published in February 1981.

Roger L. Hildebeidel,

Eastern States Director.

[FR Doc. 80-40249 Filed 12-24-80; 8:45 am]

BILLING CODE 4310-84-M

[N-4700]

Nevada; Amendment and Republication of Proposed Withdrawal

Notice of the Forest Service, United States Department of Agriculture, application N-4700 for withdrawal of land from settlement, sale or entry under the public land laws, but not the mining nor mineral leasing laws for the purpose of including the land in the Humboldt National Forest was published as F.R. Doc. 79-4959 on page 9805 of the issue of February 15, 1979 and an amendment thereto was published as F.R. Doc. 80-5622 on pages 11922-11923 of the issue of February 22, 1980.

The applicant agency has amended its application to delete the following described land:

Mount Diablo Meridian

T. 34 N., R. 60 E.,
Sec. 4, Lots 3, 4;
Sec. 8, S½SE¼;
Sec. 16, SW¼NW¼, NW¼SW¼;
Sec. 22, N½, N½SW¼, SE¼;
Sec. 24, W½SW¼.
T. 35 N., R. 62 E.,
Sec. 32, E½.

Comprising 1201.05 acres.

The above described lands have been determined to have higher and better use for exchange purposes. The serial number assigned for the exchange application on these lands is N-30967.

This amendment decreases the proposed withdrawal by 1201.05 acres. The total acres now proposed for withdrawal is 14,022.68.

All correspondence in connection with this withdrawal or the exchange application should be directed to the Bureau of Land Management, Department of the Interior, Chief, Division of Technical Services, P.O. Box 12000, Reno, Nevada 89520.

Wm. J. Malencik,

Chief, Division of Technical Services.

[FR Doc. 80-40322 Filed 12-24-80; 8:45 am]

BILLING CODE 4310-84-M

[OR 18844]

Oregon; Order Providing for Opening of Land

1. By order dated December 3, 1980, the Federal Energy Regulatory Commission vacated the land withdrawal in part for Power Project No. 529 as to the following described land:

Willamette Meridian

Mt. Hood National Forest

T. 3 S., R. 9 E.,
Sec. 19, W½ lot 4, SE¼ lot 4, SE¼SE¼SW¼, S½N½SE¼, and S½SE¼;
Sec. 20, S½N½SW¼, SW¼NE¼SE¼, S½NW¼SE¼, and S½S½;
Sec. 29, N½, N½SW¼, SW¼SW¼, N½SE¼SW¼, N½N½SE¼, and SW¼NW¼SE¼;
Sec. 30, E½ lot 1 NE¼NE¼, and SE¼SE¼;
Sec. 31, NE¼NE¼, E½NW¼NE¼, and SE¼NE¼;
Sec. 32, NW¼NW¼NW¼.

The area described contains 1,093.59 acres in Clackamas and Hood River Counties, Oregon.

2. By virtue of the authority contained in Section 204 of the Federal Power Act of June 10, 1920 (41 Stat. 1075, as amended, 16 U.S.C. 818) and in accordance with the authority delegated by Bureau of Land Management Order No. 701 dated July 23, 1964 (29 FR 10526) as amended, it is ordered that at 10:00 a.m. on February 2, 1980 the land described above will be relieved of the restrictions imposed by the provisions of Section 24 of the Federal Power Act, supra, and the Act of August 11, 1955 (69 Stat. 682; 30 U.S.C. 621).

3. Subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law, the land described above is already open to such forms of disposition as may by law be made of national forest lands; location and entry under the United States mining laws; and to applications and offers under the mineral leasing laws.

Inquiries concerning the land should be addressed to the Chief, Branch of Lands and Minerals Operations, Bureau of Land Management, P.O. Box 2965, Portland, Oregon 97208.

Dated: December 17, 1980.

Champ C. Vaughan, Jr.,

Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 80-40323 Filed 12-24-80; 8:45 am]

BILLING CODE 4310-84-M

[Group 647]

California; Filing of Plat of Survey

December 16, 1980.

1. A plat of survey of the following described land, accepted November 25, 1980, will be officially filed in the California State Office, Sacramento, California, effective at 10:00 a.m. on January 30, 1981:

San Bernardino Meridian, California

Tps. 11 & 12 S., Rs. 2 & 3 E.

2. The plats, in four sheets, represent the dependent resurvey of portions of the east boundary, subdivisional lines and subdivisions of sections 21 and 28, T. 11 S., R. 2 E.; portions of the east and north boundaries, subdivisional lines and subdivision of section 3, T. 12 S., R. 2 E., and a portion of the boundary of the Rancho Santa Ysobel; portion of the boundary of the Rancho Valle de San Jose, a portion of the boundary of the Rancho Santa Ysabel, resurvey of the boundary of the Ysabel Indian Reservation No. 3, and a portion of the

subdivisional lines, T. 11 S., R. 3 E.; and a dependent resurvey and survey of the boundary of the Santa Ysabel Indian Reservation No. 3 T. 12 S., R. 3 E. The surveys were executed to restore the corners in their true original locations according to the best available evidence.

3. The described lands are withdrawn in the Santa Ysabel Indian Reservations Nos. 1, 2, and 3 and the boundaries are a part of Rancho Valle de San Jose and Rancho Santa Ysabel. The lands are not subject to disposition under the public land laws by reason of the official filing of the plat of survey.

Herman J. Lyttge,

Chief, Branch of Records and Data Management.

[FR Doc. 80-40321 Filed 12-24-80; 8:45 am]

BILLING CODE 4310-84-M

[W-73164]

Wyoming; Application

December 18, 1980.

Notice is hereby given that pursuant to Section 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185), the Colorado Interstate Gas Company of Colorado Springs, Colorado, filed an application for a right-of-way to construct a 6⅝ inch, five (5) 4½ inch pipelines and related facilities for the purpose of transporting natural gas across the following described public lands:

Sixth Principal Meridian, Wyoming

T. 23 N., R. 101 W.,
Sec. 6.
T. 24 N., R. 101 W.,
Secs. 31, 32, and 33.
T. 20 N., R. 102 W.,
Secs. 18, and 20.
T. 21 N., R. 102 W.,
Secs. 6, 18, 30, and 32.
T. 22 N., R. 102 W.,
Secs. 4, 8, 18, and 30.
T. 23 N., R. 102 W.,
Secs. 1, 2, 3, 11, 14, 22, and 34.
T. 20 N., R. 103 W.,
Sec. 12.
T. 22, N., R. 103 W.,
Sec. 36.

The proposed pipelines and related facilities will serve to transport natural gas from several wells as additions to Colorado Interstate Gas Company's gathering system within Sweetwater County, Wyoming.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should do so promptly. Persons submitting comments should include their name and address and send them to the District Manager, Bureau of Land Management, P.O. Box 1869, Highway 187 North, Rock Springs, Wyoming 82901.

Harold G. Stinchcomb,

Chief, Branch of Lands and Minerals.

[FR Doc. 80-40336 Filed 12-24-80; 8:45 am]

BILLING CODE 4310-84-M

Wyoming; Result of Protest Period on Wilderness Inventory Final Decisions

On November 14, 1980, the Wyoming State Director published the final decisions on the recently completed wilderness inventory of public lands in Wyoming. In that notice, 43 units, totaling 525,405 acres, were identified as Wilderness Study Areas and 536,849 acres were dropped from the wilderness review process. The November 14 notice initiated a 30-day period wherein anyone wishing to protest any of those decisions could do so by writing to the Wyoming State Director. That protest period ended on December 15, 1980.

A total of 18 protests were received concerning 14 wilderness inventory units. Only one of those protests concerned an inventory unit that was dropped from further consideration in the November 14 decisions. The other 13 units under protest are all Wilderness Study Areas. The one unit that was dropped was the Lysite Badlands, WY-030-115, in the Rawlins District. The protest to this decision will retain the unit under the constraints of the interim management policy pending the outcome of the protest. Three of the units were protested on boundary locations and the other 10 were protested on wilderness characteristic determinations. For those 3 units with disputed boundary locations, the dropped parcels of public lands will be retained under interim management until the protest is resolved. These three units are:

WY-030-123a Sweetwater Rocks
WY-040-325 Whitehorse Creek
WY-040-406 Red Creek Badlands

The November 14 decisions on all other units which received no protest are now in effect. Those units that were dropped in the November 14 decisions and on which no protests were received were released from the constraints of the Bureau's interim management policy as of 4:30 p.m., December 15, 1980. A future Federal Register notice will detail the content of each protest and the State Director's response.

Maxwell T. Lieurance,

State Director.

[FR Doc. 80-40347 Filed 12-24-80; 8:45 am]

BILLING CODE 4310-84-M

Bakersfield District Advisory Council; Call for Nominations

The Bureau of Land Management of the U.S. Department of the Interior intends to establish a District Advisory Council in its Bakersfield, California District. The purpose of this notice is to call for nominations for membership on that council.

An advisory council was not established for this district when councils were formed for other BLM districts pending completion of a study of the Bureau's organization in California. That study had been completed and reorganization implemented.

The council will be composed of 10 members. To provide a total membership that is balanced in terms of points of view represented and functions to be performed. The members will normally be selected from within the Bakersfield District.

At least on member shall be an elected official of general purpose goernment serving the area, and at least one member shall be qualified to provide advice on each of the following categories of interest: renewable resources; non-renewable resources; recreation; environmental protection; transportation rights-of-way, or occupany issues; wildlife; and public-at-large. All members are expected to represent the general public interest, but they should be knowledgeable in the category for which they are appointed.

Term of service will be two years. At the discretion of the Secretary of the Interior or his designee, members may be appointed to additional terms not to exceed a total of six years. All council members will serve without salary, but will be reimbursed for travel and per diem expenses at current rates for government employees.

The Bakersfield District council normally will meet four times annually, but in no case less than once. Additional meetings may be called at the discretion of the District Manager or his designee in connection with special needs for advice.

Establishment of advisory councils is in accordance with the Federal Land Policy and Management Act of 1976, as amended, and the Federal Advisory Committee Act.

Persons wishing to nominate individuals to serve on the Bakersfield District Advisory Council should send the nominee's name, address, profession and other biographic data to: Federal Building, Bureau of Land Management, Bakersfield District Manager, 800 Truxtun Avenue—Room 302, Bakersfield, California 93301. Nominations must be made no later than January 31, 1981.

Further information may be obtained from the Bakersfield District Manager or from: State Director, Bureau of Land Management, 2800 Cottage Way, Room E-2841, Sacramento, California 95825.

Dated: December 17, 1980.

Roland A. Rush,

Acting State Director.

[FR Doc. 80-40216 Filed 12-24-80; 8:45 am]

BILLING CODE 4310-84-M

Medford District Advisory Council; Notice of Meeting

Notice is hereby given in accordance with 43 CFR 1780 that a meeting of the Medford District Advisory Council will be held on January 23, 1981.

The meeting will begin at 8:00 a.m. and end at 12:00 noon in the Oregon Room of the Bureau of Land Management Office at 3040 Biddle Road, Medford, Oregon.

The agenda for this meeting will include: 1. Announcements of current BLM activities.

2. A presentation by BLM personnel on the vegetative management environmental assessment record for the 1981 season.

3. A presentation on the use of herbicides for vegetative management.

4. A presentation by a group opposed to the use of herbicides for vegetative management.

5. Arrangements for the next meeting.

The meeting is open to the public and news media. Interested persons may make oral statements to the Council between 11:00 and 11:45 A.M. or file written statements for the Council's consideration. Anyone wishing to make oral statements must notify Mary Gillean, Bureau of Land Management, 3040 Biddle Road, Medford, Oregon 97501, telephone 503 776-4198, by close of business January 20, 1981. Depending on the number of persons wishing to make oral statements, a per person time limit may be established by the District Manager.

Summary minutes of the Council meeting will be maintained at the District Office and be available for public inspection and reproduction at the cost of duplication.

Dated: December 15, 1980.

George Francis,

District Manager.

[FR Doc. 80-40210 Filed 12-24-80; 8:45 am]

BILLING CODE 4310-84-M

Regional Oil Shale Team; Agenda of Meeting

On December 10, 1980, a meeting of the Regional Oil Shale Team, composed of the Green River-Hams Fork and Uinta-Southwestern Utah Regional Coal Teams of the Federal-State Coal Advisory Board to be held at 10 a.m. on January 6, 1981, in Room 503, Federal Court House, 1921 Stout Street, Denver, Colorado 80202 was announced (45 FR 81273). The purpose of this notice is to provide additional information concerning the agenda for this meeting.

The Agenda is as follows: 1. Welcome and introductory remarks concerning the formation of the Team and work completed to date by the Department of the Interior Oil Shale Task Force.

2. Discussion of how the Regional Oil Shale Team can make use of the experience of Regional Coal Teams to facilitate its operations.

3. Discussion of a Memorandum of Understanding concerning *ex officio* membership on the Team and other organizational matters.

4. Status report concerning action plans to implement decisions concerning additional Prototype Oil Shale leasing and development of a permanent program.

5. Discussion on timing of Call for nomination for prototype leases.

6. Public Comment Period.

7. Team decisionmaking on Memorandum of Understanding and timing of Call for Nominations.

8. Discussion of Future Work.

9. Adjournment.

The public comment period will begin at 2 p.m. Persons who wish to speak and/or submit written statements should contact Cecil Roberts, Colorado State Office, 1600 Broadway, Denver, Colorado 80202; telephone (303) 837-4888.

For further information: Jack White, Bureau of Land Management, Room 5640, 18th and C Streets, N.W., Washington, D.C. 20240, telephone: (202) 343-4437.

Dated: December 15, 1980.

Guy R. Martin,

Assistant Secretary.

[FR Doc. 80-40211 Filed 12-24-80; 8:45 am]

BILLING CODE 4310-84-M

Geological Survey

Oil and Gas and Sulphur Operations in the Outer Continental Shelf; Tenneco Oil and Production Plan

AGENCY: U.S. Geological Survey, Department of the Interior.

ACTION: Notice of the receipt of a proposed development and production plan.

SUMMARY: Notice is hereby given that Tenneco Oil Exploration and Production has submitted a Development and Production Plan describing the activities it proposes to conduct on Lease OCS-G 4191, Block 11, Sabine Pass Area, offshore Louisiana.

The purpose of this Notice is to inform the public, pursuant to Section 25 of the OCS Lands Act Amendments of 1978, that the Geological Survey is considering approval of the Plan and that it is available for public review at the offices of the Conservation Manager, Gulf of Mexico OCS Region, U.S. Geological Survey, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana 70002.

FOR FURTHER INFORMATION CONTACT: U.S. Geological Survey, Public Records, Room 147, open weekdays 9 a.m. to 3:30 p.m., 3301 North Causeway Blvd., Metairie, Louisiana 70002, Phone (504) 837-4720, Ext. 226.

SUPPLEMENTARY INFORMATION: Revised rules governing practices and procedures under which the U.S. Geological Survey makes information contained in Development and Production Plans available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in a revised Section 250.34 of Title 30 of the Code of Federal Regulations.

Dated: December 17, 1980.

E. A. Marsh,

Staff Assistant for Operations, Acting Conservation Manager, Gulf of Mexico OCS Region.

[FR Doc. 80-40212 Filed 12-24-80; 8:45 am]

BILLING CODE 4310-31-M

Oil and Gas and Sulphur Operations in the Outer Continental Shelf; General American Oil Co. of Texas

AGENCY: U.S. Geological Survey, Department of the Interior.

ACTION: Notice of the receipt of a proposed development and production plan.

SUMMARY: Notice is hereby given that General American Oil Company of

Texas has submitted a Development and Production Plan describing the activities it proposes to conduct on Lease OCS 0301, Block 56, West Cameron Area, offshore Louisiana.

The purpose of this Notice is to inform the public, pursuant to Section 25 of the OCS Lands Act Amendments of 1978, that the Geological Survey is considering approval of the Plan and that it is available for public review at the offices of the Conservation Manager, Gulf of Mexico OCS Region, U.S. Geological Survey, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana 70002.

FOR FURTHER INFORMATION CONTACT: U.S. Geological Survey, Public Records, Room 147, open weekdays 9 a.m. to 3:30 p.m., 3301 North Causeway Blvd., Metairie, Louisiana 70002, Phone (504) 837-4720, Ext. 226.

SUPPLEMENTARY INFORMATION: Revised rules governing practices and procedures under which the U.S. Geological Survey makes information contained in Development and Production Plans available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in a revised Section 250.34 of Title 30 of the Code of Federal Regulations.

Dated: December 17, 1980.

E. A. Marsh,

Staff Asst. for Operations.

[FR Doc. 80-40213 Filed 12-24-80; 8:45 am]

BILLING CODE 4310-31-M

Office of the Secretary

[516 DM 6, Appendix 6]

National Environmental Policy Act; Revised Implementing Procedures

AGENCY: Department of the Interior.

AGENCY: Notice of final revised instructions for the Bureau of Mines.

SUMMARY: This notice announces a final appendix to the Department's NEPA procedures for the Bureau of Mines. The final Departmental procedures were published in the Federal Register on April 23, 1980 (45 FR 27541).

DATE: The appendix was adopted December 19, 1980.

FOR FURTHER INFORMATION CONTACT: Bruce Blanchard, Director, Office of Environmental Project Review, Office of the Secretary, Department of the Interior, Washington, D.C. 20240; Telephone (202) 343-3891, FTS 343-3891. For Bureau of Mines, contact Richard Edgerton, Telephone (202) 634-1311, FTS 634-1311.

SUPPLEMENTARY INFORMATION: This appendix to the Departmental Manual (516 DM 6, Appendix 6) provides more specific NEPA compliance guidance to the Bureau of Mines. In particular it provides information about Bureau organizational responsibilities for NEPA compliance, advice to applicants, actions normally requiring the preparation of an EIS, and categorical exclusions. The appendix must be taken in conjunction with the Departmental procedures (516 DM 1-6) and the CEQ regulation (40 CFR 1500-1508). In addition, the bureau will prepare a handbook(s) or other technical guidance on how to apply these procedures to its principal programs.

The proposed appendix was published in the Federal Register on February 14, 1980 (45 FR 10043) and no comments were received. As a result of internal review, several minor technical changes have been made to improve the intstructions.

Format

Chapter 6 (516 DM 6) Managing the NEPA Process

Appendix 6 Bureau of Mines

6.1 NEPA Responsibility
6.2 Guidance to Applicants
6.3 Major Actions Normally Requiring an EIS
6.4 Categorical Exclusions

Other Bureaus

Final appendix for others bureaus have been published in the Federal Register as follows:

Appendix 1 Fish and Wildlife Service (45 FR 47941)
Appendix 3 Heritage Conservation and Recreation Service (45 FR 76801)
Appendix 9 Water and Power Resources Service (45 FR 47944)

Proposed appendices have been published for the following bureaus:

Geological Survey, November 14, 1980 (45 FR 75336)
Bureau of Indian Affairs, July 24, 1980 (45 FR 49368)
National Park Service, May 15, 1980 (45 FR 32126)
Office of Surface Mining, February 14, 1980 (45 FR 10043)
Bureau of Land Management, December 15, 1980 (45 FR 82367)

Dated: December 19, 1980.

James H. Rathlesberger,

Secretary of the Interior.

Bureau of Mines

6.1 NEPA Responsibility

A. The *Director* is responsible for NEPA compliance for Bureau of Mines activities.

B. *Assistant Director, Program Development and Evaluation* is operationally responsible to the Director for insuring, on a continuing basis, Bureau-wide compliance with NEPA.

C. *Deputy Director for Minerals Research* will insure that environmental concerns are identified early in the planning stages for all proposed research and development projects.

D. *Special Assistant—Environmental Assessment* is responsible for overall coordination of the Bureau's NEPA activities; providing information, guidance, training, advice, and coordination on NEPA matters as they relate to the Bureau's research and development programs; and reviewing Bureau-proposed legislation and programs for NEPA-related implications. Information about Bureau of Mines NEPA documents or the NEPA process can be obtained by contacting the Special Assistant.

E. *Directors, Minerals Technology Programs* are responsible to the Deputy Director for Minerals Research for integrating the NEPA process into all R&D programs.

F. *Director, Division of Research Center Operations* is responsible to the Deputy Director for Minerals Research for integrating the NEPA process into all activities involving the research centers.

6.2 Guidance to Applicants

The Bureau of Mines has no applicable programs.

6.3 Major Actions Normally Requiring an EIS

A. Approval of construction of a major new research center or test facility will normally require the preparation of an EIS.

B. If it is initially decided not to prepare an EIS, an EA will be prepared and handled in accordance with Section 1501.4(e)(2).

6.4 Categorical Exclusions

In addition to the actions listed in the Departmental categorical exclusions outlined in Appendix 1 of 516 DM 2, many of which the Bureau also performs, the following Bureau of Mines actions are designated categorical exclusions unless the action qualifies as an exception under 516 DM 2.3A(3):

A. Data collection activities and field surveys. Included are reconnaissance-type investigations, research studies to develop new information, stream gaging, well logging, and aquifer response testing.

B. Individual research projects concerning the development or evaluation of mining, metallurgical, or environmental technologies; and the demonstration of associated equipment.

C. Research activities concerning minerals health and safety technology.

D. Research activities that take place in a laboratory where methods for proper disposal of laboratory wastes to prevent environmental pollution have been implemented.

E. Field demonstrations and pilot plants when operated in conjunction with existing facilities of a cooperator or contractor when such facilities provide for effluent and/or emission controls and waste disposal practices that are and will be in compliance with all existing Federal, State, and local standards or regulations.

[FR Doc. 80-40208 Filed 12-24-80; 8:45 am]
BILLING CODE 4310-53-M

DEPARTMENT OF JUSTICE

Attorney General

Proposed Consent Decree and Action To Obtain Damages for Discharge of Pollutants by the City of Punta Gorda, Fla.

In accordance with Department policy, 28 CFR 50.7, 38 F.R. 19029, notice is hereby given that on March 17, 1980, a proposed consent decree in *United States of America* v. *City of Punta Gorda and the State of Florida,* Civil Action No. 77-35-CIV, was lodged with the United States District Court for the Middle District of Florida, Fort Myers Division.

The consent decree requires the City of Punta Gorda to pay to the United States Treasury a penalty of $10,000 within thirty (30) days of entry of judgment and to meet certain deadlines for the construction of a new regional wastewater treatment system.

The proposed consent decree may be examined at the Office of the United States Attorney for the Middle District of Florida, Tampa, Florida; at the Region IV office of the Environmental Protection Agency, Enforcement Division, 345 Courtland Street, N.E., Atlanta, Georgia 30308; and at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1254, 9th and Pennsylvania Avenue, N.W., Washington, D.C. 20530.

The Department of Justice will receive written comments relating to the proposed consent decree for a period of 30 days from the date of this notice. Comments should be addressed to the Deputy Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, D.C. 20530 and should refer to *United States of America* v. *The City of Punta Gorda and the State of Florida,* (M.D. Fla., Civil Action No. 77-35-CIV; D.J. NO. 90-5-1-1-801).

Angus MacBeth,
Deputy Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 80-40214 Filed 12-24-80; 8:45 am]
BILLING CODE 4410-01-M

Guidelines for Litigation To Enforce Obligations To Submit Materials for Predissemination Review

I. Scope

These guidelines govern the Department's activities in connection with the enforcement of predissemination review obligations, created by contract or agency regulation, that have been taken on by present or former employees, agents, and contractors of the United States government in consideration of their being granted access to classified information or of being assigned or retained in a position of special confidence and trust requiring such access.

II. Criteria for Recommendations That Suits Be Filed

A. Only the Attorney General may authorize the filing of suits subject to these guidelines. Requests received by Department attorneys from other agencies for the filing of suits which are determined to lack litigative merit should also be brought to the Attorney General's attention if they involve novel issues or are of particular importance to the requester.

B. Department attorneys will be guided by the following criteria in determining whether to recommend that the Attorney General file suit against individuals who have breached or threaten to breach their obligation to submit material relating to intelligence activities for predissemination review:

1. General Principles

a. In deciding whether to recommend that the Attorney General file suit, the political content of a disclosure and the political viewpoint of the individual shall not be considered. Disclosures favorable to or critical of the agency shall be accorded equal treatment, and embarrassment to the agency by the disclosure shall be treated as irrelevant. Nothing in this paragraph precludes consideration, however, of evidence of a person's intention to disclose to disclose classified information or to disregard an obligation to submit material for predissemination review, or a person's history of such actions.

b. In deciding whether to recommend that the Attorney General file suit, Department attorneys shall observe the principle that present or former government officials should be held to identical standards of trust as a result of their access to classified information, regardless of their present or former rank or influence.

2. Specific Considerations

a. Department attorneys may recommend filing suit in an appropriate case when an individual discloses or causes to be disclosed information or material that is required by an express agreement or agency regulation to be submitted to an agency of the United States prior to disclosure, if the individual fails to submit such material or information for predissemination review. In making such recommendations, Department attorneys shall take into account the following factors:

i. Whether the individual willfully or intentionally failed to submit the material or information for predissemination review, when the individual knew or reasonably should have known that the disclosure was subject to an agreement or regulation requiring the submission of the material or information for predissemination review;

ii. whether the information disclosed was learned in the course of the individual's official association with the agency, and is not widely available to members of the public who have not been employees of the agency;

iii. whether the disclosure contains material or information that is properly classifiable (although it shall not be necessary for the United States to allege that the disclosure contains classified information in filing any suit under these guidelines);

iv. whether the information is disclosed in such a manner as to make it likely that the substance of the disclosure will be widely known or is likely to come to the attention of individuals, organizations or foreign nations under circumstances which may cause harm to the national security or foreign policy of the United States;

v. whether the disclosure contains specific information about operations, structures, personnel, and activities of the agency, as opposed to political criticisms of or commentary about the agency and its activities generally without identifying specific activities of the agency;

vi. whether it appears that the disclosure is likely to result in substantial harm to particular operations of the agency or endanger individual lives;

vii. whether it appears that the disclosure is likely to inhibit the flow of intelligence information to the intelligence community from its lawful sources;

viii. In the case of predissemination review obligations imposed by agency regulations rather than by contract, whether the agency concerned has taken appropriate steps to apprise the individual of the existence and meaning of the regulation.

b. Any decision to seek an injunction against publication of information is viewed by the Department as an extraordinarily serious matter that should be undertaken only after the most searching scrutiny of the strength of the government's case. Therefore, Department attorneys should take into account the following factors before recommending that the attorney General authorize filing suit prior to any disclosure to enjoin such disclosure:

i. The considerations listed in the preceding subsection for filing suit subsequent to disclosures, except that particular stress shall be placed on the question of whether it appears that the disclosure is likely to contain material that is properly classifiable (although it shall not be necessary for the United States to allege that the disclosure contains classified information in filing any suit under these guidelines);

ii. whether it reasonably appears that the disclosed information or material required to be submitted to an agency of the United States without submitting such material or information for predissemination review;

iii. whether the system of predissemination review adopted by the agency concerned provides adequate procedural safeguards to assure that the review will not impermissibly interfere with the dissemination of information other than that which is properly classifiable, including the articulation of standards for the imposition of any final restraints that are sufficiently precise to preclude arbitrary and inconsistent administrative action;* and the requirement that the agency act within a specified brief period of time.

iv. whether it reasonably appears that the injunction obtained will effectively prevent the harm that would otherwise occur; and

v. whether adequate steps have been taken by the agency concerned or by the Department to inform the individual that the United States will consider filing suit and seeking an injunction and/or a constructive trust if the individual should disseminate the information without submitting it for predissemination review.

Litigation in Absence of Express Agreement

The Attorney General will not authorize suit for failure to submit material for predissemination review in the absence of any express clearance obligation imposed by contract or regulation, except as provided in section III. A. 2. of these guidelines.

III

In situations where the filing of suit is recommended under part II of these Guidelines, Department attorneys will be guided by the following criteria in determining what remedy or remedies to recommend that the Attorney General seek:

A. Predisclosure injuctions:

1. Recommendations to seek predisclosure injunctions shall be guided by the criteria set forth in section II B.2.b., *supra.*

2. The Attorney General will not ask the court to enter an injunction pursuant to Rule 65, F.R.Civ.P., nor seek to enforce the language of Rule 65, against any individual or organization other than an individual who is under an express obligation to submit materials or information for predissemination review pursuant to an agreement or regulation, in consideration of having been given access to classified information, unless it appears to the satisfaction of the Attorney General either that disclosure of the material or information by such other individuals or organizations will pose a serious and imminent threat to the national security or foreign policy of the United States. The Attorney General reserves the right, however, to bring such proceedings against individuals or organizations that actively solicit persons subject to such obligations to violate those obligations.

B. *Constructive Trusts*

1. Department attorneys may recommed that the Attorney General seek the remedy of a constructive trust if suit is authorized in response to recommendations made under these guidelines.

2. Department attorneys recommending the filing of suits for constructive trusts shall give careful consideration to the nature and amount of the assets that the Department seeks to have included in such trusts, in accordance with the following principles:

a. The minimum exercise of judicial power that will do justice yet protect the interests of national security shall be sought;

b. Remedies requested by the Government in suits under these guidelines should be designed solely to promote compliance with lawful obligations to submit material for predissemination review. The Government does not seek to reduce defendants to penury. The appropriateness of a proposed remedy shall be judged on the basis of all the facts in each individual case;

c. Gross receipts, net receipts and other measures of gain from unauthorized disclosures shall all be considered in choosing an appropriate proposal for relief. In making this choice, Department attorneys shall take into account the individual circumstances of the case, including but not limited to:

i. The economic impact on the individual and any dependents of the proposed remedy;

ii. The likelihood that a particular remedy will serve to deter other persons who may be considering similar unauthorized disclosures;

iii. The extent to which the individual was unjustly enriched by the disclosure;

iv. The degree of care that the individual exercised to protect some interests of national security in making his or her disclosure or the degree of recklessness shown by the individual in deciding to proceed with disclosure;

v. Whether the disclosure is the first known unauthorized disclosure by the individual, or is part of a series of such disclosures;

ve. The willingness of the individual to submit future disclosures for predissemination review;

vii. The significance of the harm done to the national security by the disclosure.

C. *Liquidated and Punitive Damages*

1. The Attorney General may authorize filing suit to seek liquidated damages for any disclosure in violation of an agreement, where such agreement appropriately contains a provision granting the United States liquidated damages for the disclosure.

*An agency policy statement providing that the agency shall seek to prevent only the publication of information properly classifiable under the terms of a lawful Executive Order shall constitute compliance with this requirement.

2. The Attorney General may authorize filing suit to seek punitive damages for a disclosure in violation of an agreement in appropriate cases.

IV. Other Sanctions; Private Rights

A. Nothing in these guidelines shall govern the discretion of Department attorneys to institute other types of proceedings for the violation of the laws of the United States by any individual, including civil suits arising out of unauthorized disclosures of classified information.

B. Nothing in these guidelines creates or confers any private right enforceable at law or in equity against the United States or any agency or employees thereof. The Attorney General retains discretion to file or decline to file suits predicated on violations of an obligation to submit material for predissemination review, based on his review of the facts and the interests of justice in each case.

V. Definition

As used in these guidelines, the term "Attorney General" means the Attorney General of the United States of a designee.

Dated: December 9, 1980.

Benjamin R. Civiletti,

Attorney General.

[FR Doc. 80-40215 Filed 12-24-80; 8:45 am]

BILLING CODE 4410-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Humanities Panel; Meetings

AGENCY: National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provision of the Federal Advisory Committee Act (Public Law 92-463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at 806 15th Street, N.W., Washington, DC 20506:

(1)

Date: January 7-8, 1981
Time: 9:00 a.m. to 5:30 p.m.
Room: 1023
Program: This meeting will review applications submitted by state humanities committees, Division of State Programs, for activity beginning after March 1, 1981.

(2)

Date: January 9, 1981
Time: 9:00 a.m. to 5:30 p.m.
Room: 1134
Program: Residential Fellowships: This meeting will review applications English Literature, submitted to the Division of Fellowships and Seminars, for projects beginning after January 1, 1981.

(3)

Date: January 10, 1981
Time: 9:15 a.m. to 5:30 p.m.
Room: 314
Program: Summer Stipends: This meeting will review applications for Summer Stipends in Music, Theater and Dance, submitted to the Division of Fellowships and Seminars, for projects beginning after January 1, 1981.

(4)

Date: January 12, 1981
Time: 9:00 a.m. to 5:30 p.m.
Room: 911
Program: This meeting will review applications for Summer Stipends in Spanish and French Literatures and Languages, submitted to the Division of Fellowships and Seminars, for projects beginning after January 1, 1981.

(5)

Date: January 12-13, 1981
Time: 9:00 a.m. to 5:30 p.m.
Room: 1134
Program: This meeting will review applications submitted for Research Materials Program: Publications projects Division of Research Programs, for projects beginning after March 1, 1981.

(6)

Date: January 13, 1981
Time: 9:00 a.m. to 5:30 p.m.
Room: 911
Program: This meeting will review applications for Summer Stipends in English Literature: Restoration to the Present, submitted to the Division of Fellowships and Seminars, for projects beginning after January 1, 1981.

(7)

Date: January 15, 1981
Time: 9:00 a.m. to 5:30 p.m.
Room: 1023
Program: This meeting will review applications for Summer Stipends in German, Slavic, Oriental and Classical Languages submitted to the Division of Fellowships and Seminars, for projects beginning after January 1, 1981.

(8)

Date: January 16, 1981
Time: 9:00 a.m. to 5:30 p.m.
Room: 1023
Program: The meeting will review applications for Summer Stipends in Ancients, Medieval and Early Modern European History, submitted to the Division of Fellowships and Seminars, for projects beginning after January 1, 1981.

The proposed meetings are for the purpose of Panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. Because the proposed meetings will consider information that is likely to disclose,

(1) trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(2) information of a personal nature the disclosure of which would constitute a cleary unwarranted invasion of personal privacy; and

(3) information the disclosure of which would significantly frustrate implementation of proposed agency action; pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated January 15, 1978, I have determined that these meetings will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information about these meetings can be obtained from Mr. Stephen J. McCleary, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, D.C. 20506, or call (202) 724-0367.

Stephen J. McCleary,

Advisory Committee Management Officer.

[FR Doc. 80-40203 Filed 12-24-80; 8:45 am]

BILLING CODE 7536-01-M

Visual Arts Panel (Conceptual/Performance/New Genre); Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463), as amended, notice is hereby given that a meeting of the Visual Arts Panel (Conceptual/Performance/New Genre) to the National Council on the Arts will be held January 15-16, 1980, from 9:00 a.m.-5:30 p.m. in the 12th Floor Screening Room of the Columbia Plaza Office Complex, 2401 E Street NW., Washington, D.C.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the Federal Register of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and 9(b) of section 552b of Title 5 United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National

Endowment for the Arts, Washington, D.C. 20506, or call (202) 634-6070.

Dated: December 16, 1980.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 80-40333 Filed 12-24-80; 8:45 am]

BILLING CODE 7537-01-M

Visual Arts Panel (Video); Notice of Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Visual Arts Panel (Video) to the National Council on the Arts will be held January 9-11, 1981, from 9:00 a.m. to 5:30 p.m. in the 12th Floor Screening Room of the Columbia Plaza Office Complex, 2401 E Street, N.W., Washington, D.C.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on application for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the Federal Register of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and 9 (b) of section 552b of Title 5 United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 634-6070.

Dated: December 16, 1980.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 80-40334 Filed 12-24-80; 8:45 am]

BILLING CODE 7537-01-M

NATIONAL TRANSPORTATION SAFETY BOARD

[N-AR 80-52]

Reports, Recommendation Responses; Availability

Aircraft Accident Reports in Brief Format

U.S. Civil Aviation, Issue No. 12 of 1979 Accidents (NTSB-80-9).—The National Transportation Safety Board has released its 12th volume of abbreviated reports on U.S. civil aviation accidents which occurred last year. The 300 accidents reported in Issue No. 12, released December 15, represent a random selection.

In issuing Press Release No. SB 80-100 in conjunction with the publication of this volume, the Safety Board warned pilots not to become complacent about the threat from airframe and engine icing because of the speed and sophistication of modern aircraft. While the advances in the design of engines and deicing and anti-icing equipment have markedly reduced the hazards of ice in general aviation flying, the Board noted that they have by no means been eliminated. Cited as an example of the threat from icing conditions is the crash of a Cessna Turbo Centurion near Dunsmuir, Calif., which killed six persons. The pilot, who had a total of 650 hours flying time, was advised prior to takeoff of thunderstorms, icing, and turbulence along portions of her planned route to Redding, Calif. Despite the marginal weather, she elected to make the flight over mountainous terrain. An attempt was made to climb after reporting icing conditions, but apparently ice degraded the aircraft's climb capability.

Note.—The brief format reports in this publication present the facts, conditions, circumstances, and probable cause(s) for each accident. Additional statistical information is tabulated by injury index, injuries and causal factors. While these brief reports contain essential information, more detailed data may be obtained from the original factual reports on file in the Safety Board's Washington office. Upon request, factual reports will be reproduced commerically at an average cost of 20 cents per page for printed matter, 65 cents per page for black-and-white photographs, and $4.37 per page for color photographs, plus postage. Requests concerning aircraft accident report briefs should include (1) date and place of occurrence, (2) type of aircraft and registration number, and (3) name of pilot. Requests should be addressed to: Public Inquiries Section, National Transportation Safety Board, Washington, D.C. 20594.

Copies of the publication may be purchased from the National Technical Information Service, U.S. Department of Commerce, Springfield, Va. 22161.

Reponses to Safety Recommendations

Aviation

A-78-27 through -29, A-79-80 and -81, A-80-64 through -75, from the Federal Aviation Administration, November 6, 1980.—Response is to five reiterated recommendations and 12 new recommendations issued by the Safety Board on August 8 (45 FR 55877, August 21, 1980) in connection with the Board's special investigation of the commuter industry and the elements which affect commuter airline safety. Release of the Board's special study, "Commuter Airline Safety, 1970-1979" (NTSB-AAS-80-1), was reported at 45 FR 58734, September 4, 1980.

As to the reiterated recommendations, FAA notes that the Board had been earlier advised of actions underway, many of which were developed as the result of implementation and issuance of amendments to 14 CFR Part 135 published at various times during the past year, or as the resolution of issues discussed during FAA's First Commuter Air Carrier Safety Symposium held last January. The adequacy of these actions, and other regional programs directed to commuter safety, will again be addressed at the second symposium to be held January 16 and 17, 1981.

As to recommendation A-79-80, requiring that pilots in Part 135 operations be thoroughly trained on the performance capabilities and handling qualities of aircraft when loaded to maximum certificated gross weight or to the limits of their c.g. envelope, or both, FAA reports issuance of new § 135.244, Operating Experience, effective last March 1. FAA believes the addition of this requirement will further ensure that pilots involved in commuter operations are adequately trained in all pertinent operational areas, one of which includes aircraft handling characteristics at maximum takeoff gross weights.

With respect to recommendation A-79-81, which asked FAA to expedite rulemaking which make flight time and duty time limitations and rest requirements for commuter air carriers the same as those specified for domestic air crewmembers under 14 CFR Part 121, FAA reports that a supplemental notice of proposed rulemaking was issued on August 11, 1980 (Notice No. 78-3B). That proposal would revise the time limitations and rest requirements for flight crewmembers utilized by domestic, flag, and supplemental air carriers, commerical operators, and air taxi operators, based upon two notices of proposed rulemaking issued in 1977 and 1978 as part of FAA's Regulatory Review Program. FAA notes that comments received on the earlier notices (and specifically Notice 78-3) indicated need for intensive review and additional conceptual development. Consequently, in view of the conceptual similarity between the flight and duty time limitations proposed in Part 135 and the proposal in Notice 78-3, when FAA issued the Part 135 amendments, changing the flight and duty time limitations in Part 135 was deferred for futher consideration. Accordingly, this supplemental notice proposes changes to both Part 121 and Part 135 and

includes a discussion of comments received on Notices 78-3 and 77-17 pertaining to flight and duty time limitations.

Recommendation A-78-27 asked FAA to develop, in cooperation with industry, flight recorder standards (FDR/CVR) for complex aircraft which are predicated upon intended aircraft usage. FAA reiterates comments made in its July 29, 1980, response, indicating that during August 1979 FAA received a proposed standard for a composite CVR/FDR from one of the major manufacturers of both CVR's and FDR's. FAA has now developed a proposed draft standard for a composite CVR/FDR. A new public procedure to expedite issuance of standards for specified materials, parts, processes, and appliances used on civil aircraft was issued by FAA on June 2, 1980, with September 9 as its effective date. FAA will publish its proposed standard for a composite CVR/FDR under this new procedure. (A copy of the latest draft of the CVR/FDR, a copy of the draft of the CVR/FDR Standard, and a copy of the new TSO procedures were provided with FAA's November 6 response.) FAA, as a result of a recent Safety Board recommendation, is requesting SAE to develop the standard from this draft material.

Recommendation A-78-28 asked FAA to draft specifications and fund research and development for a low cost FDR, GVR, and composite recorder which can be used on complex general aviation aircraft, and establish guidelines for these recorders. FAA notes that although initially FAA had planned to establish a regulatory project to develop an advance notice of proposed rulemaking for identification of appropriate standards, further review indicated that this procedure was not necessary. Research and development previously accomplished by the U.S. Army and by NASA were already being incorporated by several equipment manufacturers in their own development plans.

Recommendation A-78-29 called on FAA to, in the interim, amend 14 CFR to require that no operation (except for maintenance ferry flights) may be conducted with turbine-powered aircraft certificated to carry six passengers or more, which require two pilots by their certificate, without an operable CVR capable of retaining at least 10 minutes of intracockpit conversation when power is interrupted; such requirements can be met with available equipment to facilitate rapid implementation of this requirement. As noted in FAA's July 29 response, 14 CFR Part 135 was amended, as published October 10, 1978, at 43 FR 46742, to require under § 135.151 that no person may operate a turbojet airplane having a passenger seating configuration, excluding any pilot seat, of 10 seats or more, unless it is equipped with an approved cockpit voice recorder. In further fulfillment of this recommendation, FAA is drafting an NPRM which would require under Part 91, General Operating and Flight Rules, several additional equipment items, including a CVR on all multiengine turboject airplanes. This would expand the coverage under § 135.151 since there would be no minimum seating requirement specified.

In response to recommendation A-80-64, calling for establishment of a separate classification of commuter airline inspectors to conduct commuter airline surveillance, FAA notes that a separate classification was established within the FAA GS-1825 classification guide well in advance of issuance of this recommendation. FAA says this classification for Principal Aviation Safety Inspectors emphasizes experience requirements for the certification and surveillance of commuter airlines. This guide is currently being used in the job classification of these inspectors. (A copy of the guide was provided.)

FAA agrees with recommendation A-80-65, which called for a specialized training for inspectors assigned to commuter airlines to insure that inspectors are qualified in the equipment operated and are knowledgeable regarding commuter airline operations, and FAA has initiated additional training courses for this purpose. Specialized training is being provided for inspectors assigned to commuter airlines at the Mike Monroney Aeronautical Center at Oklahoma City. Course 21618, Air Carrier Airworthiness Indoctrination (ACAI), is for general aviation inspectors and is made up of selected subjects from the air carrier inspectors' indoctrination course. It was initiated in fiscal year 1979 in response to revised Part 135; 80 inspectors completed this course in fiscal year 1979-80 and 16 inspectors are scheduled for fiscal year 1981. The second, Course 21828, Air Taxi Certification and Surveillance, covers certification requirements, operating rules, aircraft, equipment, policies, and procedures—developed for airworthiness inspectors assigned to commuter airlines. In fiscal year 1979-80, FAA trained 48 inspectors in Course 21828 and 36 inspectors are scheduled for fiscal year 1981. There are two courses for operational inspectors: Course 22100, Air Taxi Operations Certification and Inspection; and Course 21617, Air Carrier Mini Indoctrination; 170 inspectors completed Course 22100 in fiscal year 1979-80 and 40 inspectors completed Course 21617 in fiscal year 1980 (the first year that this course was offered). For fiscal year 1981, Course 22100 has 70 inspectors scheduled for attendance and Course 21617 has 36 inspectors scheduled. With regard to flight training and qualifications, FAA is making an effort to qualify all commuter inspectors in at least one turboprop aircraft, and, where applicable, specific turbojet aircraft under their surveillance. This should be viewed as a continuing program due to such factors as manpower and fiscal restraints and personnel turnover.

In answer to recommendation A-80-66, which asked FAA to allocate GADO resources to insure that all commuter surveillance and general aviation requirements can be accomplished, FAA reports that 127 Flight Standards Aviation Safety Inspector positions were allocated for fiscal year 1981 budget appropriation, all dedicated to commuter/air taxi certification and surveillance activities. FAA notes that due to a pressing need, 50 of these positions were advanced to the fiscal year 1980 budget; all positions have been filled. The additional 77 positions will be filled during fiscal year 1981.

FAA agrees with recommendation A-80-67, which calls for a procedure for distributing surveillance of commuter airline maintenance evenly during all periods when maintenance is performed. FAA notes that work assignments for inspectors is a function of district office supervision, which provides the greatest flexibility for effective utilization of those personnel. The headquarters and regional offices periodically emphasize the need for specific surveillance by notices, such as N 8000.198, Increased Surveillance for Operator Under New Part 135 (copy provided). FAA reports that inspector personnel assigned to commuters have borne a time-consuming workload in the recertification of those operators under the new Part 135. With this workload behind FAA and the hiring of new inspectors for commuter assignments now in progress, coupled with the commuter-oriented inspector programs, sufficient inspector manpower should be provided to accommodate scheduling off-hour surveillance of commuter maintenance activities, according to FAA.

FAA reports that the recommendation A-80-68 requirement (that only actual passenger weights be used in weight and balance computations for

reciprocative engine aircraft used in Part 135 flights which are certificated for nine or less passengers) was accomplished on an interim basis by internal notices culminating April 1, 1980. FAA notes that final implementation of this recommendation is by Advisory Circular, AC 120-27A, Weight and Balance Control, issued May 14, 1980, and by internal instructions to FAA airworthiness inspectors, now under development. FAA would cause the certificate holders to develop suitable weight and balance control systems that can be easily managed by pilots or other personnel responsible for loading, in accordance with methods and procedures provided by the respective certificate holder.

In response to recommendation A-80-69, which asked FAA to amend 14 CFR 135.243 to require a minimum number of multiengine flight hours for a pilot-in-command of a multiengine commuter airline flight, FAA reports that last February new § 135.244, commuter pilot-in-command operating experience requirements, was issued, containing standards for pilots prior to designation as pilot-in-command on commuter passenger-carrying operations. These requirements established increased operating experience levels by make and model for both single and multiengine aircraft. This experience, which varies depending on whether the aircraft is piston or turbine powered, must be acquired under the supervision of a check airman employed by the certificate holder in passenger-carrying operations. FAA says the intent of this rule is to upgrade pilot experience to adhere to a higher level of safety. Also, the section (copy provided) specifies requirements in addition to those in § 135.243 which require all pilots serving in commuter operations to hold an airline transport pilot certificate. This requirement contributes appreciably to pilot-in-command experience, especially when complemented by the provisions of new § 135.244. Finally, FAA believes the increased training program requirements of Subpart H of Part 135 are also a positive factor. The operating experience under § 135.244 must be acquired only after satisfactory completion of the appropriate ground and flight training for the aircraft and crewmember position. Approval provisions for the operating experience must be scheduled in the operator's training program.

Recommendation A-80-70 asked FAA to amend 14 CFR Subpart B to require that dispatch and flight operations duties are supervised by personnel trained in those functions. Due to the relative size and scope of Part 135 commuter operations, FAA does not, at this time, believe there is a need for a flight dispatcher as indicated in Part 121 operations. FAA will continue to monitor the situation. Regarding flight operating personnel qualifications and training, FAA believes the current regulations are adequate. The qualification requirements for supervisory personnel are adequate to achieve the intended level of safety: § 135.37, Management Personnel Required, required a qualified director of operations, chief pilot, and director of maintenance; § 135.39 specifies the qualifications that persons occupying these positions must possess; and § 1325.77, Responsibility for Operational Control, requires each certificate holder to list in his operating manual the name and title of each person authorized to exercise operational control. FAA intends to take no further steps in this area at this time.

With respect to recommendation A-80-71, which asked FAA to amend § 135.185 to require that aircraft empty weight and that center of gravity be determined more frequently, FAA says it agrees with the intent of the proposal as it regards the importance of aircraft empty weight, operating weight, and corresponding centers of gravity (c.g.). However, FAA believes a well developed cumulative weight control system is the primary means of controlling operating weight and c.g. This system continuously updates operating weights and c.g.'s (or other aircraft weight references) to account for changes to the aircraft, its equipment, or standard passenger provisions such as stewardess supplies. FAA notes that periodic reweighing of aircraft under approved programs serves to confirm the cumulative weight control system; § 135.185 provides for the use of approved weight and balance control systems for multiengine aircraft which includes cumulative weight control. These programs include periodic reweighing requirements for aircraft controlled on a fleet basis, as well as aircraft handled individually. In the case of aircraft fleets, aircraft within each fleet are weighed on a sampling basis to confirm the fleet weight and c.g. Therefore, reweighing periodically is imposed on the fleet rather than on individual aircraft.

Further with respect to recommendation A-80-71, FAA notes that Advisory Circular 120-27A, Weight and Balance Control, was issued May 18. This circular consolidates previous advisory circulars for air taxis and large air carriers, and includes cumulative weight control procedures as well as aircraft reweight periods. The superseded advisory circular for air taxis did not include a periodic reweigh period. FAA does not believe further steps in this area are appropriate at this time.

FAA concurs with recommendation A-80-72, which called for evaluation and revision as appropriate of criteria for authorizing single-pilot IFR operations for commuter airlines. FAA reports that § 135.105 was amended, effective March 1, 1980, to require that, prior to authorizing single pilot IFR operations, the pilot-in-command must have previously logged 100 pilot-in-command hours in the make and model aircraft to be flown. This increased pilot experience requirement would ensure that the pilot has aircraft familiarity and proficiency sufficient to adequately cope with IFR operational problems and to handle inflight emergencies.

In connection with recommendation A-80-73, which asked FAA to expand the ADAP program to support the development of commuter-served airports, FAA notes that in 1976, Amendments to the Airport and Airway Development Act of 1970 defined commuter airports for the first time and provided specific funding for their development. FAA reports that in administering the Airport Development Aid Program (ADAP), FAA, through use of an authorized discretionary fund, has consistently granted more for commuter airport development annually than the $15 million identified in the Act for use at commuter locations. FAA notes that the Administration's legislative proposal to continue an airport grant program beyond the September 30, 1980, expiration of the ADAP was developed to provide a single fund for development of all commercial service (including commuter) airports. FAA says this will allow greater emphasis to be placed on improvement of commuter airports in the post-1990 program. FAA states that the latest House and Senate legislative proposals require administration of the facilities and equipment and airport development programs in a manner to maximize the use of safety facilities with highest priority for commercial service airports. This includes, but is not limited to, installation, operation, and maintenance of precision approach systems for each primary runway; grooving or friction treatment of all primary and secondary runways; nonprecision approaches for secondary runways; and electronic or visual vertical guidance on all runways. FAA believes its ADAP program has been administered to support the

development of commuter-served airports, and that future programs, though subject to legislative approval, have also been designed to support commuter airports, and, accordingly, no further action is presently intended.

With respect to recommendation A-80-74, which asked FAA to revise the qualifying criteria to insure that a larger percentage of commuter-served airports are equipped with instrument landing systems, FAA reports initiation of an extensive evaluation of the instrument landing system (ILS) qualifying criteria. This evaluation includes a reassessment of the benefits derived from an ILS by all categories of aviation, including trunk carriers, commuter carriers, air taxi carriers, general aviation, and military. Completion of this evaluation is anticipated in the near future, and FAA will advise the Board of results.

Recommendation A-80-75 asked FAA to insure, to the extent possible, that airports which are served by commuter airlines are equipped with an instrument approach facility. FAA reports initiating in February 1980 an in-depth analysis of all airports served by commuter airlines in the continental U.S. and Hawaii which found that 64 percent have a commissioned or programmed instrument landing system. Commuter needs at the remaining commuter-served airports are being investigated. FAA notes that recommendations regarding the installation of ILS's at specific airports are anticipated in the near future and will be made available to the Board.

Highway

H-80-47, from the National Highway Traffic Safety Administration, December 9, 1980.—Response is to a recommendation issued September 18 following investigation of the head-on collision of a sedan and a pickup truck on U.S. Route 64, near Perry, Okla., February 23, 1980. The recommendation asked NHTSA to evaluate the effectiveness of current Dram Shop type laws in reducing the number of highway accidents involving drivers under the influence of alcohol in States having such laws, and, if these evaluations prove to be positive, then incorporate the concepts of the laws into the existing Highway Safety Program Standard No. 8, Alcohol in Relation to Highway Safety. (See 45 FR 67174, October 9, 1980.)

The response indicates that NHTSA believes that a widespread national "impact" evaluation of Dram Shop laws would be very costly and ill-advised at this time. A more constructive approach, which NHTSA is now undertaking, is the more limited, administrative evaluation of existing Dram Shop programs in the States of California and New Jersey. In the latter State, for example, NHTSA funded and is working with the State Attorney General and the New Jersey Office of Highway Safety in a special program to enforce their Dram Shop law. NHTSA says it intends to monitor this program closely, to assess the degree to which their law was implemented and to convey to all States the activities and accomplishments of this program when completed. Further, NHTSA will continue to encourage State and local communities to evaluate their laws and associated programs whenever possible. (Attached to NHTSA's response is a section of a 1973 NHTSA-contracted study on the drinking driver, covering Dram Shop laws.)

Intermodal

I-80-3, from the Association of American Railroads (AAR), December 8, 1980.—Response is to a recommendation issued October 21 as a result of investigation of the derailment November 8, 1979, of cars 25 through 49 of Conrail freight train IHEN-8 one mile east of Inwood, Ind. Tank car GATX 26024, containing vinyl chloride, came to rest completely overturned with the man-way dome and associated valves buried so that they could not be examined. The recommendation asked AAR to examine ruptured tank cars to determine what effect current design and welding practices for welded tank attachments may have on the structural integrity of tank cars loaded with pressurized liquefied gases in the derailment environment and report the resultant findings. (See 45 FR 71870, October 30, 1980.)

AAR's response indicates that the Research and Test Department has been gathering data since mid-summer on failures such as that which occurred on GATX 26024, at the General American Transportation Company's facility in Hearne, Texas. Also, AAR has been gathering data on other types of failure where the tank car lost product through a crack which developed while the car was not moving in rail transportation mode.

AAR states that its investigation will include the design and welding practices currently used on tank cars which transport pressurized gases. AAR intends to seek advice and comments from recognized experts on welding practices within, as well as outside, the railroad industry. The Safety Board will be kept informed.

Pipeline

P-80-66 through -68, from the Texas Pipe Line Company, December 3, 1980.—Response concerns recommendations issued September 24 following investigation of the leak of crude oil from a fractured 22-inch pipeline at a levee crossing at Berwick, La., January 2, 1980. The crude oil subsequently ignited. (See 45 FR 67175, October 9, 1980.)

Recommendation P-80-66 asked Texas Pipe Line to review the practice of using fillet-welded reinforcement sleeves for tie-in welds to determine if these sleeves have been the cause of any pipeline failures in its system, and based on the results of this review, revise company practices and procedures for the use of these sleeves. The company states in its response that it has never had a general practice of using fillet-welded reinforcement sleeves for tie-in welds. As far as can be determined, the company says it has had only one other pipe failure resulting from the use of a fillet-welded reinforcement sleeve. This failure occurred about 25 years ago in the bank of a river crossing in close proximity to an underbend where the pipe was believed to be heavily stressed.

Texas Pipe Line notes that *Liquid Petroleum Transportation Piping Systems,* ANSI B 31.4, the industry voluntary standard code for pressure piping, allows the use of fillet-welded full encirclement sleeves, under certain conditions, for repairing pipe in high-pressure service. Texas Pipe Line says it adheres strictly to this code in the repair of its pipelines when such lines are not otherwise covered by procedures contained in 49 CFR Part 195. Since the use of fillet-welded full encirclement sleeves, under certain conditions, to repair high-pressure pipe is acceptable industry practice and company experience supports the use of such sleeves, except in locations of unusual stress such as in locations of unusual stress, Texas Pipe Line has issued the following instructions to its line managers:

> Effective immediately fillet-welded full encirclement sleeves shall not be permanently installed in locations of unusual stress such as in the tops of levees or within 3-feet of overbends, underbends or sidebends.

Recommendation P-80-67 asked the company to notify the pipeline patrol of the location of existing fillet-welded sleeves and instruct it to examine, during periodic patrols, the areas around the sleeve installations for signs of leakage. Texas Pipe Line reports that it has reviewed all of its main lines and has not found any location were a reinforcement sleeve is subjected to any unusual stress. Air patrol pilots have

been instructed to closely observe all pipeline rights-of-way for signs of leakage.

In response to recommendation P-80-68, which called for evaluating existing procedures for leak detection and taking steps to make these procedures more effective, Texas Pipe Line reports that it has evaluated its existing procedures for leak detection of its main lines and has found such procedures to be generally effective. Among the procedures used are: (1) Volume over/short checking between origin and destination by station personnel; (2) line pressure recording charts with alarms; (3) line differential pressure mercoid shutdown devices with alarms; and (4) weekly air patrol of main lines.

Texas Pipe Line states that it is planning to install additional meters and associated equipment on the Houma-Pt. Arthur 22-inch line to provide a continuous volume-in, volume-out comparison, which is expected to improve leak detection capabilities. Other pipelines will be evaluated for possible installation of a similar system.

Railroad

R-80-47, from the Bay Area Rapid Transit District (BART), December 9, 1980.—Response is to a recommendation issued October 24 following investigation of the derailment of a Western Pacific Railroad Company freight train at Hayward, Calif., April 9, 1980. The recommendation asked BART to establish procedures to prevent trains from being operated into an area where an emergency exists until it is known that it is safe to do so, and to develop and maintain on a current basis with the Western Pacific Railroad Company a plan for immediate notification of any emergency occurring on the common right-of-way between Oakland and Fremont. (See 45 FR 79206, November 28, 1980.)

The response indicates that BART and Western Pacific have established procedures and exchanged appropriate telephone numbers to expedite notification of each other in the event of an actual or potential emergency involving the right-of-way of the other between Oakland and Fremont. The telephone numbers terminate in the Sacramento Dispatcher's office of the Western Pacific, and the Operations Control Center at BART. BART checks *all* emergency numbers at least once a month, and logs the results. The operating rules of both properties recognize "Stop" signals given by others on or adjacent to their respective rights-of-way.

Note.—Copies of the Safety Board's recommendation letters, as well as responses and related correspondence, are provided free of charge. All requests for copies must be in writing, identified by recommendation number. Address requests to: Public Inquiries Section, National Transportation Safety Board, Washington, D.C. 20594.

(49 U.S.C. 1903(a)(2), 1906)

Margaret L. Fisher,

Federal Register Liaison Officer.

December 19, 1980.

[FR Doc. 80-40307 Filed 12-24-80; 8:45 am]

BILLING CODE 4910-58-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-466]

Allens Creek Nuclear Generating Station, Unit No. 1; Availability of Draft Supplement No. 2 to Final Environmental Statement

Notice is hereby given that Draft Supplement No. 2 to the Final Environmental Statement (NUREG-0470) has been prepared by the Commission's Office of Nuclear Reactor Regulation related to the proposed construction of the Allens Creek Nuclear Generating Station (ACNGS), Unit No. 1, by the Houston Lighting & Power Company. The proposed station is to be located in Austin County, Texas.

This second supplement addresses site alternatives to the proposed ACNGS and a proposed means of transporting the reactor pressure vessel to the site.

This draft supplement is available for inspection by the public in the Commission's Public Document Room at 1717 H Street, N.W., Washington, D.C., and in the Sealy Public Library, 201 Atchinson Street, Sealy, Texas. Draft Supplement No. 2 to the Final Environmental Statement is also being made available at the Houston-Galveston Area Council, 3701 West Alabama Avenue, Sealy, Texas 77027. Requests for copies of the Draft Supplement No. 2 should be addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C., 20555. Attention: Director, Technical Information and Document Control.

Interested persons may submit comments on this draft supplement to the FES for the Commission's consideration. Federal, State, and specified local agencies are being provided with copies of the Draft Supplement No. 2 (local agencies may obtain these documents upon request).

Comments by Federal, State and local officials, or other members of the public received by the Commission will be made available for public inspection at the Commission's Public Document Room in Washington, D.C. and the Sealy Public Library, 201 Atchinson Street, Sealy, Texas. Upon completion of comments submitted with respect to the Draft Supplement No. 2, the Commission's staff will prepare a Final Supplement No. 2, the availability of which will be published in the Federal Register. Comments are due by February 11, 1981.

Comments on the Draft Supplement No. 2 from interested members of the public should be addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 12th day of December 1980.

For the Nuclear Regulatory Commission.

B. J. Youngblood,

Chief, Licensing Branch No. 1, Division of Licensing.

[FR Doc. 80-40098 Filed 12-24-80; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-322A]

Long Island Lighting Co.; Receipt of Updated Information for Antitrust Review of Operating License Application

Note.—This document originally appeared in the Federal Register for Friday December 12, 1980. It is rerinted in this issue at the request of the agency.

The Long Island Lighting Company filed updated information for Antitrust Review of an Operating License Application, dated September 30, 1980. The original submission of information for the antitrust review of the operating license application was filed by letter, dated January 12, 1976. This information was filed pursuant to 2.101 of the Commission's Rules and Regulations and is in connection with the plans of Long Island Lighting Company to operate a boiling water reactor located on the north shore of Long Island, the State of New York, County of Suffolk, in the town of Brookhaven. The reactor has been designated as the Shoreham Nuclear Power Station, Unit 1.

The portion of the application filed contains updated antitrust information for review pursuant to NRC Regulatory Guide 9.3 to determine whether there have been any significant changes since the completion of the antitrust review at the construction permit stage.

On completion of staff antitrust review of the above-named application, the Director, Office of Nuclear Reactor Regulation will issue an initial finding as to whether there have been "significant changes" under section 105c(2) of the Act. A copy of this finding will be published in the Federal Register and will be sent to the Washington, D.C., and local public document room and to

those persons providing comments or information in response to this notice. If the initial finding concludes that there have not been any significant changes, request for reevaluation may be submitted for a period of 60 days after the date of the Federal Register notice. The results of any reevaluation that are requested will also be published in the Federal Register and copies sent to the Washington, D.C., and local public document room.

A copy of the updated information for Antitrust Review for an Operating License Application is available for public examination and copying for a fee at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. and at the local public document room in the Shoreham—Wading River Public Library, Route 25A, Shoreham, New York 11786.

Any person who desires additional information regarding the matter covered by this notice or who wishes to have his views considered with respect to significant changes related to antitrust matters which have occurred in the licensee's activities since the construction permit antitrust review for the above-named plant should submit such requests for information or views to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. Attention: Chief, Utility Finance Branch, Office of Nuclear Reactor Regulation, on or before February 10, 1981.

Dated at Bethesda, Maryland this 3rd day of December 1980.

For the Nuclear Regulatory Commission.

B.J. Youngblood,

Chief Licensing Branch No. 1, Division of Licensing.

[FR Doc. 80-38401 Filed 12-11-80; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 21845 (70-6533)]

Alabama Power Co.; Proposed Change in Unsecured Debt Limitation and Solicitation of Proxies in Connection Therewith

December 18, 1980.

Notice is hereby given that Alabama Power Company ("Alabama"), 600 North 18th Street, Birmingham, Alabama 35291 a public-utility subsidiary of The Southern Company, a registered holding company, has filed a declaration with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 6(a), 7, and 12(e) of the Act and Rules 62 and 65 promulgated thereunder as applicable to the following proposed transactions. All interested persons are preferred to the declaration, which is summarized below, for a complete statement of the proposed transactions.

Alabama intends to submit to the holders of its outstanding preferred stock for consideration and action at a special meeting of such holders to be held on or about April 29, 1981, a proposal that Alabama be authorized, by vote of its preferred stockholders, to issue or assume, until July 1, 1988, securities representing unsecured debt having maturities of less than ten years in excess of 10% of capital, surplus and secured debt, provided that (a) the amount of securities representing unsecured debt having maturities of less than 10 years outstanding on January 1, 1987, shall not exceed said 10% limitation and (b) Alabama's total unsecured indebtedness represented by securities shall at no time exceed 20% of capital, surplus and secured debt. Alabama also proposes to solicit proxies from the holders of its preferred stock in connection therewith. The proposed authorization would supersede similar authorization approved by preferred stockholders on February 11, 1975 (HCAR No. 18714 (December 16, 1974)).

The fees and expenses to be incurred in connection with the proposed transactions are estimated at $93,000 including a legal fee of $38,000 and a fee for soliciting proxies of $35,000. It is stated that no state or federal commission, other than this Commission, has jurisdication over the proposed transactions.

Notice is further given that any interested person may, not later than January 19, 1981, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by the filing which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be adressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon declarant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the declaration, as filed or as it may be amended, may be permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices or orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 80-40303 Filed 12-24-80; 8:45 am]

BILLING CODE 8010-01-M

SELECTIVE SERVICE SYSTEM

Support for the President's Executive Order No. 12160 (Consumer Affairs Program)

AGENCY: Selective Service System.

ACTION: Statement of support for executive order.

SUMMARY: In September, 1979, President Carter issued an executive order to provide for the enhancement and cooperation of federal consumer programs. The Selective Service does not provide "consumer services" per se, but fully supports the spirit of the order.

FOR FURTHER INFORMATION CONTACT: Brayton Harris, Assistant Director (Public Affairs), Selective Service System, 600 E Street, NW., Washington, D.C. 20435, telephone (202) 724-0790.

Bernard D. Rostker,

Director of Selective Service.

December 19, 1980.

The text of statement follows:

Introduction

The Selective Service System is an agency of the federal government whose principal mission is to provide the Department of Defense with the manpower it would require to augment the All Volunteer Force in a national emergency. The agency is currently in a standby posture to maintain an active register of males subject to a draft and to develop the plans necessary to support a mobilization. Selective Service does not provide "consumer services" per se; unless an active draft should be resumed, the only contact a registrant would have with this agency at this time and in the foreseeable future, would be to file, as needed, a report of change of address. For this reason, Selective Service has been exempted from the formal requirements of Executive Order 12160.

Consumer Affairs Perspective

Although Selective Service is exempt from Executive Order 12160, the Director of Selective Service wholeheartedly supports the spirit of that Order. Accordingly, he has created an active public affairs program within the agency which meets each of the criteria established in sections 1–4 of the directive. He has created the position of Assistant Director for Public Affairs, reporting directly to the Director on a day-to-day basis, with a trained and experienced staff to handle media and public inquiries whether written or oral.

Consumer Participation

During the past year, senior members of the staff have met with, and solicited advice and comment from the governing bodies of such diverse organizations as the Coalition Against Registration and the Draft, the National Interreligious Service Board of Conscientious Objectors, various veterans groups, service organizations and educational groups such as the American Student Association and the United States Student Association. In furtherance of this activity, and in accordance with the provisions of the Advisory Committee Act, a panel of citizens representing a wide range of interest and viewpoint will be established to assist Selective Service in the development of future policies and procedures.

On December 4, 1980, Selective Service published proposed regulations in the Federal Register for public comment. These regulations define a new organizational structure and operational procedure for use should the draft ever be required. These differ from the old in many ways, and we believe that they will result in more consistent results, thereby ensuring that individuals will be treated with more equity, uniformity, and justice than in the past. We are soliciting public comment on these regulations; those comments will be considered and changes made, as appropriate.

Beginning December 8, 1980, Selective Service distributed for public comment copies of a concept paper for an Alternative Service program for conscientious objectors, and began a series of meetings with interested groups to discuss the details of this proposal.

Regarding future activities, there is little that this agency could do—or should do—which is not fully under public scrutiny. Should a draft ever be needed, the rights and interests of each potential draftee would be protected by a nationwide network of draft boards and appeal boards, comprised of local civilian volunteers. To overcome some of the problems which have developed with draft boards in the past, Selective Service will be working with each state governor to open up the nomination process and to ensure that boards would be representative of local communities. For the first time in Selective Service history, we will develop nationally—consistent comprehensive training for each prospective draft board member so that each could be well versed in Selective Service regulations, programs and policy. This will help ensure uniform and equitable adjudication of claims. Additionally, a state-based inspection system is being devised to be responsive to the needs, concerns and complaints of claimants.

Informational Materials

The Public Affairs staff have developed and distributed a range of information materials to the Congress, the news media and registrants. An information pamphlet has been given to each registrant, which clearly outlines his rights and responsibilities under the law. Posters have been placed in each post office and at each U.S. Customs entry point. A brochure detailing the history, procedures and policies of Selective Service is being developed. Comprehensive fact sheets on various aspects of Selective Service have been sent to all print media.

In the past nine months, senior members of the staff have accepted every possible invitation for public appearances, panel discussions and debates, and radio, television, and print media interviews—with as many as eight such events scheduled in a single day by officials while in a travel status.

Education and Training

Senior members of the Public Affairs Staff are trained professionals, who keep up-to-date on consumer concerns through attendance at seminars, conferences and lectures. Public Affairs matters are discussed at each Selective Service Quarterly Regional Manager's Conference. Public Affairs aspects of Selective Service operations are covered in training materials prepared for use by assigned members of the Selective Service Reserve Forces.

Inquiries and Complaint Handling

The Public Inquiries Branch of the Public Affairs Office responds directly to the public, by personal letter or telephone call. From the time registration was announced by the President in his State of the Union address on January 23, 1980 through the present, the public inquiries staff has responded to more than 10,000 letters, usually within one week of receipt. Additionally, mailgrams were sent to reply to urgent requests.

Selective Service has a bank of ten Codaphones which give a recorded message outlining the basic facts about registration. These messages are continually updated to reflect particular concerns of the public at any given time. During active registration periods, Selective Service also maintains a Phone Information Center which is manned by four to six people. During the last registration, this unit handled at least 400 phone calls per day during a two-month period. To respond to calls from the Hispanic population, a person fluent in Spanish was hired and trained. Federal Information Centers throughout the U.S. were also given packets of information so personnel could directly answer questions from the general public.

Approximately 100 media inquiries a day were answered by the Public Affairs Office from January 23rd through September. These largely were handled by telephone; many were taped or live inputs into news and public affairs radio programs, nation-wide.

The Public Affairs Office also maintains an updated audio feed for direct access by radio and television stations.

Appropriate Telephone Numbers

Brayton Harris, Assistant Director (Public Affairs)—724–0790
Joan Lamb, Public Affairs Officer—724–0790
Betty Alexander, Public Inquiries Officer—724–0427.

[FR Doc. 80-40253 Filed 12-23-80; 8:45 am]
BILLING CODE 8015-01-M

DEPARTMENT OF STATE

[CM-8/355]

Advisory Committee on International Investment, Technology, and Development; Meeting

The Department of State will hold a meeting on January 8, 1981 of the Working Group on International Data Flows of the Advisory Committee on International Investment, Technology, and Development. The Working Group will meet from 10:00 am to 12:00. The meeting will be held in the Loy Henderson Conference Room of the State Department, 2201 C Street, N.W., Washington, D.C. 20520. The meeting will be open to the public.

The purpose of the meeting will be to discuss preparation for the meeting of the Experts Group of the OECD Working Group on Information, Computers and

Communications Policy (ICCP) to be held in Paris on January 20 and 21, and to review measures under consideration to publicize the OECD privacy guidelines.

Requests for further information on the meeting should be directed to Philip T. Lincoln, Jr., Department of State, Office of Investment Affairs, Bureau of Economic and Business Affairs, Washington, D.C. 20520. He may be reached by telephone on (area code 202) 632-2728.

Members of the public wishing to attend the meeting must contact Mr. Lincolns's office in order to arrange entrance to the State Department building.

The Chairman of the Working Group, will as time permits, entertain oral comments from members of the public attending the meeting.

Dated: December 10, 1980.

Philip T. Lincoln, Jr.,

Executive Secretary.

[FR Doc. 80-40224 Filed 12-24-80; 8:45 am]

BILLING CODE 4710-07-M

[CM-8/354]

Advisory Committee on International Investment, Technology, and Development; Meeting

The Department of State will hold a meeting on Wednesday, January 14, 1981 of the Working Group on Preparations for the U.N. Conference on New and Renewable Sources of Energy (UNCNRSE) of the Advisory Committee on International Investment, Technology, and Development. The Working Group will meet from 9:30 am to 1:00 pm. The meeting will be held in Room 1107 of the State Department, 2201 C Street, N.W., Washington, D.C. 20520. The meeting will be open to the public.

The purpose of the meeting will be to discuss the status of U.S. and international preparations for the Conference; reports by the U.S. members on the *ad hoc* expert group meetings on financing and information flows; reports by the chairmen of U.S. policy working groups on research and development, transfer of technology, rural energy issues, and industrial issues; and, preparations for the third meeting of the Preparatory Committee, March 30-April 10.

Requests for further information on the meeting should be directed to Philip T. Lincoln, Jr., Department of State, Office of Investment Affairs, Bureau of Economic and Business Affairs, Washington, D.C. 20520. He may be reached by telephone on (area code 202) 632-2728.

Members of the public wishing to attend the meeting must contact Mr. Lincoln's office in order to arrange entrance to the State Department building.

The Chairman of the Working Group, will as time permits, entertain oral comments from members of the public attending the meeting.

Dated: December 9, 1980.

Philip T. Lincoln, Jr.,

Executive Secretary.

[FR Doc. 80-40225 Filed 12-24-80; 8:45 am]

BILLING CODE 4710-07-M

[CM-8/356]

Study Group 9 of the U.S. Organization for the International Radio Consultative Committee (CCIR); Notice of Meeting

The Department of State announces that Study Group 9 of the U.S. Organization for the International Radio Consultative Committee (CCIR) will meet on January 15, 1981, in Room A110, Federal Communications commission Annex, 1229 20th Street, N.W., Washington, D.C. at 10:00 a.m.

Study Group 9 deals with questions relating to line-of-sight and trans-horizon radio-relay systems operating via terrestrial stations at frequencies above about 30 MHz. The purpose of the meeting is to review the results of the recent international meeting of Study Group 9 and establish a program of work in preparation for the international meeting in October 1981.

Members of the general public may attend the meeting and join in the discussions subject to instructions of the Chairman. Requests for further information should be directed to Mr. Gordon Huffcutt, State Department, Washington, D.C. 20520, telephone (202) 632-2592.

Dated: December 10, 1980.

Gordon L. Huffcutt,

Chairman, U.S. CCIR National Committee.

[FR Doc. 80-40223 Filed 12-24-80; 8:45 am]

BILLING CODE 4710-07-M

Office of the Secretary

[Public Notice CM-8/353]

Shipping/Coordinating Committee, Committee on Ocean Dumping; Meeting

The U.S. Advisory Committee on Ocean Dumping, a Subcommittee of the Shipping Coordinating Committee, will hold an open meeting at 9:30 a.m. on Wednesday, January 14, 1981, in Room 1101, West Tower, Waterside Mall, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C.

The purpose of the meeting is to review the outcome of the Fifth Consultative Meeting of the London Dumping Convention and to discuss the agenda of the next meeting of the Ad Hoc Scientific Group.

Requests for further information should be addressed to Ms. Norma A. Hughes, Executive Secretary, Committee on Ocean Dumping (WH-548), U.S. Environmental Protection Agency, Washington, D.C. 20460. Ms. Hughes may be reached by telephone (202) 472-2836. The Chair will entertain comments from the public as time permits.

John T. Stewart,

Chairman, Shipping Coordinating Committee.

Dated: December 15, 1980.

[FR Doc. 80-40206 Filed 12-24-80; 8:45 am]

BILLING CODE 4710-09-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. 301-20]

American Home Assurance Co., Termination of Investigation

The United States Trade Representative, in accordance with the provisions of 15 CFR 2006.6 is terminating the investigation under section 301 of the Trade Act of 1974 (19 U.S.C. 2411) concerning the discriminatory practice of the Government of Korea in the insurance sector. On November 5, 1979, the American Home Assurance Company (AHA) filed a petition under section 301 alleging that the Government of Korea discriminated against AHA by: (1) Failing to issue a license permitting AHA to write marine insurance in Korea; (2) failing to permit AHA to join the Fire Pool or to write most forms of joint venture fire insurance; and (3) failing to grant retrocessions from the Korean Reinsurance Corporation to AHA on the same basis as that applied to Korean insurance companies. A Federal Register notice announcing the initiation of the investigation and including the text of the petition was published on December 19, 1979 (44 FR 75246). A Federal Register notice inviting poublic comment on all aspects of this case, including proposals for retaliation, was published on November 26, 1980 (45 FR 78850).

Beginning in June, 1980, U.S. Government officials held several rounds of consultations with officials of the Government of Korea on the issues by AHA. During these consultations, the U.S. Government learned that the

Government of Korea is planning to implement the policy objective of fostering an open economic system through the promotion of open competition in certain sectors of the insurance market in the near future.

Furthermore, in a letter dated December 19, 1980, AHA notified the United States Trade Representative of its desire to withdraw its petition.

In view of the above, the investigation of the complaint filed by the American Home Assurance Company is terminated.

Jeanne S. Archibald,

Chairman, Section 301 Committee.

[FR Doc. 80-40248 Filed 12-24-80; 8:45 am]

BILLING CODE 3190-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Radio Technical Commission for Aeronautics (RTCA) Executive Committee; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I) notice is hereby given of a meeting of the RTCA Executive Committee to be held on January 23, 1981 in RTCA Conference Room 261, 1717 H Street, N.W., Washington, D.C. commencing at 9:30 a.m.

The Agenda for this meeting is as follows: (1) Approval of Minutes of Meeting Held on November 19, 1980; (2) Special Committee Activities Report for November and December 1980; (3) Chairman's Report on RTCA Administration and Management; (4) Approval of Resolution to Change RTCA Constitution and Bylaws to Admit the General Aviation Manufacturers Association (GAMA) as an Executive Committee Member; (5) Consideration of Establishing New Special Committees; (6) Approval of Special Committee 143 Report on Minimum Operational Performance Standards for Ground Based Automated Weather Observation Equipment; (7) Report of Fiscal and Management Committee; (8) Mid-year Review of RTCA FY-1981 Budget; and (9) Other Business.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1717 H Street, N.W., Washington, D.C. 20006; (202) 296-0484. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, D.C., on December 16, 1980.

Eugene S. Rehrig,

Acting Designated Officer.

[FR Doc. 80-40317 Filed 12-24-80; 8:45 am]

BILLING CODE 4910-13-M

Radio Technical Commission for Aeronautics (RTCA); Special Committee 136; Installation of Emergency Locator Transmitters (ELT) in Aircraft; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I) notice is hereby given of a meeting of Special Committee 136 on Installation of Emergency Locator Transmitters (ELT) in Aircraft to be held on January 29-30, 1981 in RTCA Conference Room 261, 1717 H Street, N.W., Washington, D.C. commencing at 9:30 a.m.

The Agenda for this meeting is as follows: (1) Chairman's Introductory Remarks; (2) Approval of Minutes of the Eighth Meeting Held on August 5-6, 1980; (3) Briefing on Automatic Deployable ELT; (4) Review Second Draft of Report on ELT Installation and Activation; and (5) Other Business.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1717 H Street, N.W., Washington, D.C. 20006; (202) 296-0484. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, D.C., on December 16, 1980.

Eugene S. Rehrig,

Acting Designated Officer.

[FR Doc. 80-40318 Filed 12-24-80; 8:45 am]

BILLING CODE 4910-13-M

Federal Highway Administration

Access Ramps to Public Boat Launching Areas in Connection With Federally Funded Bridge Projects

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice.

SUMMARY: The FHWA today publishes for public information the text of FHWA Notice N 5020.17, October 15, 1980 entitled, "Access Ramps to Public Boat Launching Areas in Connection with Federally Funded Bridge Projects." The purpose of the FHWA Notice is to distribute guidelines to FHWA field offices for implementing Section 147, Access Ramps to Public Boat Launching Areas, of the Federal-Aid Highway Act of 1976. Published also as an attachment to the FHWA Notice is the text of a Memorandum of Understanding (MOU) agreed upon by the FHWA and the Heritage Conservation and Recreation Service (HCRS) of the Department of the Interior. The texts of these documents are self-explanatory and are set forth below.

DATES: The MOU was signed on August 12, 1980 and the subject FHWA Notice was issued on October 15, 1980.

FOR FURTHER INFORMATION CONTACT: Sidney Louick, Office of Engineering, 202-426-0450, or Barbara Dalmut, Office of the Chief Counsel, 202-426-0800, Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m. ET, Monday through Friday.

Issued on December 17, 1980.

John S. Hassell, Jr.,

Federal Highway Administrator.

Access Ramps to Public Boat Launching Areas in Connection With Federally Funded Bridge Projects

1. *Purpose.* To distribute guidelines for implementing the Federal-Aid Highway Act of 1976, Section 147, Access Ramps to Public Boat Launching Areas.

2. *Background.*

a. Under Section 147, primary, secondary, and urban systems funds may be used to construct access ramps to public boat launching areas in connection with bridge projects on these Federal-aid systems. A formal Memorandum of Understanding (MOU) (Copy attached) was executed on August 12, 1980, between the Federal Highway Administration (FHWA) and the Heritage Conservation and Recreation Service of the Department of the Interior, which provides general guidelines for coordinating highway and recreational development in accordance with the provisions of Section 147.

b. The provisions of the MOU will be incorporated in appropriate regulations and the Federal-Aid Highway Program Manual as soon as possible.

3. *Discussion.* The MOU states a boat launching area is adjacent to a bridge project if the property which includes the launching facility ". . . is situated so as to be a part of the bridge project." This refers only to the physical relationship between the bridge project and the boat launching area. Federal-aid primary, secondary, or urban system funds utilized for the bridge project are not eligible for any portion of the cost of

the boat launching facility, including the cost of any adjacent land required for the facility. The use of Federal-aid highway funds is limited to the cost of obtaining additional highway right-of-way needed for construction of the access ramp and to the physical construction of the ramp itself.

4. *Action.*

a. Division Administrators should discuss with the State highway agencies the guidelines incorporated in the MOU. Bridge projects which could incorporate provisions for access ramps to public boat launching areas are to be considered and developd in accordance with these guidelines.

b. The FHWA field offices will ensure the MOU is part of each State's documentation developed and approved pursuant to 23 U.S.C. 109(h). The MOU may be added at the next revision of or amendment to the State Action Plan and may be incorporated as an appendix or by reference.

John S. Hassell Jr.,
Federal Highway Administrator.

Attachment—Memorandum of Understanding on Providing for Access Ramps to Public Boat Launching Areas in Connection With Federally Funded Bridge Projects

A. Purpose

The purpose of this Memorandum of Understanding is to provide guidance for the approval of access ramp projects to public boat launching areas, as required by section 147 of the Federal-Aid Highway Act of 1976, Pub. L. 94-280, May 5, 1976. Section 147 provides that funds apportioned to the States under 23 U.S.C. 104(b)(1), (b)(2), and (b)(6), may be used on application by the States for the construction of access ramps to public boat launching areas adjacent to bridges under construction, reconstruction, replacement, repair, or alteration on the Federal-aid primary, secondary, and urban system highways.

B. Definitions

1. *Bridge.* For purpose of this memorandum, a bridge is defined as a structure overcrossing a waterway of a sufficient size to accommodate boating.

2. *Adjacent.* For purpose of this memorandum, a public boat launching area is adjacent to a bridge located on a Federal-aid primary, secondary, or urban system of the property upon which the boat launching area is located, or will be located, is situated so as to be part of the bridge project.

3. *Access Ramp.* For purpose of this memorandum, an access ramp is defined as a suitable roadway leading from the Federal-aid highway to the boat launching area.

4. *Public Boat Launching Area.* For purpose of this memorandum, a public boat launching area is defined as the area at which boats are actually placed in the water.

C. Agreement

1. In accordance with section 147 of the Federal-Aid Highway Act of 1976, the Secretary of Transportation will, upon application of a State and subject to the availability of funds, approve the construction of access ramps to public boat launching areas which are adjacent to bridges that are being constructed, reconstructed, replaced, repaired, or otherwise altered on the Federal-aid primary, secondary, or urban systems.

2. The authority to include an access ramp to a boat launching area in a request for Federal funding remains with the State Highway Agency (SHA), in accordance with 23 U.S.C. 145. Timely notification of the acceptance or rejection of access ramp proposals should be given by the SHA to the agency applying for funding, the State Liaison Officer, and the Federal Highway Administration (FHWA). The FHWA will notify the appropriate Regional Director, Heritage Conservation and Recreation Service (HCRS) upon notice from the SHA.

3. The development and acquisition of the boat launching area and the access ramp may be accomplished concurrently by mutual agreement between the SHA and the agency responsible for the launching area. However, the property adjacent to the highway right-of-way on which the boat launching area is to be located must be in public ownership at the time Federal funds for the access ramps are obligated.

4. Where the highway right-of-way is sufficient for joint development, a public boat launching area may be located within the right-of-way so long as it does not interfere with the safety and utility of the highway function, subject to the Federal-Aid Highway Program Manual, Volume 7, Chapter 4, Section 3.

5. While the public boat launching area must be adjacent to the highway right-of-way, additional highway rights-of-way may be necessary for the construction of a suitable access ramp. Federal funding under section 147, and in accordance with section 104, will be available for the acquistion of such additional rights-of-way.

6. Access ramp construction eligible for consideration under section 147 will be accomplished in conjuction with federally funded bridge projects. The Federal share of the costs such access ramps will be in accordance with the provisions of 23 U.S.C. 120 applicable to 23 U.S.C. 104(b)(1), (b)(2), or (b)(6).

7. It is not the intention of section 147 of the Federal-Aid Highway Act of 1976 to provide for an extended roadway system within publicy owned recreational areas, but rather to provide direct access from the highway right-of-way to the water traversed by such highway.

8. The successful implementation of section 147 depends upon early coordination among the involved agencies. It is therefore the intention of this memorandum to assure the early notification by the FHWA/SHA of the possibilities of access ramp construction under section 147 to appropriate parties.

Early coordination shall be effected through distribution of appropriate information by the FHWA/SHA to the Regional Director, HCRS, and State Liaison Officers for information. This information may include, where appropriate, publications and reports such as the National Bridge Inventory, State and metropolitan area five year highway plans for certification, annual updates of State's long-term capital budget plans as well as preliminary project plans.

9. Where a federally funded bridge project will result in the replacement of an existing bridge, opportunities for access ramp development in conjuction with the replaced bridge and associated highway rights-of-way, should be examined as part of project planning efforts. The parties agree that Federal funding under section 147 may be used to provide for an access ramp to a public boat launch area at the replaced bridge or its associated highway rights-of-way.

D. Responsibilities of the Federal Highway Administration

1. The FHWA/SHA will notify the appropriate State Liaison Officers of proposed bridge work and the opportunity for funding of the construction of access ramps to public boat launching areas under section 147. This notification will occur early enough to permit the timely inclusion of access ramp proposals in the bridge project. Notification will also be provided to the appropriate Regional Director, HCRS.

2. The FHWA will permit the approval of access ramp additions which are submitted at any time during the life of the bridge project.

3. The FHWA will insure that this Memorandum of Understanding is part of the documentation developed by each State and approved pursuant to 23 U.S.C. 109(h). Addition of this Memorandum of Understanding may occur at the next revision of or amendment to such documentation.

E. Responsibilities of the Heritage Conservation and Recreation Service

1. The HCRS will notify the State Liaison Officers of each State of the Provisions of section 147 of the Federal-Aid Highway Act of 1976.

This notification will alert State agencies of the potential for Federal-aid funding for access ramps. The HCRS will stress the importance of early coordination and consultation process with the FHWA and SHA for evaluating opportunities to implement section 147 in connection with proposed bridge projects.

2. The HCRS will provide technical assistance, as appropriate, to other Federal, State and local agencies in assessment of opportunities for implementing section 147.

F. Interpretation of Section 4(f)

It is our mutual understanding and intent that the requirements of Section 4(f) of the Department of Transportation Act, 49 U.S.C. 1653(f) (23 U.S.C. 138), are not to be applicable to bridge construction, reconstruction, replacement, repair or alteration project solely because of the inclusion of an access ramp. In such cases, only the access ramp will be subject to the requirements of Section 4(f). Where Section 4(f) applies to the bridge project, a single Section 4(f) statement may be prepared for the bridge and the access ramp.

G. Review of Memorandum of Understanding

Within 3 years from the effective date of this Memorandum of Understanding, the Administrator and the Director shall review the effectiveness of this Understanding in achieving the stated purpose. If based upon that review, or at anytime during the course of operation within this Understanding, either the Administrator or the Director find its terms in need of modification, he or she may notify the other of the nature of the desired change.

Dated: August 12, 1980.

Concur:

John S. Hassell, Jr.,

Administrator, Federal Highway Administration.

Dated: August 12, 1980.

Concur:

Chris Therral Delaporte,

Director, Heritage Conservation and Recreation Service.

[FR Doc. 80-40130 Filed 12-24-80; 8:45 am]

BILLING CODE 4910-22-M

Federal Railroad Administration

[Docket No. RFA-305-80-1; Notice No. 1]

Consolidated Rail Corp.; Expedited Supplemental Transaction Proposals

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice concerning the development of expedited supplemental transaction proposals (Expedited STPs) pursuant to section 305(f) of the Regional Rail Reorganization Act of 1973 (Act), 45 U.S.C. 745(f).

SUMMARY: The Federal Railroad Administrator (Admninistrator), as delegate of the Secretary of DOT, seeks the submission of Expedited STP information by railroads interested in acquiring all of the rail properties of the Consolidated Rail Corporation (Conrail) in the States of Connecticut and Rhode Island for the purpose of providing freight service. Conrail's rail properties in the two States are identified in Appendix A to this Notice and are hereafter referred to as the Appendix A Rail Properties. This Notice also solicits comments from the public on the desirability of and problems posed by Expedited STPs. The Administrator has previously sought information from Conrail regarding Appendix A Rail Properties. Appendix B is a list of the information FRA has requested. Nonprivileged information received pursuant to that request will be made available for review by potential transferees and the public as provided and at the locations specified in this Notice.

DATES: The following deadlines are necessary to enable the Administrator to determine by May 29, 1981, whether to advance an Expedited STP.

The deadlines do not preclude submission to the Administrator of a recommendation for the development of a standard STP under section 305(a) of the Act with respect to any Conrail rail properties.

1. Statements of interest in acquiring all of the Appendix A Rail Properties and historical financial and operating information with respect to potential transferees must be received by FRA on or before February 2, 1981.

2. Parties interested in receiving further information on the development of Expedited STPs should submit their names, addresses and a statement regarding the nature of their interest to FRA on or before February 2, 1981.

3. Initial statements of position from members of the public regarding the desirability of and problems posed by transferring all of the Appendix A Rail Properties to another party must be received by FRA on or before February 2, 1981.

4. Financial projections, operating and employment plans and proposed offering prices must be received by FRA from potential transferees on or before February 27, 1981.

ADDRESS: Four copies of written submissions must be submitted to the Docket Clerk, Office of the Chief Counsel, Federal Railroad Administration, Room 8211, 400 Seventh Street S.W., Washington, D.C. 20590. Submissions should identify the docket number and notice number. Written submissions will be available for examination, consistent with the Freedom of Information Act, at the above address between 8:30 a.m. and 5:00 p.m., EST, Monday through Friday. Those desiring notification of receipt of submissions must include a self-addressed stamped postcard.

For the convenience of the public and potential transferees, copies of nonprivileged information which are received from Conrail and potential transferees regarding the Appendix A Rail Properties will also be available for public inspection at the following locations:

Rhode Island Department of Transportation, Planning Division, Room 369, State Office Building, Providence, Rhode Island, between 8:30 a.m. and 4:30 p.m., EST, Monday through Friday

Connecticut Department of Transportation, Department of Transportation, Administration Building, 24 Wolcott Hill Road, Wethersfield, Connecticut, between 8:30 a.m. and 4:00 p.m., EST, Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Steve Black, Office of Federal Assistance, (202) 472-7180. Office hours are 8:30 a.m. to 5:00 p.m., EST, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 305(f) of the Act, as added by section 601 of the Staggers Rail Act of 1980 (Pub. L. No. 96-448), requires the Administrator to determine by May 29, 1981, whether to propose an Expedited STP for the transfer of all the Appendix A Rail Properties to another railroad in the region. The Administrator is seeking information to enable him to determine whether to advance an Expedited STP.

The Act defines "rail properties" to mean "assets or rights owned, leased, or otherwise controlled by a railroad (or a person owned, leased, or otherwise controlled by a railroad) which are used or useful in rail transportation service * * *" The Act defines "railroad" to

mean "a common carrier by railroad as defined in section 1(3) [now codified at 49 U.S.C. 10102] of the Interstate Commerce Act," and includes the National Railroad Passenger Corporation (Amtrak). The Act defines "region" to mean "the States of Maine, New Hampshire, Vermont, Massachusetts, Connecticut, Rhode Island, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, West Virginia, Ohio, Indiana, Michigan and Illinois; the District of Columbia; and those portions of contiguous States in which are located rail properties owned or operated by railroads doing business primarily in the aforementioned jurisdictions (as determined by the Commission by order)."

Description of Expedited STPs

The principal elements of Expedited STPs are as follows: 1. Conrail Properties Eligible for Transfer: An Expedited STP is restricted to the transfer of *all* of the Appendix A Rail properties.

2. Potential Transferees: Only a *single railroad in the region* which will assume the freight service obligations of Conrail with respect to the Appendix A Rail Properties is eligible to be a transferee in an Expedited STP.

3. Administrator's Findings: The Administrator is directed to develop an Expedited STP if, after providing an opportunity for comments from interested parties, he determines that: "(A) the proposed transferee railroad is financially and operationally capable of assuming the freight operations and freight service obligations of the Corporation on a financially self-sustaining basis; (B) the proposed transfer would promote the establishment and retention of a financially self-sustaining rail system in the States of Connecticut and Rhode Island adequate to meet the needs of such States; and (C) the transfer is consistent with the goals set forth in section 206(a)(8) of this Act." The goal cited in section 206(a)(8) reads as follows: "the minimization of job losses and associated increases in unemployment and community benefit costs in areas in the areas in the region presently served by rail service."

4. Expedited STP Review Process: If the Administrator develops an Expedited STP he is to provide USRA, the ICC and the States of Connecticut and Rhode Island an opportunity to concurrently review and comment on the Expedited STP. Subsequent to receiving these comments the Administrator may petition the Special Court for an order to carry out such a proposal. The Administrator will not petition the Special Court unless the transferee railroad is willing to accept the fair and equitable purchase price established by the Administrator. The Special Court is to issue implementing orders if it determines that the proposal is fair and equitable, it is in the public interest, and that it meets the requirements of section 305 of the Act.

STP Development Process

This Notice establishes deadlines for the submission of: (1) expressions of interest from potential transferees in acquiring Appendix A Rail Properties; (2) the names, addresses, and statements regarding the nature of their interest from parties interested in receiving further information on the development of Expedited STPs; (3) initial statements of position from members of the public regarding the desirability of and problems posed by transferring all of the Appendix A Rail Properties to another railroad; and (4) financial projections, operating and employment plans and proposed offering prices from potential transferees. Following receipt of these submissions, FRA will publish in the Federal Register, in early March 1981, a summary of each Expedited STP submitted to FRA and request public comments thereon. Public hearings may also be held on these proposals. The Administrator will consider all information received by means of this process, as well as the results of discussions FRA will hold with potential transferees and Conrail, in reaching a determination regarding whether to advance an Expedited STP.

Written Submissions by Interested Parties

Inclusion on Mailing List—February 2, 1981

Parties interested in receiving further information on the development of STPs should submit their names, addresses and a statement regarding the nature of their interest to FRA by February 2, 1981, to ensure their inclusion on the FRA mailing list.

Initial Statements of Position—February 2, 1981

FRA is interested in receiving initial statements of position by members of the public regarding the desirability of and problems posed by transferring all of the Appendix A Rail Properties to another party. Such statements should be submitted to FRA by February 2, 1981. FRA will offer the public an additional opportunity to comment on this subject following the receipt of proposed Expedited STPs from potential transferees.

Written Submissions by Potential Transferees

Potential transferees wishing to acquire all of the Appendix A Rail Properties pursuant to an Expedited STP must comply with the submission requirements set forth in this Notice. Additional information may be requested by FRA to make the statutory Expedited STP determinations. If a potential transferee desires that any information so submitted not be released by the Administrator upon request from a member of the public, it must so state and must set forth any reasons why such information should not be released, including particulars as to any competitive harm which would probably result from release of such information. The Administrator will keep such information confidential to the extent permitted by law.

Statements of Interest—February 2, 1981

Each potential transferee must notify FRA in writing of its interest in acquiring all of the Appendix A Rail Properties on or before February 2, 1981. Statements of interest shall include the following information (information already on file with FRA and other Federal Government agencies can be incorporated by reference):

1. Full and correct name and principal business address of the potential transferee;

2. Date of the potential transferee's incorporation, or organization if not a corporation, and name of the government, state or territory under the laws of which it was incorporated or organized. If the potential transferee is a trustee then, in addition, the name and address of the reorganization court under the direction of which the potential transferee is acting, and the docket number of the proceeding. If the potential transferee is a partnership, association or other form of organization other than a corporation, a full description of the organization must be furnished;

3. Name, title, address and telephone number of the person who can answer questions regarding the statement of interest;

4. A statement of whether the potential transferee is willing to assume Conrail's freight service obligations with respect to the Appendix A Rail Properties and identifcation of any additional rail properites related to the Expedited STP that the potential transferee intends to otherwise acquire or obtain operating rights over;

5. A map of the potential transferee's rail system indicating the relationship of the Appendix A Rail Properties to its current system;

6. Financial Statements and Operating Reports—These items should be submitted by potential transferees in a form and detail similar to that prescribed by the ICC Uniform System of Accounts (49 C.F.R. Part 1201) and in the Annual Report R-1 or based upon another accounting system at a similar level of detail;

(a) A copy of audited annual financial statements as follows: (1) Comparative statements of financial position (balance sheets), (2) results of operations (income statements), and (3) statements of changes in financial position (sources and uses or application of funds statements) for each of the last five years in one consistent accounting format to enable year-to-year, line-to-line comparison;

(b) For the most recent year end, to the extent not included in item (a) above, the following: (1) Particulars of loans and notes receivable;

(2) Particulars of investments in affiliated companies and other investments;

(3) Particulars of balances in Account 741, Other Assets, and 743, Other Deferred Debits, or equivalent accounts;

(4) Particulars of loans and notes payable, as well as information on bank loans, including the name of the bank, date and amount of the original loan, current balance, maturities, rate of interest, and security pledged, if any;

(5) Particulars of long-term debt, including a brief statement concerning each mortgage, pledge, and other lien indicating the property or securities encumbered, the mortgage limit per mile, if any, and particulars as to priority;

(6) Particulars of the balances in Account 784, Other Deferred Debits in form and detail as required in schedule 379 of Annual Report R-1, or an equivalent description of such items;

(7) Particulars of the capital stock in form and detail as required in schedule 310 of Annual Report R-1; and

(8) Particulars of any other outside sources of funding such as state or local government subsidies received by potential transferee;

(c) A copy of the quarterly Freight Commodity Statistics reports (Forms QCS) filed with the ICC for the fourth quarter for each of the last five years and for each quarter since the last fourth quarter report, or information in similar form and detail;

(d) A copy of the most recent annual report of employee service, forms A and B, to the ICC or information in similar form and detail;

(e) A copy of the five most recent annual reports to shareholders, and any statistical supplements prepared for shareholders or the financial community;

(f) A copy of the quarterly reports to shareholders since the last annual report; and

(g) A copy of the most recent annual or special reports filed with other regulatory agencies such as the Annual Report 10K filed with the Securities and Exchange Commission.

Financial Projections, Operating and Employment Plans and Other Information—February 27, 1981

On or before February 27, 1981, potential transferees shall submit financial and traffic projections, operating information, projections of equipment needs and sources, track maintenance and improvement plans, employment plans and other information to FRA in the form and detail described below. In addition, each potential transferee must supply a concise description of its Expedited STP submission suitable for publication in the Federal Register. Potential transferees' submissions must contain sufficient information to enable the Administrator to make the statutory Expedited STP determinations. In preparing this information it should be assumed that the proposed transfer will occur on January 1, 1982. Projections for potential transferees should be provided for the year 1980 (to the extent actual data is not yet available) and the years 1981 through 1985.

1. Financial and Traffic Projections: (a) Projected Annual Financial Statements—Projections should be in a form and detail similar to that prescribed by the ICC Uniform System of Accounts, or based upon another accounting system at a similar level of detail, and stated in such a way as to be comparable, line by line, to the financial statements provided in Item (6)(a) for the February 2, 1981 submission. The general assumptions upon which the projections are based should be explained. The projections should indicate the incremental impact of the proposed acquisition of Appendix A Rail Properties upon the projected results of the potential transferee, by each projected category of revenue and expense; and

(b) Projections of annual revenues and traffic in terms of tonnage, carloadings, and account 101 revenues by two digit Standard Transportation Commodity Code (STCC).

2. Revenue Equipment and Locomotive Fleet Requirement Projections: (a) Revenue equipment—For each of the years, a projection of revenue equipment requirements by type of car indicating the relationship of equipment requirements to traffic projections on a two-digit STCC basis reflecting:

(i) Current fleet—identifying the number of serviceable and bad ordered cars;

(ii) Retirements;

(iii) Acquisitions—method of financing;

(iv) Repairs and rehabilitation;

(v) Use of foreign cars, and

(vi) Projected fleet—identifying the numbers of serviceable and bad ordered cars; and

(b) For each of the years, a projection of locomotive needs reflecting: (i) Current fleet—identifying the number of serviceable and bad ordered locomotives;

(ii) Retirements;

(iii) Acquisitions—method of financing;

(iv) Repairs and rehabilitation; and

(v) Projected fleet—identifying the number of serviceable and bad ordered locomotives.

3. Projected track maintenance and property additions and improvement programs for each of the years:

(a) An annual maintenance and improvement plan for track properties to be acquired including a comparison of current and projected track class as defined by FRA Track Safety Standards and comparisons of current to projected maximum allowable speed of operation for each line; and

(b) A description of the annual maintenance and additions and improvement plans for the properties to be acquired.

4. Operating Plans: (a) A general description of potential transferee's current and 1981 operating plans compared with the yearly operating plans projected after the acquisition; and

(b) Specifics on frequency and adequacy of service anticipated over each line to be acquired as compared to Conrail's current service levels.

5. Employment Plans: (a) Annual plans indicating the number and general ICC job category of Conrail employees currently employed on the Appendix A Rail Properties that would be offered employment by the potential transferees;

(b) Any anticipated changes in total compensation and the reasons for such changes; and

(c) A description of the employee protection agreement the potential transferee anticipates could be agreed to with current Conrail employees and the projected annual cost to the potential

transferee and the Federal Government of such a plan.

6. Valuation—The potential transferee's line-by-line estimate of the value of the Appendix A Rail Properties, including a specific description of the methodology used to calculate this value.

7. Financing: (a) A description of the method of financing anticipated for the proposed acquisition, maintenance and proposed improvement to the property and the equipment needed to provide the anticipated levels of service;

(b) If outside financing is assumed, a description of the potential transferee's ability to obtain such financing and a projection of the annual or semi-annual payment streams indicating principal and interest separately; and

(c) A description of the security to be offered, if any.

8. Employment and Economic Impacts: (a) A yearly estimate of the impact of the acquisition on the economy and employment levels in the States of Connecticut and Rhode Island; and

(b) A yearly estimate of any other impacts of the transfer on the two States.

9. Detailed assessment of the transfer on the environment (see FRA environmental regulations at 45 FR 40854 (June 16, 1980)).

Public Review of STP Information

Information that Conrail and potential transferees submit with respect to the expedited STP docket which is deemed by FRA to be nonprivileged will be available for public inspection at the following locations:

Docket Clerk, Office of the Chief Counsel, Federal Railroad Administration, Room 8211, 400 Seventh Street S.W., Washington, D.C., Monday through Friday, 8:30 a.m. to 5:00 p.m., EST

Connecticut Department of Transportation, Rail Planning Division, Room 214, Department of Transportation Administration Building, 24 Wolcott Road, Wethersfield, Connecticut, Monday through Friday, 8:30 a.m. to 4:00 p.m., EST

Rhode Island Department of Transportation, Planning Division, Room 369, State Office Building, Providence, Rhode Island, Monday through Friday, 8:30 a.m. to 4:30 p.m., EST

Issued in Washington, D.C., December 19, 1980.

John M. Sullivan,
Federal Railroad Administrator.

Appendix A—Rail Freight Properties of the Consolidated Rail Corporation (Conrail) in the States of Connecticut and Rhode Island

The following is a list of the rail freight properties owned, leased, or otherwise controlled by Conrail within the States of Rhode Island and Connecticut (Appendix A Rail Properties). These properties are eligible for consideration for transfer to another railroad under an Expedited STP. The lines in the States of Rhode Island and Connecticut over which Conrail is a designated cooperator pursuant to section 5 of the Department of Transporation Act (Local Rail Service Assistance Program) are not included as Appendix A Rail Properties since Conrail neither owns, leases, nor otherwise controls such lines. The Appendix A Rail Properties appear on a map of Conrail's New England Division of its Northeastern region which is at the end of this appendix. The map also indicates Conrail properties outside Rhode Island and Connecticut which are not subject to the Expedited STP provisions.

State	Line name	Between	M.P. to M.P.[1]	CR code	Owner
		Conrail New England Division—Northeastern Region			
Connecticut	Main Line (Shore Line)	New Haven and New London	73.0 to 122.8	41-4209	Amtrak.
Connecticut	Main Line (Shore Line)	New London and State Line (RI)	122.8 to 141.1	41-4215	Amtrak.
Rhode Island	Main Line (Shore Line)	State Line (CT) and Cranston	141.1 to 178.9	41-4215	Amtrak.
Rhode Island	Main Line (Shore Line)	Cranston and State Line (MA)	178.9 to 190.8	41-4116	Amtrack.
Connecticut	Avon Secondary	Plainville and Avon	0.0 to 9.7	41-4243	Conrail.
Connecticut	Belle Dock Industrial Track	Belle Dock and Cedar Hill	0.0 to 1.6	41-4275	Conrail.
Connecticut	Berlin Secondary	Berlin and New Britain	0.0 to 2.6	41-4261	Conrail.
Rhode Island	Bristol Secondary	Providence and Red Bridge	0.0 to 1.9	41-4165	Conrail.
Connecticut	Canaan Secondary	Canaan and State Line (MA)	47.2 to 50.0	41-4220	Conrail.
Connecticut	Canal Secondary	New Haven (Fair St) and Plainville	0.0 to 27.8	41-4247	Conrail.
Rhode Island	East Junction Secondary	State Line (MA) and Red Bridge	3.7 to 6.9	41-4164	Conrail.
Connecticut	East Longmeadow Secondary	State Line (MA) Hazardville	8.8 to 12.5	41-1255	Conrail.
Connecticut	East Windsor Secondary	East Windsor and East Hartford	18.0 to 23.1	41-4255	Conrail.
Connecticut	Griffins Industrial Track	Hartford	0.0 to 2.0	41-4259	Conrail.
Rhode Island	Harbor Junction Industrial Track	Cranston and South Providence	0.0 to 3.4	41-4163	Conrail.
Connecticut	Hartford Line	New Haven and State Line (MA)	0.0 to 55.8	41-4217	Amtrak.
Connecticut	Laurel Secondary	Middletown and Laurel	0.0 to 5.5	41-4253	Conrail.
Connecticut	Manchester Industrial Track	Manchester and South Manchester	0.0 to 1.9	41-4256	Conrail.
Connecticut	Maybrook Branch	State Line (NY) and Derby Junction	71.2 to 104.8	41-4223	Conrail.
Connecticut	Middletown Industrial Track	Cromwell and Middletown	13.7 to 16.2	41-4263	Conrail.
Connecticut	Middletown Secondary	Aldine Junction and Middletown	0.0 to 22.3	41-4251	Conrail.
Connecticut	New Britain Secondary	Plainville and Hartford	0.0 to 12.9	41-4244	Conrail.
Connecticut	New Milford Secondary	Berkshire Junction and New Milford	0.0 to 13.6	41-4220	Conrail.
Rhode Island	Newport Secondary	State Line (MA) and Portsmouth	14.2 to 21.5	41-4192	Conrail.

State	Line name	Between	M.P. to M.P.[1]	CR code	Owner
		Conrail New England Division—Northeastern Region—Continued			
Connecticut	Portland Industrial Track	Middletown and Portland	0.0 to 1.0	41-4254	Conrail.
Rhode Island	Slatersville Secondary	Woonsocket and Slatersville	0.0 to 3.4	41-4170	Conrail.
Connecticut	Suffield Industrial Track	Windsor Locks and Suffield	0.0 to 4.2	41-4260	Conrail.
Connecticut	Terryville Secondary	Waterbury and Plainville	0.0 to 17.2	41-4222	Conrail.
Connecticut	Torrington Secondary	Highland Junction and Torrington	0.0 to 20.7	41-4243	Conrail.
Rhode Island	Valley Falls Industrial Track	Valley Falls and Cumberland Mills	0.0 to 0.8	41-4128	Conrail.
Rhode Island	Washington Secondary	Providence and Washington	0.0 to 16.9	41-4160	Conrail.
Connecticut	Watertown Secondary	Highland Junction and Watertown	0.0 to 1.6	41-4258	Conrail.
Connecticut	Wethersfield	Hartford ("Hart") and Spring Brook	0.0 to 7.0	41-4263	Conrail.
Connecticut	Willimantic Secondary	Hartford ("Hart") and Manchester	0.0 to 9.6	41-4262	Conrail.
		Conrail Metropolitan Region			
Connecticut	New Haven Line	State Line (NY) and New Haven	26.1 to 73.0	91-9108	Penn Central.[2]
Connecticut	Danbury Branch	South Norwalk and Danbury	41.3 to 64.9	91-9119	Penn Central.[2]
Connecticut	New Canaan Branch	Stamford and New Canaan	0.0 to 7.9	91-9118	Penn Central.[2]
Connecticut	Waterbury Branch	Devon and Waterbury	0.0 to 26.9	91-9121	Penn Central.[2]

[1] Mile Post to Mile Post.
[2] Connecticut DOT leases these lines from the Penn Central Company. Conrail provides freight service over them through trackage rights agreements.

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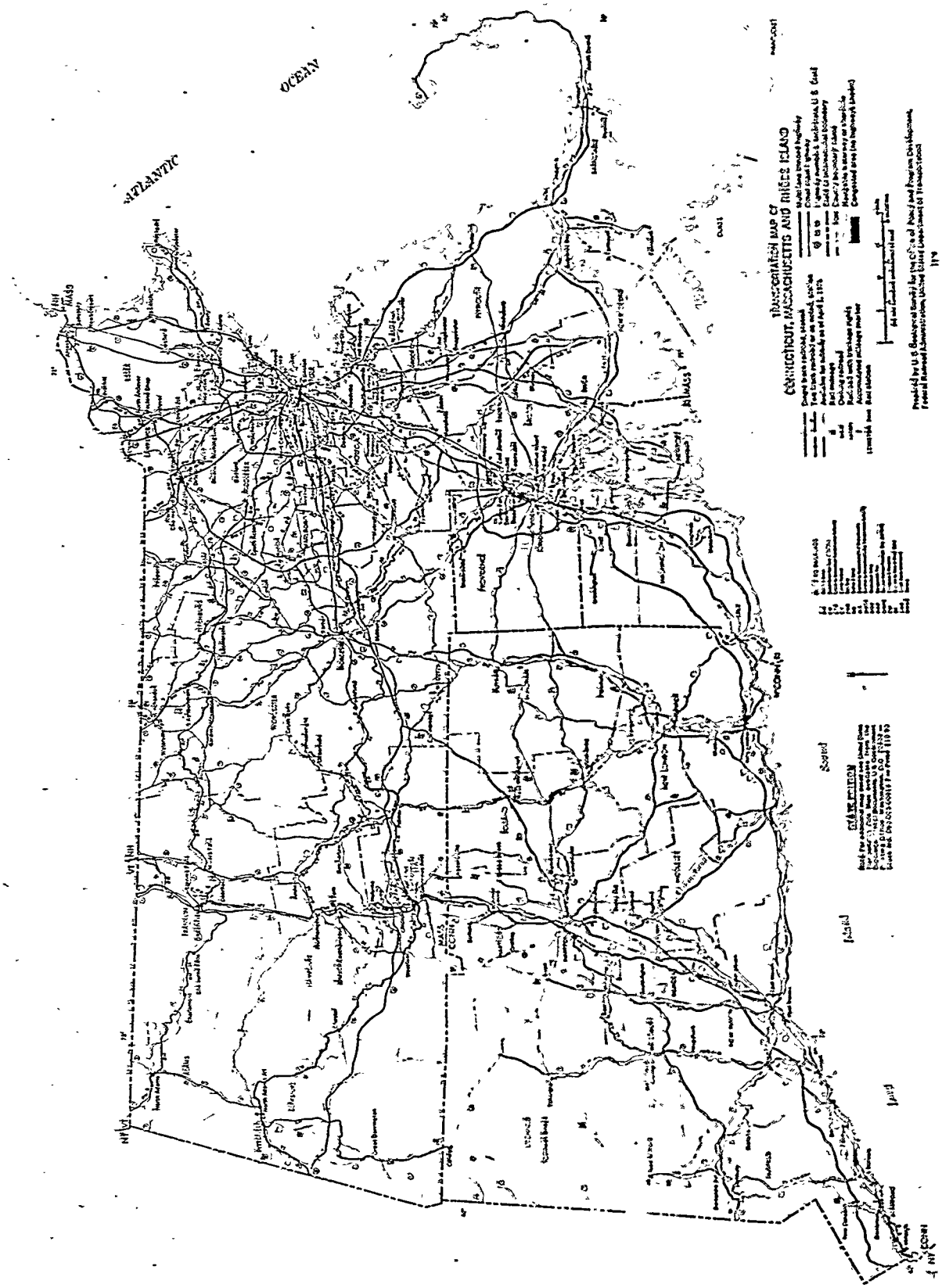

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Appendix B—Information Requested from Conrail for Use in the Expedited STP Process

The following information dealing with the Appendix A Rail Properties has been requested from Conrail for use by FRA, potential transferees and other interested parties in preparing and evaluating submissions made in the Expedited STP process. Nonprivileged information will be made available to the public as provided (some information has been received from Conrail and other information will be received over the period between now and May 29, 1981) and at the locations specified in this Notice.

1. Detailed maps of the Appendix A Rail Properties;
2. Indications of Conrail's ownership interest;
3. Conrail freight schedules on these lines;
4. Traffic information;
5. Employee information;
6. Revenue and cost information;
7. Maintenance plans;
8. Proposed surcharge, abandonment and transfer plans;
9. Proposed changes in freight service;
10. Projected traffic levels, revenues and cost; and
11. Proposed sale.

[FR Doc. 80-40204 Filed 12-23-80; 8:45 am]
BILLING CODE 4910-06-M

Office of the Secretary

[Notice No. 80-23]

Procedures for Considering Environmental Impacts

AGENCY: Department of Transportation (DOT).

ACTION: Request for public comment.

SUMMARY: The Department of Transportation is proposing to revise its guidance on the format and content of environmental documents. These revisions would replace the existing Attachment 2 to DOT Order 5610.1C, Procedures for Considering Environmental Impacts. Public comments on the proposed revisions are invited. The Operating Administrations of the Department have been encouraged to utilize this draft attachment as interim guidance.

COMMENT CLOSING DATE: February 27, 1981.

ADDRESS: Written comments should reference this Notice and be addressed to: Director, Office of Environment and Safety, P-20, U.S. Department of Transportation, Washington, D.C. 20590. Comments received will be available for public inspection during normal working hours in Room 9422, U.S. Department of Transportation, 400 Seventh Street, S.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Camille Cleveland, Office of Environment and Safety, U.S. Department of Transportation, 400 Seventh Street, S.W., Washington, D.C. 20590, (202) 426-2672.

SUPPLEMENTARY INFORMATION: The purpose of the revisions would be to provide current guidance on content of environmental assessments, findings of no significiant impact (FONSI), environmental impact statements (EISs), and documentation for compliance with section 4(f) of the DOT Act. DOT Order 5610.1C, Procedures for Considering Environmental Impacts (44 FR 56420, October 1, 1979) specifies procedures for compliance with the National Environmental Policy Act. The Order provides that to the maximum extent possible, all environmental studies, reviews and consultations will be coordinated into a single process, and compliance with applicable environmental requirements will be reflected in the EIS or environmental assessment for a proposed action. Attachment 2 would provide guidance on the format and content of environmental documents, including information on compliance with the various environmental laws, orders, and policies. Although DOT 5610.1C was issued in September 1979, in order to comply with Council on Environmental Quality's NEPA regulations (40 CFR 1500-1508), major revisions to Attachment 2 were not made at that time. These proposed revisions reflect a number of environmental requirements which have been established in recent years. Among new or revised laws and policies reflected in the revised attachment are:

- Transportation and Urban Noise initiatives in the President's Environmental Message of August 2, 1979;
- Community Conservation Guidance, issued by the White House on November 26, 1979;
- The Secretary's Policy on Design, Art, and Architecture in Transportation;
- Executive Order 12185 concerning Conservation of Petroleum and Natural Gas, and other energy conservation mandates;
- Section 176 of the Clean Air Act;
- Section 404 of the Clean Water Act;
- The Safe Drinking Water Act;
- The Coastal Zone Management Act;
- Executive orders on Protection of Wetlands and Floodplain Management; and
- The Endangered Species Act, as amended.

The revised guidance would also address the discussion to be provided in environmental impact statements and related documents concerning planning for bicycle and pedestrian use, family and business relocation impacts, and implementation of section 4(f) of the DOT Act and section 106 of the National Historic Preservation Act.

The guidance would be divided into four chapter—(I) General; (II) Urban and Community Impacts; (III) Physical Impacts; and (IV) Impacts on Section 4(f) Properties and Historic and Cultural Resources. Applicable laws, executive orders, and policy statements are referenced for each impact category. The proposed revisions would provide guidance on format and content of environmental assessments and findings of no significant impact, as well as EISs. (By contrast, the current guidance addresses only EISs.)

References in the earlier Attachment 2 to section 14 of the Urban Mass Transportation Act and section 16 of the Airport and Airways Development Act have been deleted, since the Urban Mass Transportation Administration and the Federal Aviation Administration, respectively, have issued guidance for compliance with these statutes.

DOT Order 5610.1C, including its attachments, is an internal directive which applies to all elements of the Department. Most of the operating administrations of the Department have issued or will issue their own procedures or regulations for implementing NEPA and other environmental requirements. The administrations will revise guidance on content of environmental documents as appropriate to be consistent with Attachment 2 to DOT 5610.1C following its final issuance. Pending final issuance of Attachment 2, DOT administrations have been encouraged to use this draft as interim guidance.

It is Department of Transportation's policy to afford the public an opportunity to comment on proposed regulations and policies. While the proposed attachment is not a regulation, it is of interest to the public. The Department will consider all written comments submitted during the comment period. DOT will make every reasonable effort to consider any comments received after the closing date.

Issued in Washington, D.C. on December 9, 1980.

William B. Johnston,

Assistant Secretary for Policy and International Affairs.

Attachment 2—Guidance on Format and Content of Environmental Documents

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Chapter I—General

1. Introduction

DOT 5610.1C provides a process for consideration of environmental impacts in decision making on proposed DOT actions. The Order provides that, to the maximum extent possible, all environmental studies, reviews, and consultations shall be consolidated into a single process. The environmental impact statement (EIS) and finding of no significant impacts (FONSI) with supporting environmental assessment serve as the vehicle for coordination with other agencies and the public, and must reflect compliance to the extent possible with applicable laws, regulations, executive orders, and policies. This Attachment provides guidance for content of environmental documents and compliance with the various environmental requirements.

2. Format and Content of Environmental Assessments and Findings of no Significant Impact

An environmental assessment (EA) should describe the proposed action, the need for the proposed action, alternatives, the environmental, social and economic impacts of a proposed action and its alternatives, and a list of agencies and persons consulted during early coordination. The EA should provide sufficient evidence to support a FONSI, or, if the EA will be the basis for preparation of an EIS, sufficient information to address important issues in the EIS.

A FONSI should be attached to or incorporate the EA, and should include a specific finding that the proposed action will have no significant impacts. A FONSI should reflect compliance with applicable environmental laws and regulations. (See Table I-I.) Guidance on compliance with these laws is provided in Chapters II-IV of this Attachment. Where a permit will be required (e.g. section 404 permits under the Clean Water Act) or coordination is specifically required by law (e.g. under section 4(f) of the DOT Act, the Fish and Wildlife Coordination Act, or the Endangered Species Act), the EA may serve as the vehicle for such coordination, and the EA/FONSI should reflect this coordination. If a Community Impact Analysis is prepared, the results should be discussed in the FONSI.

3. Criteria for Preparation of an EIS

Any proposed DOT action which will have significant environmental, social and economic impacts will normally require preparation of an EIS. This includes actions which are likely to:

a. have an effect that is not minimal on properties protected under section 4(f) of the DOT Act or any action having an adverse effect (as defined in 36 CFR 800.3) on properties protected under section 106 of the Historic Preservation Act;

b. be highly controversial on environmental grounds, i.e. opposed on environmental grounds by a Federal, State or local agency, or by a substantial number of persons affected by such proposed action;

c. have a significant impact on natural, ecological, cultural or scenic resources of national, State or local significance, including endangered species, wetlands, floodplain, prime or unique farmland, ground water, natural resources, or fish and wildlife resources;

d. have significant displacement impact or be controversial with respect to the availability of adequate relocation housing;

e. cause substantial disruption of an established community, disrupt orderly, planned development, be inconsistent with plans or goals that have been adopted by affected communities, or adversely affect the economic vitality of an urban area (except that economic or social effects are not intended by themselves to require an EIS, pursuant to 40 CFR 1508.14);

f. have a significant impact on noise levels of noise sensitive areas, for example, schools, hospitals, residential areas;

g. have a significant impact on air quality or be inconsistent with the approved State Implementation Plan for Air Quality;

h. have a significant impact on water quality or a public water supply system;

i. result in significant increased consumption of energy; or

j. be inconsistent with any Federal, State or local law or regulation relating to the environment.

4. Format of Environmental Impact Statements

a. The format recommended in the CEQ Regulations for Implementation of NEPA, 40 CFR 1502.10, should be used for DOT EISs:

(a) Cover Sheet
(b) Summary
(c) Table of Contents
(d) Purpose and Need for the Action
(e) Alternatives Including the Proposed Action
(f) Affected Environment
(g) Environmental Consequences
(h) List of Preparers
(i) List of Agencies, Organizations, and Persons to Whom Copies of the Statement Are Sent
(j) Index
(k) Appendices (if any)
(l) Comments Received on the Draft EIS (final EIS only)

b. Pursuant to 40 CFR 1502.7, the text of final EISs should normally be less than 150 pages, or less than 300 pages for complex proposals.

c. EISs should be written clearly and concisely, and should focus on the most significant issues and impacts. Impacts which are not significant should be discussed only briefly, summarizing why the proposed action will not have a significant impact. Detailed technical information should be summarized and included in an appendix and referenced in the EIS, with a summary of important findings of the analysis; other relevant studies should be referenced. Detailed discussions of impact assessment

methodologies should not be included in EISs; if necessary, these discussions can be included in an appendix. Lengthy descriptions of the affected environment should be avoided. Maps, charts, tables aerial photographs and other presentation techniques should be used as appropriate. Readable, high quality graphics are recommended. Maps should include legends and scales. Graphics are particularly helpful for comparisons of alternatives.

d. DOT Operating Administrations should head the cover sheet for each environmental impact statement as follows:

Department of Transportation

(operating administration)

(joint lead and cooperating agencies)

(Draft/Final Supplemental) Environmental Impact

Statement Pursuant to Section 102(2)(C) of NEPA

If appropriate, the heading should indicate that the EIS also covers the requirements of section 4(f) of the DOT Act, section 14 of the Urban Mass Transportation Act, and/or sections 16 and 18(a)(4) of the Airport Act.

The cover sheet must also include:

(1) The title of the proposed action that is the subject of the statement (and if appropriate the titles of related cooperating agency actions), together with the State(s) and county(ies) (or other jurisdiction if applicable) where the action is located.

(2) The name, address, and telephone number of the person at the agency who can supply further information.

(3) A one paragraph abstract of the statement.

(4) The date by which comments must be received (see 40 CFR 1506.10).

5. Summary of Content of Environmental Impact Statements

The information required by 40 CFR 1502.11–1502.18, as supplemented in this Attachment, should be included in EISs. However, this information should be included only where it is relevant to the proposed action being discussed in the EIS. The EIS is not intended to be encyclopedic. Rather, it is discussed in the EIS. The EIS is not intended to be encyclopedic. Rather, it is intended to be an aid in decision making, and should therefore focus on the key issues and most significant impacts identified during the scoping process, as discussed in 40 CFR 1501.7. The EIS should reflect consideration of and compliance, to the extent possible, with applicable laws, orders and policies; guidance on compliance with these laws and policies is provided in Table I–I and Chapters II–IV.

a. *Summary.* The EIS should include a summary which describes the proposed action and discusses the major conclusions, areas of controversy (including issues raised by agencies and the public), and the issues to be resolved (including the choice among alternatives). The summary will normally not exceed 15 pages.

b. *Purpose and Need.* The EIS should include a statement of the purpose of the proposed action. The need for the proposed action should be supported with data from appropriate studies.

c. *Alternatives Including the Proposed Action.* In the alternatives section, the lead agency should:

(1) "Rigorously explore and objectively evaluate all reasonable alternatives, and for alternatives which were eliminated from detailed study, briefly discuss the reasons for their having been eliminated." (40 CFR 1502.14)

(2) "Devote substantial treatment to each alternative considered in detail including the proposed action so that reviewers may evaluate their comparative merits." (40 CFR 1502.14)

(a) "Substantial treatment" of alternatives means discussion sufficient to show the relative environmental benefits, environmental impacts, costs and risks of the alternatives under consideration. Charts showing comparisons between impact of the alternatives (e.g. costs, residential displacement, noise impacts, ambient air quality predictions) are useful as a presentation technique.

(b) Where a previously circulated impact statement already contains an analysis of alternatives, a second tier or supplemental EIS may incorporate or summarize treatment of alternatives from the previous EIS, provided such treatment is current and relevant to the purpose of the proposed action, and need not reconsider alternatives previously rejected.

(c) EISs on transportation projects in urban areas should explicitly reflect consultation with the Metropolitan Planning Organization (MPO) and summarize alternatives considered during the MPO planning process.

(3) Reflect consideration of location alternatives, a no action alternative, and the following alternatives to proposed construction actions:

(a) Improved transportation system management (TSM) of existing facilities, e.g. provision of high occupancy vehicle lanes on existing streets; quota systems, peak spreading or changes in pricing structures at congested airports.

TMS includes low capital intensive improvements, that is, low cost safety and/or capacity improvements to existing facilities in lieu of major expansion or construction of a new facility. Examples of such low capital intensive improvements are: widening of existing streets, intersection improvements, or improvement of shoulders; changes to an airport taxiway system; improved airport navigation aids; purchase of buses and designation of high occupancy vehicle (HOV) lanes in lieu of heavy rail transit construction.

(b) As appropriate, other modal alternatives, e.g. mass transit alternatives to highway improvements; bus, rail, or truck/auto alternatives to airport improvements.

(c) As appropriate, design variations which would minimize the adverse impacts of the proposed action, for example, constructing fewer lanes of a proposed highway: different runway configurations.

(d) Reasonable alternatives which are not within the jurisdiction of the lead agency, grantee or permit applicant.

EISs on proposed regulatory or program actions should reflect consideration of a no action alternative and alternative means of achieving the stated objective of the proposal or alternative levels of providing a proposed service.

(4) Identify the agency's or applicant's preferred alternative or alternatives, if one or more exists, in the draft statement. The final statement shall identify the agency's preferred alternative.

d. *Affected Environment.* The environmental impact statement should succinctly describe the environment of the area(s) to be affected by the alternatives under consideration.

(1) The amount of detail provided in descriptions of the affected environment should be commensurate with the amount of information required at the particular level of decision making.

(2) The statement should identify, as appropriate, population and growth characteristics of the affected area and any population and growth assumptions used to justify the project or program or to determine secondary population and growth impacts resulting from the proposed action and its alternatives. Growth projections should be consistent with projections used for EPA section 208 planning. The Projections of Regional Economic Activity (OBERS Projections), published by the Department of Commerce Bureau of Economic Anaylsis in the *Survey of Current Business,* October 1980, are a source of statewide and areawide projections.

(3) The statement should describe other related Federal activities in the area, their interrelationships, and cumulative environmental impact.

(4) The statement should discuss the relationship of the proposed action to adopted or proposed land use plans, policies, controls, and goals and objectives of affected communities, including communities outside the jurisdiction in which the proposed project is located. Any anticipated consultations, permits or authorizations required by Federal law or regulation should be identified.

e. *Environmental Consequences.* This section should discuss the environmental impacts of the alternatives including the proposed action, any adverse environmental effects which cannot be avoided should the proposal be implemented, the relationship between short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and any significant irreversible or irretrievable commitments of resources which would be involved in the proposal should it be implemented. Environmental analyses conducted for NEPA compliance should reflect any environmental studies done at the regional level and should be integrated with studies required by other environmental review laws, executive orders, and policies, and the EIS should reflect these studies. Detailed guidance on factors to be addressed in EISs is provided in Chapters II–IV of this attachment. (See also 40 CFP 1502.16.)

f. *Mitigation Measures.* Draft EISs should describe measures under consideration or planned to minimize harm from the proposed action. Measures which will increase the benefits of the proposed action should also be discussed. The following types of measures should be considered:

(1) Design and construction actions. These include alternative locations which avoid or reduce impacts; design measures which reduce impacts, for example, reduced scale facilities, depressed highway designs, alternative airport runway configurations, transit vehicle and guideway technology which reduces noise, and construction of noise barriers; and construction techniques, for example, erosion control measures.

(2) Management actions which reduce impacts during operation of the facility. These include aircraft operating procedures for noise abatement; ramp metering to reduce highway congestion; maintaining right-of-way to enhance its usefulness as wildlife habitat.

(3) Replacement, restoration and compensation. These measures include functional replacement of public facilities, residential or business relocation assistance, and restoration of natural areas disturbed by construction.

g. The draft and final statements should document issues raised through consultations with federal, State, and local agencies with jurisdiction or special expertise and with citizens, on actions taken in response to comments, public hearings, and other citizen involvement proceedings.

h. *List of Preparers.* 40 CFR 1502.7 states that: "The environmental impact statement shall list the names, together with their qualifications (expertise, experience, professional disciplines), of the persons who were primarily responsible for preparing the environmental impact statement or significant background papers, including basic components of the statement (§§ 1502.6 and 1502.8). Where possible, the persons who are responsible for a particular analysis, including analyses in background papers, shall be identified. Normally, the list will not exceed two pages."

6. Final Environmental Impacts Statements

The final EIS shall identify the preferred alternative and identify specific commitments to measures to mitigate adverse impacts. The final EIS shall reflect compliance, to the fullest extent practicable, with the requirements of all applicable environmental laws and orders, or, at a minimum, provide assurance that the requirements can be met.

a. Any unresolved environmental issues and efforts to resolve them, through further consultations or otherwise, should be identified in the final statement. For instance, where an agency comments that the statement has inadequate analysis or that the agency has reservations concerning the impacts, or believes that the impacts are too adverse for approval, either the issue should be resolved or the final statement should reflect efforts to resolve the issue, and set forth any action that will be taken to mitigate identified problems.

b. All substantive comments received on the draft (or summaries of responses from the public which have been exceptionally voluminous) should be included in or attached to the final statement. The final EIS should respond to comments made on the draft, either by revising the EIS text or as separate responses.

7. Coordination

The NEPA process should be used as the vehicle for consultation with other agencies which is required by the various environmental laws, executive orders, and other directives. Agencies which administer permit programs or otherwise have jurisdiction over the proposed action should be requested to be cooperating agencies. The final EIS should reflect consultation with the appropriate agencies. Table I–I summarizes coordination and consultation requirements.

8. additional Guidance

Additional information contained in research reports, guidance on methodology, and other materials relating to consideration of environmental factors should be employed as appropriate in the preparation of EISs and environmental assessments. Examples of such materials include—

U.S. Department of Transportation, *Environmental Assessment Notebook Series: Highways*, 1975, Report No. DOT P 5600.4, available from the U.S. Government Printing Office, Washington, D.C. 20402, Stock Number 050–000–00109–1;

U.S. DOT, *Environmental Assessment Notebook Series: Airports*, 1978, Report Number DOT P 5600.5, available from the U.S. Government Printing Office, Washington, D.C. 20402, Stock Number 050–000–00138–5;

U.S. DOT, FAA, *Environmental Assessment of Airport Development Actions*, 1977, available from the National Technical Information Service, 5284 Port Royal Road, Springfield, Virginia 22161, NTIS Catalog Number ADA-039274;

U.S. DOT, *Guidelines for Assessing the Environmental Impact of Public Mass Transportation Projects*, 1979, NTIS Accession Number PB 299697/AS, available from the National Technical Information Service, Springfield, Virginia 22161; and

Lane, J. S. et al., *The No-Action Alternative Research Report* and *Assessment Guidelines*, National Cooperative Highway Research Program Reports 216 and 217, December 1979, available from the Transportation Research Board, National Academy of Sciences, 2101 Constitution Avenue, N.W., Washington, D.C. 20418.

Table I–1.—*Coordination Requirements*

Legislative reference	Regulatory reference	Applicability	General provisions	Agency for coordination and consultation
AIR QUALITY				
Clean Air Act, 42 U.S.C. 7400 et seq., Section 176.		All transportation activities	1. Federal actions must conform with the SIP. 2. Priority must be given to actions implementing the SIP.	Coordinate with EPA and State and local air pollution control agencies in making conformity/priority determination.

Table I-1.—*Coordination Requirements*

Legislative reference	Regulatory reference	Applicability	General provisions	Agency for coordination and consultation
Section 309		All EIS actions	EPA is required to review and comment in writing on the environmental impact of any proposed major Federal action significantly affecting the environment.	Submit DEIS to EPA.
LAND USE AND WATER QUALITY				
Clean Water Act, 33 U.S.C. 1251-1376, et seq., Section 404.	33 CFR 320-325, 33 CFR 230	Any activity involving disposal or placement of dredged or fill material in navigable waters.	1. The 404 permit program is administered by COE. EPA has authority to veto permit. 2. The DOT-Army Agreement (3-24-80) provides for early coordination with COE where a permit is required.	Coordinate with COE: 1. Before decision on appropriate environmental document. 2. During preparation of EIS (COE should serve as cooperating agency). 3. Before approval of FEIS. Coordinate with EPA and with DOI/FWS or DOC/NMFS.
Safe Drinking Water Act, 42 U.S.C. 300.		Federally assisted projects which may contaminate an aquifer designated by EPA as the sole source of drinking water for a community.	Prohibits financial assistance of projects which EPA determines may contaminate a designated sole source aquifer.	Request from EPA a determination whether project may contaminate the aquifer.
Coastal Zone Management Act, 16 U.S.C. 1451-1464.	15 CFR 930	Any proposed activity affecting areas covered by an approved coastal zone program.	Ensure that projects are consistent with coastal zone management program.	Coordinate with State Coastal Zone Management Agency. If federally funded action is inconsistent with approved plan, coordinate with DOC Office of Coastal Zone Management. See paragraph III-6 for detailed guidance.
E.O. 11990, Protection of Wetlands.	DOT 5660.1A	Any proposed direct construction or assistance. DOT policy also applies to permit actions.	Minimize the destruction, loss or degradation of wetlands; preserve and enhance natural values of wetlands.	Coordinate with EPA, DOI, NMFS, and COE and State permitting agencies, as appropriate.
Marine Protection and Sanctuaries Act, 33 U.S.C. 1401-1444.	40 CFR 225	Any proposed dumping of material into U.S. ocean waters.	Apply for permit to dump materials	Coordinate with EPA. Coordinate with COE, if dredged material.
Wild and Scenic Rivers Act, 16 U.S.C. 1271-1287.		Rivers designated under the Act	Preserve wild and scenic rivers	Coordinate with HCRS and USDA Forest Service, as appropriate.
	President's Environmental Message, 8-2-79, CEQ Memorandum, 8-10-80, Interagency Consultation on Rivers in the Nationwide Inventory.	Proposed activity affecting rivers on the Nationwide Inventory of potential wild, scenic and recreational rivers.	Assure that Federal actions do not foreclose designation under the Wild and Scenic Rivers Act.	Coordinate with HCRS.
WILDLIFE				
Fish and Wildlife Coordination Act, 16 U.S.C. 662.		Any construction project which involves impoundment (greater than 10 acres), diversion, channel deepening, or other body of water.	Requires coordination with FWS and State wildlife agencies on any stream modification.	Coordinate with FWS and State wildlife agencies. 1. Initial contact during scoping process. 2. Use EIS process to coordinate on impacts and mitigation measures.
WILDLIFE				
Endangered Species Act, 16 U.S.C. 1531, Section 7.	50 CFR 402	Any action which might jeopardize continued existence of endangered or threatened species or result in destruction or modification of critical habitat.	Federal agencies shall insure that their actions conserve listed species and insure, in consultation with FWS/NMFS, that their actions do not jeopardize listed species or modify critical habitat.	Coordinate with FWS concerning terrestrial and freshwater species, NMFS concerning marine species. See paragraph III-8.a. for further guidance.
RECREATION, REFUGE, AND HISTORIC PROPERTIES				
National Historic Preservation Act, 16 U.S.C. 470(f), Section 106.	36 CFR 1204, 36 CFR 800	Properties on or eligible for National Register of Historic Places.	Protect sites, buildings, and objects with national, State, or local historic or cultural significance. Identify effects of project on properties and coordinate with ACHP.	Coordinate with SHPO, ACHP, DOI (Keeper of the Register). See paragraph IV-2.a. for detailed guidance.
DOT Act, 49 U.S.C. 1653, 23 U.S.C. 138, Section 4(f).	DOT 5610.1C (23 CFR 771)	Projects using land from a publicly owned park, recreation area, wildlife or waterfowl refuge, or any historic site.	Findings of no feasible and prudent alternative and all possible planning to minimize harm required.	1. Consult with DOI on all 4(f) matters. If lands acquired with section 6(f) Land and Water Conservation Act funds are involved, DOI concurrence required. 2. Consult with USDA if National Forest Lands are involved. 3. Consult with HUD if lands acquired with Open Space funds are involved.
TRANSPORTATION PLANNING				
Highway Act, 23 U.S.C. 134	23 CFR 450	Urban areas over 50,000	Projects must be based upon continuing, comprehensive, planning process carried on cooperatively by states and local communities.	Coordinate with Metropolitan Planning Organization.
Urban Mass Transportation Act, 49 U.S.C. 1607.	49 CFR 613			
Title IV of Intergovernmental Cooperation Act, NEPA.	OMB Circular A-95	Federal development projects and federally assisted programs and projects.	The A-95 clearinghouse process provides for State and local review of proposed Federal and federally assisted programs and projects in terms of potential impact on or conflict with statewide, areawide, or local plans and programs.	Coordinate with appropriate State and areawide clearinghouses

Abbreviations: COE—Army Corps of Engineers. DEIS—Draft Environmental Impact Statement. DOC—Department of Commerce. DOI—Department of the Interior. EPA—Environmental Protection Agency. FEIS—Final Environmental Impact Statement. FWS—Fish and Wildlife Service (DOI). NMFS—National Marine Fisheries Service (DOC). HCRS—Heritage Conservation and Recreation Service (DOI). USDA—Department of Agriculture.

Chapter II—Urban and Community Impacts

I. Economic, Fiscal, and Community Impacts

a. *EIS Content.* (1) Where economic and fiscal impacts are significant, the EIS should reflect the effect of the proposed action on the economic health of the existing business districts, municipalities and the region, including:

- The type and number of permanent jobs created, lost, or retained in the central city and in the project area;
- Changes in employment opportunities for minorities;
- Changes in the cost and availability of retail goods and services;
- Changes in types of economic activity in the area;
- Changes in the tax base—property, sales and income tax revenues;
- Changes in population distribution and increases in expenditures for public services or facilities, either in the central city or in developing areas; and
- Impacts of transportation proposals in outlying areas on revitalization programs in the central city and other existing business districts.

(2) The general social groups specially benefited or harmed by the proposed action should be identified in the statement. Particular effects of a proposal on the elderly, handicapped, non-drivers, transit dependent, or minorities should be described to the extent reasonably predictable.

(3) The EIS should note any action which will significantly divide or disrupt an existing community. The EIS should discuss how the proposal will facilitate or inhibit access to jobs, educational facilities, religious institutions, health and welfare services, recreational facilities, social and cultural facilities, pedestrian facilities, and public transit services.

(4) If a Community Impact Analysis has been requested by an affected local government, it may be incorporated into the final EIS. At a minimum, the EIS should discuss the effect of the proposed action on the community as listed above, and any proposed modifications or mitigating actions. The views of community officials, community groups, business leaders, and where relevant, developers of large commercial projects on the consequences of the pending DOT action, should be included. The agency should be able to establish that due consideration has been given to concerns set forth in the analysis and/or the request from the local official.

b. *References.* (1) The *President's Environmental Message* of 8-2-79, directs the Secretary to assure that, among other things—

(a) Careful review is given to any transportation proposals which would encourage urban sprawl or which would tend to attract jobs out of urban centers;

(b) Major transportation projects are utilized as a positive factor for improving the urban economy and attracting jobs to the Nation's urban cores;

(c) Firm actions are taken to mitigate adverse impacts of transportation projects on the natural and urban environment.

(2) *Section 5.j. of OMB Circular A-95* (44 FR 45502) directs that clearinghouse review include: "The extent to which the project creates a significant impact on central cities, older suburban cities and other communities within the jurisdiction of the clearinghouse, including the relative impacts the project may have on one type of place as compared to others."

(3) *Community Conservation Guidance,* issued by the White House on 11-26-79, provides that a local government may request a Community Impact Analysis of proposed Federal projects which might lead to a large commercial development. DOT Order 5620. (to be issued), *Community Conservation Guidance,* sets forth procedures for conducting a Community Impact Analysis, and provides that final EISs may be the vehicle for a Community Impact Analysis.

(4) *The FHWA-UMTA Transportation Planning Regulations* (23 CFR 450 and 49 CFR 613) specify procedures for transportation planning pursuant to section 134 of the Highway Act (23 USC 134) and section 8 of the Urban Mass Transportation Act (49 USC 1607). Transportation planning in urban areas is to be performed by metropolitan planning organizations.

(5) DOT 1130.4, *Intermodal Planning Groups and Unified Planning Work Programs,* lists the following elements to be emphasized in the planning process: alternatives analysis; opportunities for joint development; public participation; air quality; equal opportunity; elderly and handicapped services; more efficient use of existing transportation resources; coastal zone impacts; noise abatement; energy conservation; compatible land use and impacts; social and economic impacts; and environmental impacts.

(6) *Section 16(c)(1) of the Airport Act,* 49 USC 1701, provides that a project may not be approved unless the Secretary is satisfied that the project is reasonably consistent with plans of planning agencies for the area in which the airport is located.

2. Land Use and Development Impacts

a. *EIS Content.* (1) The EIS should include an assessment of the significant effects of the proposed action on land use, development patterns and urban growth. If the action is likely to stimulate a significant amount of development, the discussion should indicate the nature, timing and location of induced development. Environmental, social, energy and economic impacts of induced development should be included. The EIS should particularly note proposed actions which will stimulate low density, energy intensive development in outlying areas and will have a significant adverse impact on existing communities.

(2) The EIS should discuss and document the consistency of the proposed with State and local plans, including land use, economic development, public services, and housing. For projects in urban areas, the EIS should reflect continuing consultation with the MPO.

(3) Any actions (e.g., zoning, restricting utility service, etc.) which will be used by local governments to influence development patterns or to minimize conflicts between land uses and the proposed action should be discussed.

(4) Where relevant, the EIS should discuss use of the proposed transportation action to preserve or enhance existing neighborhoods or strenthen development and revitalization of existing business districts. Any agreements for using the transportation investment to support other public and private development activities in the central city should be discussed.

b. *References.* See paragraph 11-1.b. above.

3. Displacement Impacts

a. *EIS Content.* The EIS shall include a discussion of residential and business displacements, related community impacts, and relocation assistance. Where applicable, the data on residential relocation should provide the preliminary basis for assurance of the availability of relocation housing as required by DOT 5620.1, Replacement Housing Policy, dated 6-24-70, and 49

CFR 25.57. The following specific points should be covered:

(1) An estimate of the households to be displaced including the family characteristics (e.g. minorities, and income levels, tenure, the elderly, large families).

(2) Significant impacts on the neighborhood and housing to which relocation is likely to take place (e.g. lack of sufficient housing, overloaded schools).

(3) A discussion of relocation housing in the area and the ability to provide adequate relocation housing for the types of families to be displaced, including other displacement actions in the area which will require access to relocation resources. If the resources are insufficient to meet the estimated displacement needs, the EIS should describe the actions proposed to remedy this situation including, if necessary, use of housing of last resort. A commitment on relocation housing and other relocation services should be included in the final EIS.

(4) An estimate of businesses displaced by each alternative, by size and type of business, number of employees, and the effect of business displacement on the community.

(5) Plans to mitigate potential adverse impacts on displaced businesses. Mitigation measures include relocation advisory services, assistance in finding relocation facilities in the community, and for business depending heavily on local patronage of displaced residents, timing relocation of businesses to coincide with residential relocations.

(6) Plans to retain businesses in the community. If there will be extensive residential and/or business displacement, the affected community should be encouraged to explore sources of funding from local and State entities, as well as HUD, the Economic Development Administration, the Small Business Administration, and other Federal agencies, to assist in relocation and in revitalization of the community.

(7) The EIS should reflect the results of consultation with local officials, community groups, including minority groups and businesses regarding the relocation impacts to the community affected.

b. *References.* (1) *The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970* provides for the uniform and equitable treatment of persons displaced from their homes, businesses or farms by Federal and federally assisted programs. The Act does not apply to federally permitted or licensed actions.

(2) 49 CFR Part 25, *Relocation Assistance and Land Acquisition for Federal and Federally Assisted Programs,* specifies DOT procedures for implemening the Act. It is the policy of the Department to deal consistently and fairly with all persons whose property is taken for public projects and all persons who are displaced from their homes, businesses or farms.

(3) DOT 5620.1, *Replacement Housing Policy,* of 6-24-70, states the DOT policy that a DOT-assisted project which displaces individuals and families from their homes cannot proceed to construction unless comparable replacement dwellings are available to them in advance of their displacement.

(4) The *President's Environmental Message,* of 8-2-79, directs the Secretary of Transportation to assure that actions are taken to mitigate adverse effects of transportation projects—including effects on neighborhoods and housing stock.

(5) The DOT *Business Relocation Policy,* of 2-15-80, and DOT Notice 1270.2 specify actions to be carried out by DOT agencies to minimize economic harm to businesses displaced by DOT projects and to increase the likelihood that the business remains in the community from which it is displaced.

4. Minority and Civil Rights Impacts

a. *EIS Content.* Where minority impacts may be significant, EISs should contain the following information, broken down by race, color, and national origin: population in the study area; projected users; displaced residents, businesses, and property owners; employment (of affected businesses). (This information may be drawn from or be used as input for the Title VI assessment in a grant or permit application.) The relationship of the proposed action to other Federal or federally assisted actions which may serve or affect minority populations in the project area should be discussed. The EIS should address proposed mitigation measures to reduce or avoid impacts on minority populations.

b. *References.* (1) *Title VI of the Civil Rights Act of 1964* (42 USC 2000(d) et seq.) provides that no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

(2) DOT 1000.12, *Implementation of the Department of Transportation Title VI Program,* of 1-19-77, states DOT policy to assure in all DOT actions that benefits and services are made available to and are distributed among recipients without regard to race, color, or national origin; that the location of existing or proposed facilities and services involved will not deny access to any person on the basis of discrimination; and that persons in the affected community are not differentially or adversely impacted on the basis of race, color, or national origin.

5. Considerations relating to Pedestrians and Bicyclists

a. *EIS Content.* Wherever appropriate, the EIS should reflect consideration of provision for pedestrian and bicycle safety and use on an integral feature of the project. Proposed actions which might incorporate such provisions include highway projects, bridge permits, air terminal facilities, and transit terminals or malls. The EIS should include:

(1) Information on currenty and potential bicycle and pedestrian activity, including any significant safety problems.

(2) An assessment of the impacts resulting from construction and operation of the proposed action on bicycling and walking, as well as measures to mitigate these impacts and provide for these users.

(3) For highway actions, evidence that the project is consistent with section 109(n) of the Highway Act.

(4) An indication that the proposed action is consistent with local plans for bicyclists and pedestrians and that local officials and community groups have been consulted.

b. *References.* (1) The Secretary's Report, *"Bicycle Transportation for Energy Conservation,"* of 4-22-80, states that it is DOT's policy to promote the safe, increased use of bicycles for transportation, to integrate bicycle transportation into all appropriate Departmental programs and activities, and to require the consideration of bicycle use in all appropriate DOT-funded transportation projects.

(2) *Section 109(n) of Title 23* provides that "The Secretary shall not approve any project under this title that will result in the severance or destruction of an existing major route for nonmotorized transportation traffic and light motorcycles, unless such project provides a reasonably alternate route or such a route exists."

6. Environmental Design Considerations

a. *EIS Content.* EISs shall document appropriate consideration given (or to be given) to design, art, and architecture in project planning and development.

(1) For the purpose of the Department's initiatives with respect to design, art, and architecture, design

means the process of arranging physical spaces, materials, and objects to perform specific functions. It includes architecture, landscape architecture, graphics, interior design, industrial design, and engineering design. As distinguished from art, design proceeds from the stipulation of useful functions that the design product must perform. Consequently, design quality is judged by broader criteria than aesthetics alone.

(2) Design quality considerations are relevant and are to be documented in EISs where such facilities as airport terminals, transit stations, or major urban highways are in sensitive locations (such as parks or historic districts), or where public use areas are involved. These examples are not all-inclusive. Special attention to design, art, or architecture can also often yield significant benefits in projects of a lesser scale (and in some projects that would not require an EIS).

(3) Where a proposed action is likely to be of interest to State and local arts councils and other organizations concerned with design, art, and architecture, the draft EIS should be sent to these organizations.

b. *Reference. The Secretary's Statement on Design Quality,* of 9-1-77, declares a Departmental goal of encouraging the highest design achievements in all DOT programs. The Secretary approved the recommendation of the DOT Task Force on Design, Art, and Architecture in Transportation that where relevant, consideration of design qualtity be reflected in EISs.

Chapter III—Physical Impacts

1. Energy Impacts

a. *EIS Content.* The range of alternatives studied should include alternatives which promote energy conservation. Analyses of energy impacts should differentiate between petroleum and non-petroleum energy sources. As appropriate, the energy analysis in the EIS should discuss the following for the various alternatives:

(1) Energy consumption in facility operation and maintenance. As appropriate, the EIS should address regional (system) energy impacts of the proposed action and the regional transportation plan. The analysis should be presented in terms of total BTU's or quantities of fuel consumed. Operating considerations may include:

(a) For highway actions, the total energy consumed by vehicles predicted to use the facility; vehicle miles travelled; average vehicle occupancies; changes in energy consumption through changes in traffic flow; generated or induced trips; and energy use for street lighting and tunnel operation (if significant).

(b) For airport actions, energy use in terminal facilities; energy use by aircraft; passenger load factors; and energy use in transportation to and from the airport.

(c) For transit and rail actions, energy use by transit vehicles or trains; energy use at terminals; passenger load factors; changes in modal split; energy use in access to transit.

(2) Significant indirect impacts of proposed actions, for example, changes in land use patterns contributing to longer or more energy-consuming commuting trips and which would be stimulated or supported by the proposal; trips diverted from other more or less energy efficient modes; increased automobile use generated by terminal construction or expansion of parking facilities.

(3) Measures to conserve energy which are included in the proposed action, including selection of energy-efficient alternatives, high occupany vehicle lanes and interface with transit services in urban highway proposals, measures to improve traffic flow, bicycle and pedestrian facilities, and other incentives for energy conservation.

(4) Construction energy consumption (see paragraph III-II.e), as well as trade-offs between operating and maintenance energy savings and construction energy consumption.

(5) The consistency of the proposed action with any State, regional or local energy conservation plan. Reflection of energy elements of transportation/air quality planning is also appropriate.

(6) An indication of whether the proposed action is part of an energy contingency plan or will be relied upon during an energy emergency.

(7) Proposed measures to conserve energy in any new Federal building.

b. *References.* (1) *Section 102(2)(C) of NEPA* provides that EISs address "the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented."

(2) *The President's Environmental Message of 8-2-79,* directs the Secretary of Transportation to assure that Federal transportation funds are used to promote energy conservation.

(3) *The Energy Conservation and Production Act of 1976* (42 USC 6831 et seq.) provides that no Federal aid shall be made available or approved for construction of buildings which fail to meet eenergy conservation performance standards established pursuant to section 304 of the Act.

(4) *Executive Order 12185, Conservation of Petroleum and Natural Gas,* of 12-17-79, directs each Federal agency to effectuate conservation of petroleum and natural gas through its financial assistance programs. In compliance with Executive Order 12185, *Energy Conservation by Recipients of Federal Assistance,* of 8-29-80, (45 FR 58022) amends DOT regulations for financial assistance programs to require conservation of petroleum and natural gas in DOT-funded programs.

(5) *The Energy Policy and Conservation Act of 1975* (42 USC 6201 et seq.; note sections 6322 and 6361) provides for preparation of State energy conservation plans which address, among other things, transportation controls and programs to promote the availability and use of carpools, vanpools, and public transportation. In addition, the Act calls for development of a plan for energy conservation in buildings owned or leased by a Federal agency.

(6) *Executive Order 12003, Energy Policy and Conservation,* of 7-20-77, directs each Federal agency to prepare an overall plan for conserving fuel and energy in all operations of the agency; and to prepare a 10-year plan to meet specified energy conservation goals for all existing or new federally-owned buildings.

(7) The following reports contain useful methodologies for energy impact analysis:

(a) *Shirley, E. C., Apostolos, J. A. and Shoemaker, W. R., Energy and Transporation Systems,* National Cooperative Highway Research Program Project 20-7, 1978.

(b) System Design Concepts, *Urban Public Transporation and Energy,* October 1979. Prepared for Urban Mass Transportation Administration.

2. Air Quality Impacts

a. *EIS Content.* The EIS should reflect an analysis of the air quality impacts of the proposal, including any predicted violations of ambient air quality standards. Localized "hot spots" should be identified in addition to macroscale impacts. There shall be a statement whether or not the proposed action *conforms* with and gives *priority* to the approved or promulgated State implementation plan for attainment and maintenance of ambient air quality standards. This statement shall be supported with appropriate information. Particular emphasis should be placed on conformity with the transportation control plan element (TCP) of the State

implementation plan (SIP), where there is a TCP. For this purpose, the words *conform* (Clean Air Act Section 176(c)) and *consistent* (23 USC 109(j)) are synonymous. The final EIS should reflect coordination with EPA and with State or local officials charged with administration of the SIP.

b. *References.* (1) *Section 176(c) of the Clean Air Act* (42 USC 7506) provides that no Federal agency shall engage in, provide financial assistance for, license or permit, or approve any activity which does not conform to a State implementation plan for air quality after it has been approved or promulgated. Section 176(d) provides that each Federal agency having authority to conduct or support any program with air-quality related transportation consequences shall give priority in the exercise of that authority to the implementation of the plan. The EPA/DOT guidelines of 6-12-80, provide guidance on implementation of sections 176(c) and (d).

(2) *The EPA/DOT Transportation-Air Quality Planning Guidelines* of 6-14-78 describe a planning process intended to satisfy requirements of the Clean Air Act for the transporation portions of an SIP.

(3) *Section 109(j) of the Highway Act* (23 USC 109) requires the Secretary, in consultation with EPA, to develop and promulgate guidelines to assure that highways constructed under the Act "are consistent with any approved plan for the implementation of any ambient air quality standard for any air quality control region designated pursuant to the Clean Air Act, as amended."

(4) *Section 16(e)(l) of the Airport Act* requires that applications for projects involving airport location, runway location, or a major runway extension shall not be approved unless the Governor of the State in which the project is located certifies that there is reasonable assurance that the project will be located, designed, constructed and operated in compliance with applicable air and water quality standards.

3. Noise Impacts

a. *EIS Content.* The EIS should discuss significant noise and vibration impacts of the proposed action and alternatives, including the "no build" alternative. Noise sensitive activities affected by the proposed action should be identified. Noise contours of the proposed action and alternatives should generally be included when there are a significant number of receptors or where contours would assist in understanding impacts. The EIS should demonstrate conformity to any adopted noise standards, including, if necessary, commitments to include noise abatement measures (subject to further planning and public involvement). Land use controls or other actions to prevent future incompatible land uses should be discussed where appropriate.

b. *References.* (1) *The Noise Control Act of 1972* (49 USC 4903) provides that all Federal agencies shall carry out programs within their control in such a manner as to further the Act's basic noise reduction policy.

(2) *The President's Environmental Message,* of 8-2-79, established urban noise initiatives for Federal departments, including (a) initiating programs to achieve soundproofing of noise sensitive buildings; (b) promoting use of quiet design features in planning, design and operation of proposed urban transportation projects; and (c) encouraging noise developments to be located away from major noise sources.

(3) *Section 109(i) of the Highway Act* (23 USC requires that Secretary to develop and promulgate standards for highway, noise levels compatible with different land uses and prohibits the approval of plans and specifications for certain projects unless he determines that the plans and specifications include adequate measures to implement the standards FHPM 7.7.3, *Noise Standards and Procedures,* implements this requirement.

(4) *Section 18(a)4) of the Airport Act* (49 USC 1718) requires that assurances be obtained that "appropriate action, including the adaption of zoning laws, has been or will be taken, to the extent reasonable, to restrict the use of land adjacent to or in the immediate vicinity of the airport to activities and purposes compatible with normal airport operations, including landing and takeoff of aircraft."

(5) *Guidelines for Considering Noise in Land Use Planning and Control* of the Federal Interagency Committee on Urban Noise, May 1980, consolidates Federal guidance on noise considerations in local planning.

4. Water Quality Impacts

a. *EIS Content.* The EIS should reflect an analysis of significant surface and ground water quality impacts, including a determination as to whether the proposal will be consistent with applicable. State water quality standards. The analysis should include turbidity, sedimentation, chemical pollutants, and impacts on biota.

(1) EISs for projects which may have an impact on water supplies should identify any anticipants adverse impacts and efforts to mitigate those impacts.

(2) If a proposed project is located within the area designated by EPA for protection under section 1424(e) of the Safe Drinking Water Act, the draft EIS should indicate that the proposed project is located within the designated area. EPA will review the proposed project as part of its review of the draft EIS and will make a determination whether the action may contaminate the aquifer or recharge zone so as to create a significant hazard to public health. If EPA makes a finding that there will be no such contamination, the final EIS should reflect this determination. If EPA makes a finding that the project will create a significant hazard to public health, no Federal assistance may be committed. If the proposal is modified to avoid the impact, EPA can be petitioned to withdraw its finding. The final EIS should reflect EPA's action.

(3) Draft EISs should identify any anticipated section 404 permits, and should discuss in general terms the location and extent of anticipated fill placement. If a section 404 permit will be required for a preferred alternative, the final EIS should indicate the location of the fill activity, approximate quantities of fill material, general construction grades, major design features, and proposed mitigation measures, and should include evidence of coordination with the Corps of Engineers.

(4) The final EIS should indicate that the State water quality certification has been issued or that there is likely to be no objection to obtaining the certification.

b. *References.* (1) The *Federal Water Pollution Control Act* (Clean Water Act), 33 USC 1251-1376 et seq., establishes a national water quality policy. Section 401 of the Act, 33 USC 1341, requires any applicant for a Federal license or permit to provide a certification from the State that the action will comply with the requirements of the Act.

(2) *Section 404 of the Clean Water Act* establishes a permit program for the discharge of dredged or fill material in navigable waters. This permit program is administered by the Corps of Engineers based on guidelines developed by EPA in conjunction with the Corps. The *DOT-Department of the Army Memorandum of Agreement on Permit Processing,* of 3-24-80, provides for close cooperation between DOT agencies and the Corps during environmental processing.

(3) *Section 1424(e) of the Safe Drinking Water Act* (42 USC 300(j)(6)) authorized EPA to designate an aquifer for special protection if it is the sole or principal drinking water source for an

area, and if its contamination would create a significant hazard to public health. No commitment for Federal financial assistance may be made for any project that EPA determines may contaminate a designated aquifer or recharge zone.

5. Wetlands Impacts

a. *EIS Content.* (1) If applicable, the statement should identify specific impacts of the project alternatives on wetlands, and show how the proposed action will protect, preserve, and enhance wetlands to the fullest extent practicable. Topics which should be discussed, as appropriate, include—

(a) Water supply, water quality, recharge and discharge, and pollution;

(b) Flood and storm hazards;

(c) Sedimentation and erosion;

(d) Maintenance of natural systems, including conservation and long-term productivity of existing flora and fauna, species and habitat diversity and stability, hydrologic utility, fish and wildlife, timber, and food and fiber resources;

(e) Other uses of wetlands in the public interest, including recreational, scientific, and cultural uses, as well as transportation uses and objectives;

(f) Alternatives which would avoid new construction in wetlands; and

(g) Measures which would minimize impacts to the wetlands.

(2) If the preferred alternative entails new construction in wetlands, the final EIS should identify wetlands impacts, and include specific mitigation measures. The wetlands finding required by DOT 5660.1A should be incorporated into or attached to the final EIS or the proposed record of decision, or to a FONSI. The finding should include statements that there is no practicable alternative to construction in the wetland, and that all practicable measures to minimize harm have been included in the proposal.

b. *References.* (1) *Executive Order 11990, Protection of Wetlands* (42 FR 26961), requires Federal agencies, "* * * to avoid to the extent possible the long and short term adverse impacts associated with the destruction or modification of wetlands and to avoid direct or indirect support of new construction in wetlands wherever there is a practicable alternative * * *"

(2) *DOT 5660.1A, Preservation of the Nation's Wetlands* (43 FR 45285), states that it is "* * * DOT policy that transportation facilities and projects should be planned, constructed, and operated to assure the protection, preservation, and enhancement of the Nation's wetlands to the fullest extent practicable and establish procedures for the implementation of the policy."

6. Floodplain Impacts

a. *EIS Content.* The EIS should discuss significant effects of the proposed action on areas subject to flooding. Alternatives which involve construction in, or support public or private construction in, the base (100-year) floodplain should generally be avoided where practicable.

(1) When alternatives under consideration would encroach on a base floodplain, the draft EIS should include:

(1) identification of such encroachments;

(b) any risk to, or resulting from, the transportation action;

(c) the impacts on natural and beneficial floodplain values;

(d) the degree to which the alternatives provide direct or indirect support for development in the base floodplain; and

(e) sufficient discussion to permit an initial review of the adequacy of proposed methods to minimize harm, and, where practicable, to restore and preserve the natural and beneficial floodplain values affected by the project.

(2) Should the preferred alternative involve an encroachment, the final EIS should clearly identify the floodplain concerns and impacts of the alternative, and proposed measures to minimize adverse effects and restore affected floodplain values.

(3) If the preferred alternative involves a significant encroachment, the responsible official must determine in writing that the proposed encroachment is the ony practicable alternative. The floodplain finding should be incorporated into or attached to the final statement or to a FONSI. It must contain the following elements:

(a) A description of why the proposed action must be located in the floodplain, including the alternatives considered and why they were not practicable.

(b) A statement indicating that the action conforms to applicable State and/or local floodplain protection standards.

b. *References.* (1) *Executive Order 11988, Floodplain Management* (42 FR 26951), of 5-24-77, requires Federal agencies "... to avoid to the extent possible the long- and short-term adverse impacts associated with the occupancy and modification of floodplains and to avoid direct and indirect support of floodplain development wherever there is a practicable alternative. . . ."

(2) *DOT 5650.2, Floodplain Management and Protection* (44 FR 24678), of 4-23-79, prescribes policies and procedures for ensuring that proper consideration is given to the avoidance and mitigation of adverse floodplain impacts in DOT actions. The order specifies information that EISs and FONSIs shall provide on floodplain impact and enhancement.

7. Actions Affecting Coastal Zones

a. *EIS Content.* (1) The EIS should discuss the status of planning for the coastal zone. Any significant direct or indirect impacts on barrier islands should be addressed.

(2) If the proposed action will directly affect the coastal zone of any State with a State coastal zone management program approved by the U.S. Department of Commerce, the EIS shall include the following:

(a) For federally-assisted activities, the views of the appropriate State or local agency as to the relationship of such activities with the approved State coastal zone management program, and the determination of the State as to whether the proposal is consistent or inconsistent with the approved State coastal zone management program.

(b) For issuance of a Federal license or permit, the applicant's certification that the proposed action complies with the State's approved program and that such activity will be conducted in a manner consistent with the program, and the State's concurrence with the applicant's certification. The State's concurrence may be presumed if the State does not act within six months after receipt of the applicant's certification.

(c) For other DOT activities, including development projects, a determination that the activity will be undertaken in a manner which is, to the maximum extent practicable, consistent with the approve State management program.

(d) For proposed actions determined to be inconsistent with the State's approved program, if the project cannot be modified so that it is consistent with the plan, the final EIS shall include a finding by the Secretary of Commerce that the proposed action is consistent with the purposes or objectives of the Coastal Zone Management Act or is necessary in the interest of national security.

b. *Reference. The Coastal Zone Management Act of 1972* (43 USC 1241) states that "it is the national policy to preserve, protect, develop, and where possible, to restore or enhance, the resources of the Nation's coastal zone . . ." (section 303); and requires all Federal or federally-supported activities affecting the coastal zone to be carried out in a manner consistent with

approved State coastal zone management programs (section 307). 15 CFR Part 930, *Federal Consistency with Approved Coastal Management Programs,* establishes procedures for determining consistency.

8. Fish and Wildlife Impacts

a. *EIS Content.* The EIS should discuss any potentially significant impacts of the proposed action and alternatives on fish and wildlife resources, including direct injury to fish and wildlife, loss or modification of habitat, and degradation of water quality. Impact to endangered and threatened species should be discussed. Measures to minimize harm should be discussed, including measures to enhance or improve fish or wildlife habitat.

(1) If the proposed action involves impoundment, diversion, channel deepening or other modification of a stream or other body of water, the scoping process should involve the Fish and Wildlife Service (FWS) and the appropriate State agency. The final EIS should provide evidence of consultation with these agencies, pursuant to the Fish and Wildlife Coordination Act.

(2) If the proposed action may affect a species which is listed or proposed to be listed as endangered or threatened, the EIS shall be the vehicle for consultation pursuant to section 7 of the Endangered Species Act:

(a) During the scoping process, the lead agency shall contact the regional office of the Fish and Wildlife Service (FWS) or the National Marine Fisheries Service (NMFS), as appropriate, for information whether a listed or proposed species may be present. FWS is responsible for protection of terrestrial and freshwater species; NMFS is responsible for protection of marine species.

(b) If a listed or proposed species may be present, the lead agency must conduct a biological assessment to identify probable locations of the species and determine the probable impacts of the proposed action upon the species and its habitat. The draft EIS shall include the results of the biological assessment. Submission of the draft EIS to FWS or NMFS will constitute submission of the biological assessment to that agency.

(c) If the proposed action will potentially jeopardize the continued existence of a listed species or destroy or modify critical habitat, consultation with FWS or NMFS, as appropriate, is required. Initiation of consultation shall be accomplished by submitting the draft EIS to the Regional Director of FWS or NMFS. The transmittal shall request consultation pursuant to section 7(a) of the Endangered Species Act.

(d) In selecting a preferred alternative, jeopardy to an endangered or threatened species or modification of critical habitat must be avoided. The results of the consultation, including the biological opinion, shall be reflected in the final EIS. Any measures which will be taken to conserve listed species, to avoid impacts, or to mitigate impacts to the endangered or threatened species or its habitat should be discussed.

b. *References.* (1) *The Fish and Wildlife Coordination Act,* 16 USC 662, requires that agencies consult with the State wildlife agencies and the Department of the Interior concerning the conservation of wildlife resources where the waters of any stream or other water body are proposed to be controlled or modified by a Federal agency or any public or private agency operating under a Federal permit.

(2) *Section 7(a) of the Endangered Species Act of 1973,* 16 USC 1533, as amended, requires that all Federal departments and agencies shall, in consultation with the Secretaries of the Interior and Commerce, carry out programs for the conservation of endangered species and threatened species listed by the Secretary of the Interior or Commerce, and insure that any action authorized, funded, or carried out by them "is not likely to jeopardize the continued existence of such endangered species and threatened species or result in the destruction or modification of habitat of such species which is determined by the Secretary (of Interior or Commerce) . . . to be critical. . . ."

Section 7(c) of the Act provides that each Federal agency request from the Departments of the Interior and/or Commerce information whether any species which is listed or proposed as endangered or threatened may be present in the area of a proposed construction action. If those agencies advise that such a species may be present, the action agency shall conduct a biological assessment to identify any endangered species or threatened species which is likely to be affected by the proposed action and the impacts on the species.

(3) *Interagency Cooperation Regulations–Endangered Species Act of 1973,* 50 CFR Part 402, specifies procedures for implementing section 7. (These regulations will be revised to reflect the 1978 and 1979 amendments to the Act.)

9. Wild and Scenic Rivers

a. *EIS Content.* (1) The EIS should identify any potential significant adverse effect on a river which is part of the national Wild and Scenic River System, and should reflect consultation with the administering agency or agencies.

(2) If the proposed action could have an adverse effect on a river listed in the Nationwide Inventory of rivers with potential for inclusion in the National Wild and Scenic Rivers Systems, there should be early coordination with the Heritage Conservation and Recreation Service, including participation of HCRS as a cooperating agency, if appropriate. The EIS should identify any potential significant adverse effect on the natural, cultural, and recreational values of the Inventory river. Adverse effects include alteration of the free flowing nature of the river, alteration of the setting, or deterioration of water quality. If it is determined that the proposed action could foreclose options to designate the river under the act, the EIS should reflect consultation with HCRS on avoiding or mitigating the impacts. The final EIS should indicate measures which will be included in the action to avoid or mitigate impacts.

b. *References.* (1) The *Wild and Scenic Rivers Act,* 16 USC 1271 et seq., provides for protection, under State or Federal management, of free flowing rivers or streams which are designated as wild, scenic or recreational waters. Wild river areas are free of impoundments and are generally inaccessible except by trail with essentially primitive watershed or shorelines and unpolluted waters; scenic river areas are free of impoundment, with largely undeveloped shorelines, but are accessible in places by roads; recreational river areas are readily accessible by road or railroad, have some development along the shorelines, and may have undergone some impoundment or diversion.

(2) The *President's Environmental Message of 8–2–79,* directed all Federal agencies to avoid or mitigate adverse effects on rivers identified in the HCRS Nationwide Inventory of rivers having potential to be designated under the Wild and Scenic Rivers Act. The message also directed agencies to consult with the HCRS, as part of their normal environmental review process, prior to taking actions which could effectively foreclose wild, scenic, or recreational river status on rivers in the Inventory.

(3) Memorandum for Heads of Agencies on *Interagency Consultation to Avoid or Mitigate Adverse Effects on Rivers in the Nationwide Inventory,* from CEQ, dated 8–10–80, provides guidance for consultation with HCRS as part of the NEPA process.

10. Construction Impacts

EISs should discuss significant construction impacts of a proposed action, including the following—

a. Noise impacts from construction and any specifications setting maximum noise levels, restricting work hours, utilizing quiet construction equipment, or otherwise reducing or limiting noise impacts;

b. Disposal of waste materials and effect on borrow areas and disposal sites. Environmentally sensitive and residential areas should be avoided as borrow or disposal sites. Where special problems are involved, specific mitigation measures should be discussed;

c. Measures to minimize erosion, sedimentation and turbidity in water bodies and dust in inhabited areas;

d. Impacts and measures to minimize effects on traffic and pedestrians;

e. Energy impacts of construction, including energy used by construction equipment, and significant impact on or use of natural resources such as minerals, coal, etc.; and

f. Impacts of air pollution from fugitive dust, and any measures proposed to control dust.

Chapter IV—Impacts on Section 4(F) Properties and Historic and Cultural Resources

I. Properties Protected by Section 4(F) of the DOT Act: Historic Sites and Publicly Owned Parklands, Recreation Areas, Wildlife and Waterfowl Refuges

a. *Content of EISs or Section 4(f) Statements.* The following information shall be included for cases involving section 4(f) properties:

(1) Description of "any publicly owned land from a public park, recreational area or wildlife and waterfowl refuge" or "any land from an historic site" used by the project. This includes the size of the section 4(f) lands, available activities, use, patronage, unique or irreplaceable qualities, relationship to other similarly used lands in the vicinity of the project. The proposal's impact on park, recreation, wildlife, or historic areas, and changes in vehicular or pedestrian access should be presented. Maps, plans, photographs, and drawings showing the project in sufficient scale should be included.

(2) As appropriate, the impacts of alternative designs and locations, including detailed cost estimates (with figures showing percentage differences in total project costs) and technical feasibility, and appropriate analysis of the alternatives, including any unique problems present and evidence that the cost or community disruptions resulting from alternative routes reach extraordinary magnitudes. There must be a strong justification for rejection of alternatives, including the "no build" alternative. This portion of the statement should demonstrate compliance with the Supreme Court's statement in the *Overton Park* case, as follows:

> The very existence of the statute indicates that the protection of parklands was to be given paramount importance. The few green havens that are public parks were not to be lost unless there were truly unusual factors present in a particular case or the cost or community disruption resulting from alternative routes reached extraordinary magnitudes. If the statutes are to have any meaning, the Secretary cannot approve the destruction of parkland unless he finds that the alternative routes present unique problems. (401 US 413)

(3) The views of the official having jurisdiction over the lands concerning the significance of the property and the measures to minimize harm.

(4) If there is no feasible and prudent alternative, description of all planning undertaken to minimize harm to the protected area and statement of actions taken or to be taken to implement this planning, including measures to maintain or enhance the natural beauty of the lands traversed.

(a) Specific measures which will be implemented should be listed. It is not sufficient to simply indicate that everything requested by the official with jurisdiction over the land will be accomplished.

(b) Measures to minimize harm should ordinarily include replacement of land and facilities or provision for functional replacement of the facility (see 40 CFR 25.267).

(c) Design measures to minimize harm, to include reducing the amount of land to be used, tunneling, cut and cover, treatment of embankments, planting, screening, maintenance of pedestrian or bicycle paths and noise mitigation measures, all reflecting utilization of appropriate interdisciplinary design personnel.

(d) Alternative locations within the park or other section 4(f) area which would minimize the use of section 4(f) lands should be considered as a measure to minimize harm.

(e) For historic sites, the Memorandum of Agreement with the Advisory Council will be considered in determining, pursuant to section 4(f), whether there has been all possible planning to minimize harm.

(5) If use of protected property is proposed, the proposed record of decision, the FONSI or a separate section 4(f) determination, as appropriate, shall include a specific statement that there is no feasible and prudent alternative and that the proposal includes all possible planning to minimize harm to the section 4(f) area involved.

b. *References.* (1) *Section 4(f) of the DOT Act* and *section 133 of the Highway Act* state, "It is hereby declared to be the national policy that special effort should be made to preserve the natural beauty of the countryside and public parks and recreational lands, wildlife and waterfowl refuges, and historic sites. The Secretay * * * shall not approve any program or project which requires the use of any publicly owned land from a public park, recreation area, or wildlife and waterfowl refuge of national, State, or local significance as determined by the Federal, State, or local significance as so determined by such officials unless (1) there is no feasible and prudent alternative to the use of such land, and (2) such program includes all possible planning to minimize harm to such park, recreational area, wildlife and waterfowl refuge, or historic site resulting from such use."

(2) Procedural instructions for section 4(f) matters are discussed in paragraph 12 of DOT 5610.1C.

(c.) *Application of Section 4(f).* (1) Significance of the affected park, recreation area, or refuge, shall be determined by the Federal, State or local officials having jurisdiction over the lands. In the absence of such a statement, lands will be considered significant. The significance determination applies to the entire property, except as provided in paragraph c.(4) below. Any statement of "insignificance" by the official having jurisdiction is subject to review by the Department as to whether such statement is capricious. If the land is determined to be insignificant, section 4(f) does not apply to the proposed action.

(2) The National Register of Historic Places lists historic properties of national, State, and local significance. For purpose of section 4(f), a historic site is considered significant only if it is included on or is eligible for inclusion on the National Register. In determining the application of section 4(f) to historic sites, the administration will consult with the SHPO and local officials, and will identify properties eligible for the National Register of Historic Places. For the purposes of section 4(f), a historic site is significant only if it is on or eligible for inclusion on the National Register unless the administration

determines that the application of section 4(f) is appropriate.

(3) If a finding of "no effect" on a historic site on or eligible for the National Register of Historic Places has been concurred in by the Advisory Council on Historic Preservation, it may be concluded that there is no "use" of the property for purposes of section 4(f). If archeological sites are processed under the Advisory Council's Guidelines for Making "Adverse Effect" and "No Adverse Effect" Determinations for Archeological Resources in Accordance with 36 CFR Part 800, section 4(f) is not normally considered applicable (see paragraph IV-2.a.(4)(b) below).

(4) Where Federal lands or other large public land holdings (e.g. State forests) are managed for multiple uses under a statute authorizing such management, section 4(f) applies only to portions of the land which are in fact being used for or are designated in the plans of the administering agency as being for park, recreation, wildlife or waterfowl refuge, or historic purposes. The determination of significance shall be made by the official having jurisdiction over the lands.

(5) Section 4(f) applies to school properties used and significant for recreational purposes and available for recreational use by the general public.

(6) Where land that has been acquired by a State or local transportation agency in advance of the need for its use for transportation purposes in temporarily used for recreation purposes, that land shall normally not be subject to the provisions of section 4(f). In order to establish that such temporary parklands are not subject to the provisions of section 4(f), the following documentation shall be provided: a statement that the land was not used for park, recreation, wildlife refuge or historic purposes prior to acquisition by the transportation agency; and evidence that the lease or agreement permitting use of the land for recreation purposes clearly provides that the land shall ultimately be used for tranportation purposes, and that the recreation use is allowed for a specific period or subject to the discretion of the transportation agency owning the land.

(7) The term "publicly owned land" means any land owned in fee simple or land subject to a public easement or other interest in the land by a Federal, State or local agency or entity. Generally, section 4(f) is considered to apply to State game reserves, State hunting areas, and lands subject to wetlands easements negotiated with U.S. Fish and Wildlife Service.

(8) If a body of water is publicly owned and is formally designated as a recreation area or is used for recreation purposes, section 4(f) is considered to apply to that area.

(9) Roadside rest areas and other facilities located on right-of-way owned by a transportation agency and provided solely for use by users of the transportation facility will normally not be considered subject to section 4(f).

(10) "Use of land" under section 4(f) generally means the acquistion of title to or on easement in land for a transportation program or project. In unusual circumstances, serious adverse impacts such as severe increases in noise or air pollution, or access disruption may constitute a "constructive use" even where no acquistion is involved, and section 4(f) would apply.

2. Properties and Sites of Historic and Cultural Significance

a. *EIS Content.* Final EISs should reflect compliance with section 106 and 36 CFR Part 800, the Advisory Council on Historic Preservation's procedures for compliance with section 106 of the National Historic Preservation Act. These procedures are summarized below.

(1) *Identifying Resources on or Eligible for the National Register.* The lead agency is responsible for identifying properties on or eligible for the National Register within the area of a proposed action's potential environmental impact. The lead agency should consult the State Historic Preservation Office (SHPO) for information about properties which may be eligible for the National Register, and the likelihood of previously unidentified properties within the impact area. If necessary, a survey should be conducted to identify properties that may be eligible for the National Register, particularly if archeological remains are anticipated. For properties not on the National Register that are potentially qualified, the lead agency shall, is consultation with the SHPO, apply the National Register criteria set forth in 36 CFR Part 1202.6 and shall seek a formal determination of eligibility from the Keeper of the National Register, DOI, or seek a consensus determination with the SHPO. If a consensus determination is made, the lead agency shall notify DOI and provide supporting documentation. If the lead agency and SHPO cannot agree on potential eligibility, the lead agency must seek a determination of eligibility, the lead agency must seek a determination of eligibility from DOI.

(2) *Determining Effect.* In consultation with the SHPO, the lead agency shall apply the Council's criteria of affect to determine whether the proposal will affect any Register or Eligible property in the area of potential environmental impact. Effect is measured against the characteristics that qualify the property for the Register. Any direct changes in these characteristics, as well as visual, audible, or atmospheric changes in the environment are effects.

(3) *Determination of "No Effect".* If the lead agency and the SHPO agree that the action will not affect Register properties, the determination of "no effect" may simply be documented and the section 106 process is completed. If the SHPO objects to an agency determination of "no effect" and gives timely notice, the Exective Director of the Council may review the determination.

(4) *Determination of "No Adverse Effect".* (a) *Applying Criteria.* If the lead agency determines that a proposed action will affect a Register property, the next step, again in consultation with the SHPO, is to apply the criteria of adverse effect. If the agency determines that the effect will not be adverse, a determination of "no adverse effect" is made and forwarded to the Council with evidence of the SHPO's concurrence. If the Council concurs, the action may proceed; if the Council concurs with conditions, the action may proceed if the agency accepts the condition. If the Council objects, the case goes into the consultation process.

(b) *Archeological Resources.* The Council's Guidelines for Making "Adverse Effect" and "No Adverse Effect" Determinations for Archeological Resources in Accordance with 36 CFR Part 800 provide a procedure for expediting proposed actions involving archeological sites that are important chiefly for the information they contain and that have minimal value for long term preservation. The lead agency may, with the concurrence of the SHPO, submit a determination of "no adverse effect," conditioned on completion of data recovery programs meeting accepted standards.

(5) *Determination of Adverse Effect and Consultation.* If a determination is made that the proposal will have an adverse effect on a property on or eligible for the National Register, the lead agency must provide the Council an opportunity to comment. In most cases, the consultation process will comply with section 106 without the necessity for a full Council review. A representative of the lead agency, the SHPO, the Council staff and other parties consult to consider ways to avoid or mitigate the adverse effect.

(a) *Preliminary Case Report.* A preliminary case report is required to initiate consultation with the Council. A draft environmental impact statement can serve as a preliminary case report, if the EIS indicates this and it contains the necessary information (see 36 CFR Part 800.13). The transmittal memorandum to the Council must specifically request consultation.

(b) *Alternatives.* Consultation focuses on alternative ways of accomplishing the purposes of a proposal without unacceptably damaging Register properties, including alternative sites, alternative actions, and alternative designs.

(c) *Mitigation.* Consultation also addresses measures to minimize the damage to Register properties. Mitigation measures include: limiting the magnitude of the proposal; modifying the proposal through redesign, reorientation of project site, or other similar changes; repairing, rehabilitating, or restoring the affected property; preservation and maintenance operations throughout the life of the proposal data recovery—pertinent chiefly where archeological resources principally valuable for scientific study are to be destroyed and recovery of the information they contain is accomplished before the undertaking proceeds; and recordation (drawings, photographs) of buildings or structures that must be destroyed or substantially altered.

(6) *Memorandum of Agreement (MOA).* If the consulting parties are able to agree on measures to avoid or mitigate adversity, they subscribe to a formal memorandum of agreement (MOA) containing stipulations that specify how the undertaking will be carried out. This MOA is signed by the Council's Executive Director, the representative of the lead agency, and the SHPO. Other involved parties sign in concurrence. Ratification by the Chairman completes the process. The MOA constitutes the comments of the Council for purposes of section 106. The final EIS should normally reflect the MOA.

If agreement cannot be reached, the action is reviewed by the Council. The advice given by the Council and the measures the agency will take to implement the advice should be identified in the final EIS.

b. *References.* (1) *Section 106 of the National Historic Preservation Act (16 USC 470(f))* requires the head of any Federal agency having jurisdiction over a Federal or federally-assisted undertaking to take into account, prior to approving the undertaking, its effect on any district, site, building, structure, or object that is included in the National Register of Historic Places, and to give the Advisory Council on Historic Preservation a reasonable opportunity to comment with regard to the undertaking.

(2) *Executive Order 11593, Protection and Enhancement of the Cultural Environment,* requires that Federal plans and programs contribute to the preservation and enhancement of sites, structures, and objects of historical, architectural, or archeological significance.

(3) Regulations for *Protection of Historic and Cultural Properties* of the Advisory Council on Historic Preservation (36 CFR Part 800), provide procedures for implementation of section 106 of the National Historic Preservation Act.

(4) *Archeological and Historic Data Preservation Act,* (16 USC 469a) directs agencies to preserve historic and archeological data that would otherwise be lost as a result of Federal action, and authorizes the agency to undertake recovery, protection and preservation of such data.

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Research and Special Programs Administration

Grants and Denials of Applications for Exemptions

AGENCY: Materials Transportation Bureau, DOT.

ACTION: Notice of grants and denials of applications for exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given of the exemptions granted in October 1980. The modes of transportation involved are identified by a number in the "Nature of Exemption Thereof" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo-only aircraft, 5—Passenger-carrying aircraft. Application numbers prefixed by the letters EE represent applications for Emergency Exemptions.

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
		Renewal and Party to Exemptions		
868-X	DOT-E 868	U.S. Department of Defense/MTMC, Washington, DC.	49 CFR 173.3(a), 173.7(a), 174.10, 174.104(f), 174.8, 177.801, 177.808(a).	To authorize exceptions to requirements for carrier inspection of manufacture, vehicle, loading, etc. for class A and B explosives loaded by Department of Defense shippers in non-DOT containers. (Modes 1, 2.)
970-X	DOT-E 970	U.S. Department of Defense/MTMC, Washington, DC.	49 CFR 173.21(b), 173.300, 173.301	To authorize shipment of a flammable poisonous gas in DOT Specification 3AA cylinders. (Modes 1, 2.)
2136-X	DOT-E 2136	U.S. Department of Defense/MTMC, Washington, DC.	49 CFR 173.1, 173.3(a), 173.7(a), 174.10, 174.104, 174.2, 174.93(a), 177.801, 177.802.	To authorize shipment of radioactive materials with explosives in Department of Defense containers packaged and loaded by the Department of Defense without carrier inspection. (Modes 1, 2.)
2462-X	DOT-E 2462	E. I. du Pont de Nemours & Co., Inc., Wilmington, DE.	49 CFR 173.73(b)	To authorize shipment of a class A explosive in glass bottles overpacked in wooden boxes. (Mode 1.)
2587-X	DOT-E 2587	Denison, Inc., Fredonia, KS	49 CFR 173.315(a)(1)	To authorize shipment of liquid oxygen in non-DOT specification cargo tanks. (Mode 1.)
3095-X	DOT-E 3095	Dow Chemical Company, Tulsa, OK	49 CFR 173.119(b), 173.245, 173.263.	To authorize use of a non-DOT specification cargo tank for certain corrosive and flammable liquids. (Modes 1, 3.)
3142-X	DOT-E 3142	U.S. Dept. of Energy, Washington, DC	49 CFR 173.24(a)(1)	To authorize shipment of cylinders containing nonflammable compressed gases from which a controlled flow of gas is released to a leak calibration apparatus. (Modes 1, 2.)
3667-X	DOT-E 3667	Groendyke Transport, Inc., Enid, OK	49 CFR 173.315(a)	To authorize use of DOT Specification MC 330 cargo tank for shipment of a flammable, liquefied compressed gas. (Mode 1.)
3667-X	DOT-E 3667	Phillips Petroleum Company, Bartlesville, OK	49 CFR 173.315(a)	To authorize use of DOT Specification MC 330 cargo tank for shipment of a flammable, liquefied compressed gas. (Mode 1.)
3768-X	DOT-E 3768	PPG Industries, Inc., Pittsburgh, PA	49 CFR 173.119, 173.245, 173.223	To authorize the shipment of various chloroformates in cargo tanks. (Mode 1.)

Renewal and Party to Exemptions—Continued

4108-P	DOT-E 4108	Burdett Gas Products, St. Louis, MO	49 CFR 173.315(a)	To become a party to Exemption 4108. (Mode 1.)
4460-X	DOT-E 4460	Ethyl Corporation, Baton Rouge, LA	49 CFR 173.206(a), 173.29(f)(2), 173.32(a)(1), 176.74(c), 176.76(g)(3).	To authorize metallic sodium to be packaged in a DOT Specification 51 portable tank. (Mode 3.)
4490-X	DOT-E 4490	Air Products and Chemicals, Inc., Allentown, PA	49 CFR 173.316(a)	To authorize the use of a non-DOT specification cargo tank for the transportation of a flammable gas. (Mode 1.)
4588-X	DOT-E 4588	U.S. Department of Energy, Washington, DC	49 CFR 173.65(a)	To authorize the use of packaging not presently prescribed for certain high explosives. (Mode 1.)
4803-X	DOT-E 4803	Dow Chemical Company, Tulsa, OK	49 CFR 173.249, 173.272, 173.289	To authorize the use of a non-DOT specification cargo tank for the shipment of corrosive liquids. (Mode 1.)
5038-X	DOT-E 5038	Western Electric Company, Lee's Summit, MO	49 CFR 173.135(a)(6), 173.136(a)(5), 173.247(a)(1).	To authorize the shipment of dimethylchlorosilane, tri<chlorosilane, and silicon tetrachloride in non-DOT specification cylinders. (Modes 1, 2.)
5232-X	DOT-E 5232	E. I. du Pont de Nemours & Co., Inc., Wilmington, DE.	49 CFR 173.314(c) table	To authorize shipment of certain flammable and nonflammable liquefied compressed gases in tank cars (Mode 2.)
5315-X	DOT-E 5315	U.S. Department of Defense/MTMC, Washington, DC.	49 CFR 173.87	To authorize transport of a rocket engine containing a Class A explosive contained in a specially designed device. (Mode 1.)
5557-X	DOT-E 5557	U.S. Department of Energy, Washington, DC	49 CFR 173 subpart C	To authorize use of non-DOT specification containers for shipment of certain explosives, which exceed prescribed weight limits. (Mode 1.)
5792-X	DOT-E 5792	Publicker Industries, Inc., Greenwich, CT	49 CFR 172.101, 172.101, 173.314(c), 173.314(c).	To authorize the shipment of liquefied flammable gas in non-DOT specification tank cars. (Mode 2.)
5792-X	DOT-E 5792	Northern Petrochemical Company, Des Plaines, IL.	49 CFR 172.101, 172.101, 173.314(c), 173.314(c).	To authorize the shipment of liquefied flammable gas in non-DOT specification tank cars. (Mode 2.)
5792-X	DOT-E 5792	Stauffer Chemical Company, Westport, CT	49 CFR 172.101, 172.101, 173.314(c), 173.314(c).	To authorize the shipment of liquefied flammable gas in non-DOT specification tank cars. (Mode 2.)
5792-X	DOT-E 5792	Publicker Chemical Corporation, Greenwich, CT	49 CFR 172.101, 172.101, 173.314(c), 173.314(c).	To authorize the shipment of liquefied flammable gas in non-DOT specification tank cars. (Mode 2.)
5852-X	DOT-E 5852	South Jersey Gas Company, Folsom, NJ	49 CFR 172.101, 173.315(a)	To authorize use of a non-DOT specification cargo tank for a certain flammable, liquefied gas. (Mode 1.)
6016-P	DOT-E 6016	Kanweld Welding Equipment & Supplies, Kankakee, IL.	49 CFR 173.315(a)	To become a party to Exemption 6016. (Mode 1.)
6066-X	DOT-E 6066	Union Carbide Corp., New York, NY	49 CFR 173.119, 173.125, 46 CFR 98.35.	To authorize use of non-DOT specification portable tanks for certain flammable and combustible liquids. (Modes 1, 3.)
6071-X	DOT-E 6071	Walter Kidde & Company, Incorporated, Belleville, NJ.	49 CFR 173.304, 173.305, 175.3	To authorize use of non-DOT specification pressure vessels for a nonflammable compressed gas. (Modes 1, 2, 4, 5.)
6071-X	DOT-E 6071	The Boeing Company, Seattle, WA	49 CFR 173.304, 173.305, 175.3	To authorize use of non-DOT specification pressure vessels for a nonflammable compressed gas. (Modes 1, 2, 4, 5.)
6080-X	DOT-E 6080	U.S. Department of Energy, Washington, DC	49 CFR 173.301(d), 173.327(a), 173.337(a)(1).	To authorize the use of manifolded cylinders for a class A poison. (Mode 1.)
6121-X	DOT-E 6121	E. I. du Pont de Nemours & Co., Inc., Wilmington, DE.	49 CFR 179.220-19(c)	To authorize use of DOT Specification 115A60W1 and 115A60W6 tank cars for a certain flammable liquid. (Mode 2.)
6231-X	DOT-E 6231	Lox Equipment Company, Livermore, CA	49 CFR 172.101, 173.314(c)	To authorize shipment of liquefied flammable gas in insulated non-DOT specification tank cars. (Mode 2.)
6334-X	DOT-E 6334	Allied Chemical Corporation, Morristown, NJ	49 CFR 172.101, 172.504	To authorize use of DOT Specification MC-312, MC-330, or MC-331 cargo tanks for an oxidizer. (Mode 1.)
6334-X	DOT-E 6334	U.S. Department of Defense/MTMC, Washington, DC.	49 CFR 172.101, 172.504	To authorize use of DOT Specification MC-312, MC-330, or MC-331 cargo tanks for an oxidizer. (Mode 1.)
6392-X	DOT-E 6392	Stauffer Chemical, Westport, CT	49 CFR 172.101, 173.314(c)	To authorize use of non-DOT specification vacuum insulated tank car tanks for a liquefied flammmable compressed gas. (Mode 2.)
6418-X	DOT-E 6418	Great Lakes Chemical Corporation, El Dorado, AK.	49 CFR 173.357(b)	To authorize use of DOT Specification MC-303, MC-304, MC-306, MC-307, MC-310, or MC-312 steel cargo tanks for Class B poisonous liquids. (Mode 1.)
6442-X	DOT-E 6442	U.S. Department of Defense/MTMC, Washington, DC.	49 CFR 173.53(k), 173.87	To authorize the transport of a 155 mm high explosive projectile containing either a corrosive or flammable liquid in a metal cannister with an inner polyethylene container. (Modes 1, 2.)
6498-X	DOT-E 6498	Luxfer USA, Limited, Riverside, CA	49 CFR 173.302(a)(1), 173.304(a)(1), 173.304(d)(3), 173.336(a)(2), 175.3.	To authorize the use of non-DOT specification aluminum cylinders for the transportation of certain liquefied and nonliquefied compressed gases and certain other hazardous materials. (Modes 1, 2, 3, 4, 5.)
6556-X	DOT-E 6556	Castle and Cooke, Inc., San Francisco, CA	49 CFR 173.132	To authorize use of a non-DOT specification single compartment portable tank for a flammable liquid. (Modes 1, 3.)
6598-X	DOT-E 6598	Dow Chemical Company, Midland, MI	49 CFR 173.245(a)(16)	To authorize use of a DOT 6D cylindrical steel overpack with a non-DOT inner container for a certain corrosive liquid. (Modes 1, 2.)
6602-P	DOT-E 6602	Ferro Corporation, Hammond, IN	49 CFR 173.245(a), 173.314(c), 173.315(a)(1).	To become a party to Exemption 6602. (Modes 1, 2.)
6602-X	DOT-E 6602	Great Lakes Chemical Corporation, El Dorado, AR.	49 CFR 173.245(a), 173.314(c), 173.315(a)(1).	To authorize use of DOT MC-331 cargo tanks and DOT 105A500W or 106A500X tank car tanks for certain corrosive liquids and nonflammable compressed gases. (Modes 1, 2)
6611-P	DOT-E 6611	Teikoku Sanso Kabushiki Kaisha, Kobe, Japan	49 CFR 172.101, 173.315(a)	To become a party to Exemption 6611. (Modes 1, 3.)
6653-X	DOT-E 6653	Shell Oil Company, Houston, TX	49 CFR 173.245, 173.358	Top authorize shipment of an insecticide or a corrosive material in highly specialized inner and outer containers. (Modes 1, 2, 3.)
6694-X	DOT-E 6694	Ugine Kuhlmann, Paris, France	49 CFR 179.315	To authorize use of non-DOT specification portable tanks for a nonflammable compressed gas. (Modes 1, 2, 3.)
6695-X	DOT-E 6695	Ugine Kuhlmann, Paris, France	49 CFR 173.315	To authorize the use of a non-DOT specification portable tank for a certain nonflammable compressed gas. (Modes 1, 3.)

Renewal and Party to Exemptions—Continued

6724-X	DOT-E 6724	U.S. Department of Defense/MTMC, Washington, DC.	49 CFR 172.101, 173.69, 175.3	To authorize shipment of caseless ammunition (Class C explosives) in a fiberboard box. (Modes 1, 4.)
6754-X	DOT-E 6754	Eaton Corporation, Southfield, MI	49 CFR 173.302(a)(4), 175.3, 178.69	To authorize use of a non-DOT specification container for a nonflammable compressed gas. (Modes 1, 2, 3, 4.)
6811-X	DOT-E 6811	Eaton Corporation, Southfield, MI	49 CFR 173.302(a)(4), 175.3, 178.65	To authorize use of a non-DOT specification cylinder for a nonflammable compressed gas. (Modes 1, 2, 3, 4.)
6824-X	DOT-E 6824	Georgia-Pacific Corporation, Los Angeles, CA	49 CFR 173.217(a)	To authorize packagings not provided for in the Hazardous Materials Regulations for certain oxidizing materials. (Modes 1, 2, 3.)
6844-X	DOT-E 6844	E. I. du Pont de Nemours & Co., Inc., Wilmington, DE.	49 CFR 173.249a	To authorize the use of a non-DOT specification 275-gallon "Dypak" single-trip polyethylene container overpacked in a plywood box for the transportation of a certain corrosive liquid. (Modes 1, 2, 3.)
6898-P	DOT-E 6898	E. I. du Pont de Nemours & Co., Inc., Wilmington, DE.	49 CFR 178.150-4(a)(1)	To become a party to Exemption 6898. (Modes 1, 2, 3.)
6898-P	DOT-E 6898	MCB Manufacturing Chemists, Inc., Cincinnati, OH.	49 CFR 178.150-4(a)(1)	To become a party to Exemption 6898. (Modes 1, 2, 3.)
6927-X	DOT-E 6927	Dow Chemical Company, Midland, MI	49 CFR 173.353	To authorize use of a non-DOT specification portable tank for certain Class B poisonous liquids. (Modes 1, 3.)
6927-X	DOT-E 6927	Great Lakes Chemical Corporation, W. Lafayette, IN.	49 CFR 173.353	To authorize use of a non-DOT specification portable tank for certain Class B poisonous liquids. (Modes 1, 3.)
6929-X	DOT-E 6929	U.S. Department of Energy, Washington, DC	49 CFR 173.89(c)(2)(i), 173.92(b)	To authorize shipment of rocket motors in a propulsive state. (Modes 1, 3.)
6932-X	DOT-E 6932	Ugine Kuhlmann, Paris, France	49 CFR 173.264(b)(4)	To authorize use of non-DOT specification portable tanks for anhydrous hydrofluoric acid. (Modes 1, 3.)
6944-X	DOT-E 6944	U.S. Department of Defense/MTMC, Washington, DC.	49 CFR 173.62(a), 177.834(L)(1)	To authorize the transport of a liquid high explosive in a specially designed stainless steel desiccator. (Mode 1.)
6960-X	DOT-E 6960	Pepsi-Cola Company, Purchase, NY	49 CFR parts 100-199	To authorize the use of steel drums not presently authorized in the Hazardous Materials Regulations for shipment of certain corrosive liquids. (Modes 1, 2.)
6962-X	DOT-E 6962	U.S. Department of Energy, Washington, DC	49 CFR 173.201(d)	To authorize shipment of nonflammable compressed gases in DOT-3AA1800 or 3AA2000 cylinders. (Modes 1, 2.)
6971-X	DOT-E 6971	Chem Service, Inc., West Chester, PA	49 CFR 173.288(b), 175.3	To authorize the transportation of small quantities of reagent chemicals in metal cases or metal boxes having inside glass bottles. (Modes 1, 2, 3, 4.)
6984-X	DOT-E 6984	Ireco Chemicals, Salt Lake City, UT	49 CFR 173.100(a), 173.69(g), 177.835(g)(2)(i)	To authorize the packaging of 100 or less electric blasting caps in IME 22 containers (Class C explosives) (Mode 1.)
6984-X	DOT-E 6984	Hercules, Incorporated, Wilmington, DE	49 CFR 173.100(a), 173.69(g), 177.835(g)(2)(i).	To authorize the packaging of 1000 or less electric blasting caps in IME 22 containers (Class C explosives). (Mode 1.)
6984-X	DOT-E 6984	E. I. du Pont de Nemours & Co., Inc., Wilmington, DE.	49 CFR 173.100(a), 173.69(g), 177.835(g)(2)(i).	To authorize the packaging of 1000 or less electric blasting caps in IME 22 containers (Class C explosives). (Mode 1.)
6984-X	DOT-E 6984	International Minerals and Chemical Corporation, Allentown, PA.	49 CFR 173.100(a), 173.69(g), 177.835(g)(2)(i).	To authorize the packaging of 1000 or less electric blasting caps in IME 22 containers (Class C explosives). (Mode 1.)
7035-X	DOT-E 7035	Owens-Illinois (Plastic Products Division), Toledo, OH	49 CFR 173.128(a), 173.19, 173.245(a)(39), 173.249(a)(1), 173.250a(a)(1), 173.254b(a)(6), 173.257(a)(1), 173.263(a)(23), 173.265(d)(6), 173.269(b)(8), 173.272(j)(9), 173.276(a)(10), 173.277(a)(6), 173.287(c)(1), 173.289(a)(1), 173.292(a)(1).	To authorize use of non-DOT specification drums for the shipment of corrosive liquids and solids, oxidizer, and flammable liquids. (Modes 1, 2, 3.)
7097-X	DOT-E 7097	Fuller System, Inc., Woburn, MA	49 CFR 173.377(f)	To except dry mixtures of parathion and tetraethyl dithio pyrophosphate from specification packaging requirements. (Mode 1.)
7285-X	DOT-E 7285	Ugine Kuhlmann, Paris, France	49 CFR 173.315(a)	To authorize the use of non-DOT specification portable tanks for transportation of certain nonflammable, liquefied gases. (Modes 1, 2, 3.)
7538-X	DOT-E 7538	Southern Chemical Products Company, Macon, GA.	49 CFR 178.19, Part 173, Sub F	To authorize the manufacture, marking, and sale of non-DOT specification polyethylene containers for use in packaging of certain corrosive liquids. (Modes 1, 2, 3.)
7600-X	DOT-E 7600	Lubbock Manufacturing Company, Lubbock, TX	49 CFR 173.101, 173.315(a)(1)	To authorize the manufacture, marking and sale of non-DOT specification cargo tanks to be used in the transportation of certain flammable gases. (Mode 1.)
7835-P	DOT-E 7835	Scott Environmental Technology Inc.848		To become a party to Exemption 7835. (Mode 1.)
7938-P	DOT-E 7938	Compagnie Generale Maritime, Paris, France	49 CFR Part 173, Subpart D, F, H	To become a party to Exemption 7939. (Modes 1, 2, 3.)
8008-X	DOT-E 8008	Wheaton Aerosols Co., Mays Landing, NJ	49 CFR 173.305, 173.306(a)	To authorize the use of a non-DOT specification container for the transportation of a flammable propellant gas. (Modes 1, 2, 3, 4.)
8060-X	DOT-E 8060	SLEMI, S.A., Paris, France	49 CFR 173.315(a)	To authorize the use of non-DOT specification portable tanks for the transportation of certain non-flammable liquefied gases. (Modes 1, 2, 3.)
8060-X	DOT-E 8060	Ugine Kuhlmann, Paris, France	49 CFR 173.315(a)	To authorize the use of non-DOT specification portable tanks for the transportation of certain non-flammable liquefied gases. (Modes 1, 2, 3.)
8157-X	DOT-E 8157	Born Free Plastics, Inc., Houston, TX	49 CFR 173.346	To authorize the shipment of dinitro-phenol solutions in DOT 34, 30-gallon capacity drums. (Modes 1, 2, 3.)
8186-X	DOT-E 8186	King-Seeley Thermos Company, Kendallville, IN	49 CFR 173.202, 174.3, 175.3	To authorize sodium potassium liquid sealed in a stainless steel temperature sensing bulb of a thermostat to be shipped in a non-DOT corrugated fiberboard box. (Modes 1, 2, 4.)

Renewal and Party to Exemptions—Continued

8206-P	DOT-E 8206	Copps Industries, Inc., Menomonee Falls, WI	49 CFR 173.245(a)(17), 175.3, 178.131.	To become a party to Exemption 8206. (Modes 1, 2, 3, 4.)
8207-P	DOT-E 8207	Copps Industries, Inc., Menomonee Falls, WI	49 CFR 173.245(a)(17), 175.3, 178.131.	To become a party to Exemption 8207. (Modes 1, 2, 3, 4.)
8225-X	DOT-E 8225	Hoover Universal, Inc., Beatrice, NE	49 CFR 173.245, 173.249, 173.249a, 173.257, 173.263, 173.266, 173.272, 173.277, 173.292, 178.19, 178.253.	To authorize the use of a non-DOT specification rotationally molded, cross-linked polyethylene portable tank for the shipment of corrosive liquids and an oxidizer. (Modes 1, 2.)
8244-X	DOT-E 8244	Halliburton Services, Inc., Duncan, OK	49 CFR 173.119, 173.125, 173.245, 173.263, 173.264, 173.289, 46 CFR 64.9.	To authorize shipment of various flammable, combustible, and corrosive materials in lined marine portable tank. (Modes 1, 3.)
8324-P	DOT-E 8324	Copps Industries, Inc., Menomonee Falls, WI	49 CFR 173.245(a)(17), 175.3, 178.131.	To become a party to Exemption 8324. (Modes 1, 2, 3, 4.)
8375-P	DOT-E 8375	Sea Containers, Inc., New York, NY	49 CFR 173.119, 173.125, 173.245, 173.247, 173.346, 173.347, 46 CFR 90.05-35, 46 CFR 98.35-3.	To become a party to Exemption 8375. (Modes 1, 2, 3.)
8370-N	DOT-E 8370	Henred Fruehauf, Ltd., Johannesburg, S. Africa	49 CFR 173.119, 173.125, 173.245	To authorize the use of a non-DOT specification intermodal portable tank for shipment of various flammable and combustible liquids and corrosive materials. (Modes 1, 2, 3.)
8391-N	DOT-E 8391	Acurex Corporation, Aerotherm Group, Mountainview, CA.	49 CFR 173.302(a)(1), 173.304(a)(1), 175.3.	To authorize the use of a non-DOT specification cylinder for shipment of various nonflammable gases. (Modes 1, 2, 3, 4, 5.)
8436-N	DOT-E 8436	Pennwalt Corporation, Buffalo, NY	49 CFR 173.119(m)(10), 173.119(m)(11), 173.119(m)(12).	To authorize shipment of an organic peroxide, classed as a flammable liquid, in a DOT Specification MC-331 cargo tank equipped with temperature and pressure sensing devices. (Mode 1.)
8450-N	DOT-E 8450	Vought Corporation, Dallas, TX	49 CFR 173.92	To authorize shipment of rocket motors, Class B explosives, in non-DOT specification 3/8 inch polyethylene containers with steel bases. (Mode 1.)
8454-N	DOT-E 8454	Thiokol Corporation, Brigham City, UT	49 CFR 173.93	To authorize shipment of propellant explosives (solid) Class B in a specially designed hopper tank similar to DOT Specification 56. (Mode 1.)
8457-N	DOT-E 8457	Texas Instruments, Incorporated, Johnson City, TN.	49 CFR 172.101, 175.3	To authorize shipment of lithium batteries, classed as a flammable solid, contained in specially designed electronic equipment. (Modes 1, 2, 3, 4, 5.)
8463-N	DOT-E 8463	Ethyl Corporation, Baton Rouge, LA	49 CFR 173.262(b)(1), 173.262(b)(2), 173.262(b)(3).	To authorize shipment of not over 62% hydrobromic acid in glass bottles contained in metal cans overpacked in a DOT Specification 12A fiberboard box. (Mode 1.)
8465-N	DOT-E 8465	Chase Bag Co., Oak Brook, IL	49 CFR 173.182	To authorize the manufacture, marking, and sale of a 4 mil bag of low density polyethylene film, 50 pound capacity, for shipment of ammonium nitrate fertilizer. (Modes 1, 2.)
8474-N	DOT-E 8474	Physics International, San Leandro, CA	49 CFR 173.114a(j)	To authorize shipment of a limited number of packages of nitrocarbonitrate after December 31, 1980 bearing the oxidizer label. (Mode 1.)
8475-N	DOT-E 8475	Chemical & Metal Industries, Inc., Denver, CO	49 CFR 173.245(a)	To authorize shipment of a corrosive liquid, n.o.s. in DOT Specification 106A500-X and 110A500-W multi-unit tank car tanks. (Mode 1.)
8476-N	DOT-E 8476	Warren Petroleum Company, Tulsa, OK	49 CFR 173.315(a)(1), 173.315(c)(1)	To authorize shipment of ethane-propane mixtures and other petroleum gases in DOT Specification MC-331 cargo tanks in accordance with Notice No. 79-3, Docket HM-115. (Mode 1.)
8477-N	DOT-E 8477	Mobay Chemical Corporation, Pittsburgh, PA	49 CFR 173.247(a)(13)	To authorize shipment of thionyl chloride, classed as a corrosive material in DOT Specification 111A100-W-6 tank cars constructed of 316L stainless steel. (Mode 2.)
8478-N	DOT-E 8478	West-Mark, Ceres, CA	49 CFR 173.119(a)(17), 173.245(a)(30)(31), 177.824(c)(4), 178.342-5, 178.343-5.	To manufacture, mark and sell non-DOT Specification cargo tanks complying generally with DOT Specification MC-307 or MC-312 except for bottom outlet valve variations for the transportation of flammable or corrosive waste, liquids or semi solids. (Mode 1.)
8482-N	DOT-E 8482	University of California, Santa Barbara, CA	49 CFR 173.206	To authorize a one-time shipment of a stainless steel research container of lithium metal overpacked in a plywood crate. (Modes 1, 3.)

Emergency Exemptions

EE 8513-N	DOT-E 8513	Alaska International Airline, Anchorage, AK	49 CFR 172.101, 173.315(a)(1), 175.3	To authorize limited shipments of liquefied nitrogen pressurized in non-DOT specification portable tanks. (Mode 4.)

Denials

7218-X—Request by Structural Composites Industries, Inc., Azusa, CA to amend the hydroburst failure mode requirement denied October 9, 1980 as being unnecessary.

7277-X—Request by Structural Composites Industries, Inc., Azusa, CA to amend the hydroburst failure mode requirement denied October 9, 1980 as being unnecessary.

8297-N—Request by Equip Rail Company, Washington, DC to authorize shipment of liquid hazardous materials of various classifications in non-DOT specification IMCO type II portable tanks denied October 29, 1980.

8411-N—Request by The Goodyear Tire & Rubber Co, Akron, OH to authorize shipment of various hazardous waste materials in DOT Specification 17C, 17E & 17H drums complying with the reconditioning requirements except for the cleaning process denied October 9, 1980.

Issued in Washington, D.C., on December 16, 1980.

J. R. Grothe,

Chief, Exemptions Branch, Office of Hazardous Materials Regulation, Materials Transportation Bureau.

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BILLING CODE 4910-60-M

Grants and Denials of Applications for Exemptions

AGENCY: Materials Transportation Bureau, D.O.T.

ACTION: Notice of grants and denials of applications for exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given of the exemptions granted in November 1980. The modes of transportation involved are identified by a number in the "Nature of Exemption Thereof" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo-only aircraft, 5—Passenger-carrying aircraft. Application numbers prefixed by the letters EE represent applications for Emergency Exemptions.

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
		Renewal and Party to Exemptions		
970-X	DOT-E 970	Callery Chemical Co., Callery, PA	49 CFR 173.21(b), 173.300, 173.301	To authorize shipment of a flammable poisonous gas in DOT Specification 3AA cylinders. (Modes 1, 2.)
3121-P	DOT-E 3121	Air Products and Chemicals, Inc., Allentown, PA	49 CFR 173.339(a), 177.841(b)	To become a party to Exemption 3121. (Mode 1.)
3193-X	DOT-E 3193	E. I. du Pont de Nemours & Co., Inc., Wilmington, DE.	49 CFR 173.314(c), 173.315(a)(1)	To authorize use of DOT Specification packaging not presently prescribed for shipment of flammable and nonflammable liquefied compressed gases. (Modes 1, 2, 3.)
4039-X	DOT-E 4039	Airco Industrial Gases, Murray Hill, NJ	49 CFR 173.315(a)	To authorize shipment of liquefied hydrogen in a non-DOT specification portable tank. (Mode 1.)
4282-X	DOT-E 4282	Hercules, Incorporated, Wilmington, DE	49 CFR 172.101, 173.114a, 173.93(a)	To authorize use of privately owned and specially designed cargo tanks for a class B explosive and oxidizer. (Mode 1.)
4354-X	DOT-E 4354	PPG Industries, Inc., Pittsburgh, PA	49 CFR 173.119(m), 173.245, 173.289(d), 173.289(c).	To authorize the shipment of chloroformates in a polyethylene drum as additional packaging. (Modes 1, 2, 3.)
4490-X	DOT-E 4490	National Aeronautics and Space Administration, Washington, DC.	49 CFR 173.315(a)	To authorize the use of a non-DOT specification cargo tank for the transportation of a flammable gas. (Mode 1.)
4631-X	DOT-E 4631	Energy Sciences & Consultants, Inc., Bowbik, MN.	49 CFR 173.114a, 173.182(c), 173.304(a).	To authorize use of non-DOT hopper-type tank trucks and cargo tank trailers for shipment of an oxidizing material and a nonflammable compressed gas. (Mode 1.)
4717-X	DOT-E 4717	Stauffer Chemical Company, Westport, CT	49 CFR 172.101, 173.314(c)	To authorize shipment of ethylene in non-DOT specification tank cars. (Mode 2.)
5186-X	DOT-E 5186	Liquid Carbonic Corporation, Chicago, IL	49 CFR 172.101, 173.315(a)	To authorize shipment of a flammable liquefied compressed gas in a non-DOT specification cargo tank. (Mode 1.)
5403-X	DOT-E 5403	Halliburton Services, Inc., Duncan, OK	49 CFR 173.245(a)(31), 173.249(a)(6), 173.249a)(6), 173.263(a)(10), 173.264(a)(14), 173.266(b)(3), 173.272(i)(21), 173.289(a)(4), 178.343-2(b), 178.343-5(b)(1)(i), 178.343-5(b)(2)(i)	To authorize the use of cargo tanks, meeting the requirements of DOT Specification MC-312 with certain exceptions, in support of oil well acidizing and industrial cleaning operations. (Modes 1,3.)
5959-X	DOT-E 5959	Ethyl Corp., Baton Rouge, LA	49 CFR 172.101, 173.315(a)	To authorize shipment of liquefied ethylene in non-DOT specification cargo tanks. (Mode 1.)
6113-X	DOE-E 6113	Boston Gas Company, Boston, MA	49 CFR 172.101, 173.315(a)	To authorize the use of a non-DOT specification cargo tank for the transportation of certain flammable gases. (Mode 1.)
6197-P	DOE-E 6197	Boston Gas Company, Boston, MA	49 CFR 172.101, 173.315(a)(1)	To become a party to Exemption 6197. (Mode 1.)
6325-X	DOE-E 6453	Atlas Powder Company, Dallas, TX	49 CFR 173.114a	To authorize the transportation of oxidizers in containers not presently prescribed in the Hazardous Materials Regulations. (Mode 1.)
6349-X	DOT-E 6349	Union Carbide Corporation, Linde Division, Tarrytown, NY.	49 CFR 172.101, 173.315(a)	To authorize use of non-DOT specification portable tanks for certain flammable and nonflammable gases. (Modes 1, 2, 3.)
6418-X	DOT-E 6418	Shell Oil Company, Houston, TX	49 CFR 173.357(b)	To authorize use of DOT Specification MC-303, MC-304, MC-306, MC-307, MC-310, or MC-312 steel cargo tanks for Class B poisonous liquids. (Mode 1.)
6518-X	DOT-E 6518	Stauffer Chemical Company, Westport, CT	49 CFR 172.101, 172.302, 173.119, 173.134, 173.154.	To authorize the shipment of specified pyrophoric liquids and solids, water reactive solids and certain other flammable liquids in steel portable tanks. (Modes 1, 3.)
6518-X	DOT-E 6518	Union Carbide Corporation, New York, NY	49 CFR 172.101, 172.302, 173.119, 173.134, 173.154	To authorize the shipment of specified pyrophoric liquids and solids, water reactive solids and certain other flammable liquids in steel portable tanks. (Modes 1, 3.)
6651-X	DOT-E 6651	Heatbath Corporation, Chicago, IL	49 CFR 173.28(h), 173.28(m)	To authorize one time reuse of the involved single-trip containers of certain class B poisonous solids. (Mode 1.)
6668-X	DOT-E 6668	Union Carbide Corporation, Linde Division, Tarrytown, NY.	49 CFR 173.304(a)(2), 178.57	To authorize shipment of liquid oxygen in non-DOT specification cylinders. (Modes 1, 2.)
6672-X	DOT-E 6672	Chandler Evans, Inc., West Hartford, CT	49 CFR 173.302(a)(4), 175.3	To authorize use of non-DOT cylinders for shipment of certain non-liquefied compressed gases. (Modes 1, 2, 4.)
6824-P	DOT-E 6824	GPS Industries, City of Industry, CA	49 CFR 173.217(a)	To become a party to Exemption 6824. (Modes 1, 2, 3.)
6890-X	DOT-E 6890	U.S. Department of Defense/MTMC, Washington, DC.	49 CFR 173.100(cc), 175.3	To authorize transport of an explosive severance system consisting of linear segments which may contain up to 79 grams of hexanitrostilbene (class C explosive). (Modes 1, 2, 3, 4.)
7013-X	DOT-E 7013	ASM Enterprises, Incorporated, Pine Bluff, AR	49 CFR 173.315(a)(1)	To authorize the use of a non-DOT specification cargo tank for a flammable compressed gas. (Mode 1.)

Renewal and Party to Exemptions—Continued

7041-X	DOT-E 7041	Ethyl Corporation, Baton Rouge, LA	49 CFR 173.134(a)(6)	To authorize shipment of pyrophoric waste materials in non-DOT specification cargo tank of the MC-331 type. (Mode 1.)
7046-X	DOT-E 7046	J. T. Baker Chemical Company, Phillipsburg, NJ	49 CFR 173.269, 178.340-5(c)	To authorize the use of glass lined cargo tanks complying with DOT Specification MC-312 except for Section 178.340-5. (Modes 1, 3.)
7052-P	DOT-E 7052	Allen-Bradley, Twinsburg, OH	49 CFR 172.101, 175.3	To become a party to Exemption 7052. (Mode 1, 2, 3, 4.)
7085-X	DOT-E 7085	California Seal Control Corporation, San Pedro, CA.	49 CFR 172.101, 173.100, 173.51(a)(7), 173.86.	To authorize packaging not presently authorized by the Hazardous Materials Regulations for class C explosives. (Modes 1, 2, 3.)
7096-X	DOT-E 7096	Fike Metal Products Corporation, Blue Springs, MO.	49 CFR 173.304(a)(1), 178.55	To authorize shipment of a nonflammable liquefied compressed gas (bromotrifluoromethane) in non-DOT specification cylinders. (Modes 1, 2, 3.)
7517-X	DOT-E 7517	Trinity Industries, Inc., Dallas, TX	49 CFR 173.314(c)	To authorize the manufacture, marking, and sale of non-DOT specification tank car tanks for use in the transportation of a nonflammable compressed gas. (Modes 1, 2, 3.)
7574-X	DOT-E 7574	Remmers-Tomkins Flight Service, Inc., Burlington, IA.	49 CFR 172.101, 172.204(c)(3), 173.27, 175.30(a)(1), 175.320(b), Part 107, Appendix B.	To authorize the transportation of certain explosives that are not permitted for air shipment or are in quantities greater than prescribed. (Mode 4.)
7753-P	DOT-E 7753	Hooker Chemical Company, Houston, TX	49 CFR 173.190(b)(2)	To become a party to Exemption 7753. (Modes 1, 2, 3.)
7798-X	DOT-E 7798	Ro-Go Chemical Co., Fresno, CA	49 CFR 173.248	To authorize the use of fiberboard box/polyethylene container packagings for the transportation of spent sulfuric acid. (Mode 1.)
7808-X	DOT-E 7808	Whitmire Research Laboratories, Inc., St. Louis, MO.	49 CFR 172.101, 173.34(d), 175.3	To authorize the shipment of insecticides in DOT 39 Specification cylinders without Bureau of Explosives approved safety device. (Modes 1, 2, 3, 4.)
7823-X	DOT-E 7823	Allied Chemical Corporation, Morristown, NJ	49 CFR 173.246	To authorize the transportation of iodine pentafluoride in cylinders conforming to DOT Specification 4BW with certain exceptions. (Modes 1, 2, 3.)
8012-P	DOT-E 8012	Catu Containers, S.A., Geneva, Switzerland	49 CFR 173.266	To become a party to Exemption 8012. (Modes 1, 2, 3.)
8012-P	DOT-E 8012	Lowaco, S.A., Geneva, Switzerland	49 CFR 173.266	To become a party to Exemption 8012. (Modes 1, 2, 3.)
8053-X	DOT-E 8053	Eastman Kodak Company, Rochester, NY	49 CFR 173.148(a), 175.3	To authorize shipment of monethylamine in inside glass bottles/metal can packagings overpacked in DOT Specification 12B fiberboard boxes. (Modes 1, 2, 4.)
8055-X	DOT-E 8055	Associated Lead, Inc., Philadelphia, PA	49 CFR 173.154	To authorize the shipment of a flammable solid in 50-pound capacity DOT Specification 44C multi-wall paper bags. (Modes 1, 2, 3.)
8063-X	DOT-E 8063	Union Carbide Corporation, Linde Division, Tarrytown, NY.	49 CFR 173.304(a)	To authorize the use of a DOT Specification 4L cylinder for the transportation of certain nonflammable gases. (Mode 1.)
8111-X	DOT-E 8111	U.S. Department of Energy, Washington, DC	49 CFR 173.304(a)	To authorize the use of non-DOT specification welded, stainless steel cylinder for the transportation of a nonflammable gas mixture. (Modes 1, 2, 3, 4, 5.)
8153-P	DOT-E 8153	Chemical Waste Management, Inc., Emelle, AL	49 CFR 173.119(a)(17), 173.245(a)(30), 173.245(a)(31), 178.342-5, 178-343-5.	To become a party to Exemption 8153. (Mode 1.)
8215-X	DOT-E 8215	Olin Corporation, Winchester-Western Division, East Alton, IL	49 CFR 173.101, 173.107, 173.60, 173.74, 173.78, 173.93.	To authorize the shipment of certain identified Class A, B, and C explosives in non-DOT specification containers. (Mode 1.)
8380-P	DOT-E 8380	Fomo Products, Inc., Akron, OH	49 CFR 173.1200(a)(8)(ii)(A), 173.1200(a)(8)(ii)(E).	To become a party to Exemption 8380. (Mode 1.)
8390-N	DOT-E 8390	Allied Chemical Company, Morristown, NJ	49 CFR 173.272, 178.210, 178.24a	To become a party to Exemption 8390. (Mode 1.)

New Exemptions

8431-N	DOT-E 8431	Dow Chemical Company, Midland, MI	49 CFR 173.294(a)(2), 179.202-16	To authorize shipment of monochloroacetic acid solution, classed as a corrosive material in DOT Specification 111A100W6 tank cars made of 316L stainless steel with bottom outlets and washout prohibited. (Mode 2.)
8439-N	DOT-E 8439	Hydraulic Research Textron, Pacoima, CA	49 CFR 173.302, 173.304, 175.3, 178.47.	To manufacture, mark, and sell non-DOT specification cylinder complying with DOT Specification 4DS, with certain exemptions, for shipment of various nonflammable compressed gases. (Modes 1, 2, 3, 4, 5.)
8458-N	DOT-E 8458	E. I. du Pont de Nemours & Co. Inc., Wilmington, DE.	49 CFR 173.31(c) Table 1	To authorize DOT Specification 111A100W2 tank cars (converted from 105A500W or 112A400W tank cars) for shipment of various corrosive and oxidizing materials to be retested every 10 years. (Mode 2.)
8468-N	DOT-E 8468	Hedwin Corporation, Baltimore, MD	49 CFR 173.119, 173.125, 173.272, 173.288, 173.346.	To authorize the manufacture, marking, and sale of DOT Specification 34, 5 and 6 gallon polyethylene containers for shipment of certain flammable, poison B, and corrosive liquids. (Modes 1, 2, 3.)
8490-N	DOT-E 8490	Houghton Chemical Corporation, Allston, MA	49 CFR 173.245(a)(31)	To authorize shipment of acetic acid (glacial) monoethanolamine and monethanolamine solutions classed as corrosive materials in a 4 compartmented bottom unloading MC-306 cargo tank constructed of type 304 stainless steel. (Mode 1.)
8492-N	DOT-E 8492	Bacharach Instruments Company, Santa Clara, CA.	49 CFR 173.304(a)(2), 175.3	To manufacture, mark and sell a non-DOT specification cylinder (calibration device) for shipment of liquefied hydrogen sulfide. (Modes 1, 2, 3, 4.)
8496-N	DOT-E 8496	American Cyanamid Company, Wayne, NJ	49 CFR 173.351	To authorize shipment of solutions containing less than 5% hydrocyanic acid, classed as poison B liquid, in packages prescribed in Section 173.332. (Modes 1, 2.)

New Exemptions—Continued

EE8512-N	DOT-E 8512	ICD Group, Incorporated, New York, NY	49 CFR 173.163	To authorize the shipment of potassium chlorate in polyethylene lined bags. (Mode 1.)
EE8527-N	DOT-E 8527	United Parcel Service, Greenwich, CT	49 CFR 172.504(c)	To authorize placarding of rail transport vehicles in the same manner as prescribed for highway transport vehicles for shipment of various hazardous materials. (Mode 2.)
EE8529-N	DOT-E 8529	Southern Air Transport, Inc., Miami, FL	49 CFR 172.101, 173.59(c)(c)(1), 175.30.	To authorize the transportation of bombs and grenades for shipment by cargo-only aircraft. (Mode 4.)
EE8530-N	DOT-E 8530	Global International Airways, Kansas City, MO	49 CFR 107.102 column Cb, 175.30	To authorize the transport of rocket ammunition with explosive projectile and/or smoke projectile for shipment by cargo-only aircraft. (Mode 4.)

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof
6530-X	Air Products and Chemicals, Inc., Allentown, PA.	49 CFR 173.302(c)	To authorize shipment of hydrogen and mixtures of hydrogen with helium, argon or nitrogen in certain cylinders filled to 110% of its marked service pressure. (Modes 1, 2)

Denials

8398-N—Request by W. R. Grace and Company, Lexington, MA to authorize the use of a valve, incorporated in the closure of a DOT Specification 17E drum, to relieve a vacuum generated within the drum denied November 13, 1980.

Issued in Washington, D.C., on December 16, 1980.

J. R. Grothe,

Chief, Exemptions Branch, Office of Hazardous Materials Regulation, Materials Transportation Bureau.

[FR Doc. 80-39775 Filed 12-24-80; 8:45 am]

BILLING CODE 4910-60-M

[Docket No. 79-7W; Notice 2]

Transportation of Natural and Other Gas by Pipeline; Grant of Waiver

The Champlin Petroleum Company petitioned the Materials Transportation Bureau (MTB) for a waiver from compliance with the cathodic protection requirements of Subpart I of 49 CFR Part 192. The requested waiver would apply to Champlin Petroleum Company's Wilmington Oil Field gas gathering lines within the city limits of Los Angeles and Long Beach, California.

The petition stated that the gas gathering lines for which the waiver was requested operate at a vacuum to remove the gas from the crude oil at the wellhead. Also, the gas gathering lines are continuously monitored for air content to permit early detection of any leak in the gas gathering pipelines, and all detected leaks are promptly repaired.

In response to this petition, MTB issued a notice of a petition for waiver inviting interested persons to comment (45 FR, 54930, August 18, 1980). In this notice, MTB stated that it was considering granting the requested waiver on the basis that the cathodic protection requirements of Subpart I of 49 CFR Part 192 are not necessary for public safety with regard to a gas gathering system operating under negative pressure.

One comment was received in response to the Notice. This comment supported the granting of the waiver because gas gathering lines operating at a negative pressure and continuously monitored for air would be quickly shut down in the event of a leak and would pose no hazard to the public. Furthermore, a gas pipeline operating at a negative pressure would, in case of a leak, ingest air into the system rather than allow gas to escape, and that a pipeline operating at a negative pressure cannot rupture from overpressure, posing a minimum hazard to the public.

In consideration of the foregoing, MTB, by this order, finds that compliance with Subpart I, 49 CFR Part 192, is unnecessary under the circumstances set forth in the petition and that the requested waiver would not be inconsistent with pipeline safety. Accordingly, effective immediately, Champlin Petroleum Company is granted a waiver from compliance with Subpart I, 49 CFR Part 192, for its gas gathering lines which are operated at a negative pressure in the Wilmington Oil Field within the city limits of Los Angeles and Long Beach, California, provided the methods of monitoring and maintenance, as further described in the petition, are followed.

(49 U.S.C. 1671; 49 CFR Part 1.53; Appendix A of Part 1 and Appendix A of Part 106)

Issued in Washington, D.C., on December 18, 1980.

Melvin A. Judah,

Acting Associate Director for Pipeline Safety Regulation, Materials Transportation Bureau.

[FR Doc. 80-40143 Filed 12-24-80; 8:45 am]

BILLING CODE 4910-60-M

[Docket No. 80-6W; Notice 2]

Transportation of Natural Gas and Other Gas by Pipeline; Grant of Waiver

The Columbia Gas Transmission Corporation petitioned the Materials Transportation Bureau (MTB) for a waiver from compliance with the applicable requirements of § 192.327(e) of the Federal gas pipeline safety standards (49 CFR Part 192) for their transmission line, MA, at its crossing of the Susquehanna River, two miles above the Conowingo Dam in Harford and Cecil counties, Maryland.

The petitioner is replacing five 10-inch pipelines crossing the Susquehanna

River with one 20-inch pipeline. The existing pipelines were laid on the river bottom without cover. The petitioner requested that a waiver be granted to permit the replacement line to be laid in the same manner as the existing line.

In response to this petition, MTB issued a notice of a petition for waiver, inviting interested persons to comment (45 FR 54930, August 18, 1980). In this notice, MTB stated that it was considering granting the requested waiver on the basis that the cover reuired by § 192.327(e) is in this instance not necessary for public safety.

Four comments were received in response to the invitation to comment. All four of the comments supported the granting of the waiver. The commenters stated that, under the conditions proposed by the petitioner, there would not be any reduction in public safety; also, a waiver would result in less impact on the environment, would have a significant impact in reducing the cost, and would be in keeping with the Presidential guidelines to reduce unnecessary costs to the public.

In consideration of the foregoing, MTB, by this order, finds that compliance with § 192.327(e) is unnecessary for the reasons set forth in Notice 1, and that the requested waiver would not be inconsistent with pipeline safety. Accordingly, effective immediately, Columbia Gas Transmission Corporation is granted a waiver from compliance with § 192.327(e) regarding the crossing of their transmission line, MA, of the Susquehanna River; provided the methods of installation and inspection, as further described in the petition, are followed.

(49 USC 1672; 49 CFR Parts 1.53, Appendix A of Part 1, and Appendix A of Part 106)

Issued in Washington, D.C., on December 19, 1980.

Melvin A. Judah,

Acting Associate Director for Pipeline Safety Regulation, Materials Transportation Bureau.

[FR Doc. 80-40141 Filed 12-24-80; 8:45 am]

BILLING CODE 4910-60-M

VETERANS ADMINISTRATION

Special Medical Advisory Group; Meeting

The Veterans Administration gives notice under 38 U.S.C. 4112, that a meeting of the Special Medical Advisory Group will be held in the Administrator's Conference Room at the Veterans Administration Central Office, 810 Vermont Avenue, NW, Washington, DC, on January 14 and 15, 1981. The purpose of the Special Medical Advisory Group is to advise the Administrator and the Chief Medical Director relative to the care and treatment of disabled veterans, and other matters pertinent to the Veterans Administration's Department of Medicine and Surgery.

The sessions will convene at 8:30 a.m. both ways. These sessions will be open to the public up to the seating capacity of the room. Because this capacity is limited, it will be necessary for those wishing to attend to contact Mrs. Barbara Pryor, Executive Secretary, Special Medical Advisory Group, Veterans Administration Central Office (phone (202) 389-2298) prior to January 2, 1981.

Dated: December 18, 1980.

By direction of the Administrator.

Rufus H. Wilson,

Deputy Administrator.

[FR Doc. 80-40308 Filed 12-24-80; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 45, No. 250
Monday, December 29, 1980

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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SECURITIES AND EXCHANGE COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 45 FR 81922, December 12, 1980.

STATUS: Closed meeting.

PLACE: Room 825, 500 North Capitol Street, Washington, D.C.

DATE PREVIOUSLY ANNOUNCED: Tuesday, December 9, 1980.

CHANGES IN THE MEETING: Additional item. The following item was considered at a closed meeting on Friday, December 19, 1980 at 10:30 a.m.:

Institution and settlement of an injunctive action.

Chairman Williams and Commissioners Evans and Friedman determined that Commission business required the above changes and 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: Nancy Wojtas at (202) 272-2178.

December 23, 1980.

[S-2355-80 Filed 12-23-80; 3:41 pm]

BILLING CODE 8010-01-M

federal register

Monday
December 29, 1980

Part II

Department of Transportation

Federal Aviation Administration

Airworthiness Review Program; Amdt. No. 8A: Aircraft, Engine, and Propeller Airworthiness and Procedural Amendments; Correction

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 11, 21 and 45

[Docket Nos. 14779 and 14324; Amdt. Nos. 11-20A; 21-51A; and 45-12A]

Airworthiness Review Program; Amdt. No. 8A: Aircraft, Engine, and Propeller Airworthiness, and Procedural Amendments; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: These amendments correct certain minor omissions and typographical errors noted in Airworthiness Review Program No. 8A, Amendment Nos. 11-20, 21-51, and 45-12. These amendments are necessary to express correctly the FAA's intended statement of the rules, and to publish the correct effective date for new § 21.50(b).

EFFECTIVE DATE: December 29, 1980.

FOR FURTHER INFORMATION CONTACT: Marvin J. Walker, Regulatory Review Branch, AVS-22, Safety Regulations Staff, Associate Administrator for Aviation Standards, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591, Telephone: (202) 755-8714.

SUPPLEMENTARY INFORMATION: On September 11, 1980, Amendment Nos. 11-20 (45 FR 60170), 21-51 (45 FR 60170), and 45-12 (45 FR 60183) were published in the Federal Register. A review of those amendments shows that there were minor typographical errors and omissions, and that immediate amendments are needed to correct the amendments. The reasons for each of the amendments are explained below:

1. *Section 11.49.* There were two omissions and one typographical error in this section. Section "11.49(b)(4)" should be "11.49(b)(3)", and the words "is delegated" should be inserted after the word "chapter" in § 11.49(b)(3) to be internally consistent with § 11.49(b). The period at the end of § 11.49(b)(2) is replaced by a semicolon and the word "and".

2. *Section 21.50.* In § 21.50(b) the date "October 14, 1981" was a typographical error. Consistent with Notice 75-31 (40 FR 29412) the date should have been October 14, 1980 (the effective date of amendment 21-51). In order to give the notice required by the Administrative Procedure Act, the date has been amended to "January 28, 1981." (30 days after effective date of this amendment.)

3. *Section 45.11.* In § 45.11(a) the reference to § 43.13 was a typographical error. The reference to § 43.13 should be § 45.13.

Since these amendments are clarifying and editorial in nature and implement changes required to carry out the intent of amendments to Parts 11, 21, and 45, and impose no additional burden on any person, I find that notice and public procedure are unnecessary and that good cause exists for making them effective in less than 30 days.

The Amendments

Accordingly, Parts 11, 21, and 45 of the Federal Aviation Regulations are amended, effective December 29, 1980, as follows:

PART 11—GENERAL RULE-MAKING PROCEDURES

§ 11.49 [Amended]

1. By deleting the period at the end of § 11.49(b)(2) and inserting "; and" in place thereof. By redesignating § 11.49(b)(4) as § 11.49(b)(3) and inserting the words "is delegated" after the word "chapter" in § 11.49(b)(3).

PART 21—CERTIFICATION PROCEDURES FOR PRODUCTS AND PARTS

§ 21.50 [Amended]

2. By deleting the date "October 14, 1981" in § 21.50(b) and inserting the date "January 28, 1981" in place thereof.

PART 45—IDENTIFICATION AND REGISTRATION MARKING

§ 45.11 [Amended]

3. By deleting the reference "§ 43.13" in § 45.11(a) and inserting "§ 45.13." in place thereof.

(Sec. 313(a), 601, 603, and 604, Federal Aviation Act of 1958 (49 U.S.C. 1354(a)), 1421, 1423, and 1424; sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)))

Note.—The FAA has determined that this document involves a regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Since this regulatory action involves amendments that are corrective and editorial in nature, and does not modify the substance of the regulation contemplated under the final rule, the anticipated impact is so minimal that it does not warrant preparation of a regulatory evaluation.

Issued in Washington, D.C., on December 19, 1980.

Langhorne Bond,

Administrator.

[FR Doc. 80-39161 Filed 12-24-80; 8:45 am]

BILLING CODE 4910-13-M

Federal Register

Monday
December 29, 1980

Part III

Department of Transportation

Federal Aviation Administration

Light Transport Airplane Airworthiness Review Program

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 23, 25, and 135

[Docket No. 18600; Notice 78-17E]

Light Transport Airplane Airworthiness Review Program

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice announcing termination of review.

SUMMARY: This notice announces termination of the Light Transport Airplane Airworthiness Review Program which was initiated to develop new airworthiness standards for multiengine airplanes having a maximum seating configuration, excluding any pilot seat, of 60 seats and a maximum takeoff weight of 50,000 pounds. Based on the information currently available to the FAA, the benefits expected to result from a new light transport airplane airworthiness regulation would not be realized. The technical information developed thus far during this effort can best be considered as a basis for improving Parts 23 and 25.

FOR FURTHER INFORMATION CONTACT: Everett W. Pittman, Regulatory Review Branch (AVS-22), Safety Regulations Staff, Associate Administrator for Aviation Standards, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; Telephone: (202) 755-8714.

SUPPLEMENTARY INFORMATION:

Background

Current airworthiness standards exist for two basic designations of airplanes: Part 23 for airplanes 12,500 pounds or under having nine or less passenger seats, and Part 25 for transport category airplanes. Commuter airline and air taxi operations in the United States have grown substantially in recent years, establishing a need for new airplanes in the 10- to 60-seat transport category.

Three Phase Program

Recognizing the need for improved standards for airplanes intended for these operations, the Administrator initiated a three-phase program. The first phase was the issuance of revised Part 135, "Air Taxi Operators and Commercial Operators," on September 26, 1978 (43 FR 46742; October 10, 1978). This action aligned the rules for these operations more closely with those of Part 121, "Certification and Operations: Domestic, Flag, and Supplemental Air Carriers and Commercial Operators of Large Aircraft." The second phase was the issuance of SFAR 41, "Airworthiness Standards: Reciprocating and Turbopropeller Powered Multiengine Airplanes," on September 7, 1979 (44 FR 53723; September 17, 1979). SFAR 41 prescribes requirements for an increase in approved takeoff weights for small airplanes. The third phase was the Light Transport Airplane Airworthiness Review. This Review contemplated the development of a new Part 24 of the Federal Aviation Regulations. The proposed part would provide a separate set of airworthiness standards for multiengine airplanes that would have a suggested maximum passenger seating configuration, excluding any pilot seat, of about 30 seats and a maximum gross weight of about 35,000 pounds. (These figures were later revised to 60 seats and 50,000 pounds.)

Generally, Part 24 was designed to tailor a set of regulations to this emerging class of airplane. Thus, it was the FAA's intent to craft a less complex set of design standards to provide a level of safety essentially equivalent to current design standards at a lower design and production cost. Everyone involved anticipated that the Part 24 regulations would help stimulate production of airplanes specifically aimed at providing the public the most suitable commuter airplane.

Notice of Review Program

On December 21, 1978, the FAA issued Notice 78-17 (43 FR 60846; December 28, 1978) announcing the Light Transport Airplane Airworthiness Review Program. The proposed Part 24 airworthiness standards were not necessarily meant to be made up of existing Part 23 or Part 25 rules. However, those rules plus appropriate portions of Appendix A to Part 135 were to serve as the foundation for the proposed Part 24 requirements, with appropriate modifications as suggested by interested persons. On January 30, 1979, the FAA issued Notice 78-17A (44 FR 7057; February 5, 1979) announcing the date for a Discussion Forum on the FAA proposals and presenting a Forum schedule. On March 12, 1979, the FAA issued Notice 78-17B (44 FR 16856; March 19, 1979) inviting interested persons to submit comments and proposals for consideration at a Review Conference to be held in September 1979.

Economic Analysis

The President's policy on improving government regulations, as provided in Executive Order 12044, requires agencies to consider alternative ways to deal with a problem and an analysis of the economic consequences of each alternative. Equally significant, the FAA was cognizant that unless specifically tailored regulations resulted in an economically feasible aircraft, the entire effort would be for naught. Thus, Notice 78-17B requested that each FAA proposal and each proposal submitted by interested persons be assessed by the public for its economic impact. This assessment was to include a comparison of the costs associated with Part 23 as modified by Appendix A to Part 135, and Part 25. The FAA requested that these costs be identified by such categories as design, testing, production, operating, etc. Where appropriate, the costs were to be further identified as initial (one-time), recurring, and revenue gain or loss.

Very little useful economic data was presented in response to this request and what was presented was of limited value because it only compared selected sections of Part 23 with Part 24 or Part 24 with Part 25. To assist the FAA in preparing a meaningful economic analysis on the data submitted, an analysis was conducted involving a knowledgeable panel from outside the agency. Major domestic and Canadian manufacturers of aircraft were contacted to obtain information on the cost impacts of proposed Part 24.

Again, the information available from industry was not sufficient to prepare cost estimates. Therefore, a panel knowledgeable in aircraft design and manufacture was assembled to provide engineering estimates of the likely cost impacts of proposed Part 24. The panel developed a general specification for a 30-seat airplane which could be certified to either Part 24 or Part 25. An estimate of the cost to certify the same base airplane to Part 23 as modified by Appendix A to Part 135 was also prepared to establish a cost for such an airplane if it could be so certificated.

Results to Date of the Part 24 Analysis

The Light Transport Airplane Airworthiness Review has benefitted from the participation of the most highly qualified technical expertise from the aviation industry, from foreign civil aviation authorities and from within the FAA. The resulting data represents the most indepth and productive review of the United States fixed-wing airworthiness standards ever accomplished.

The FAA has given considerable thought to all of the arguments advanced thus far regarding Part 24. Overall, the FAA has concluded that many of the same basic results that would have been achieved through a Part 24 can be realized at a lower cost to

the public by making some related changes to Part 25.

To illustrate the efficiency of amending Part 25 rather than to establish a new Part 24, let us focus on the fact that a baseline airplane specification was developed for comparison purposes which could be certificated to Part 23 plus Appendix A to Part 135, to Part 24, and to Part 25. It was a twin-engine turbopropeller airplane with 30 seats, a design cruise speed of 300 MPH, and a gross takeoff weight of 27,000 pounds. The baseline airplane certificated to Part 23 plus Appendix A to Part 135 was estimated to cost $2,500,000 for a production run of 200 airplanes. The same airplane certificated to Part 24 was estimated to cost $2,673,357, and to Part 25 was $2,810,740. Thus the cost differential in airplane unit cost for a production run of 200 airplanes for Part 23 versus Part 25 is only a little over 12 percent. Likewise, the cost saving for a Part 24 airplane compared to Part 25 is only 5 percent. In short, the economic benefits expected to result from a new light transport airplane airworthiness regulation apparently would not be realized. Consequently, the technical information developed during the course of the Part 24 study effort can best be considered as a basis for improving Parts 23 and 25.

A copy of the complete economic analysis and the latest technical draft of Part 24 used to estimate the cost of certificating an airplane under this proposed part are contained in Docket No. 18600 and can be reviewed in Room 916, 800 Independence Avenue, S.W., Washington, D.C. between 8:30 a.m. and 5:00 p.m.

Alternative Action

The content of the technical draft of Part 24 which existed at the time of this decision will be published and will be made available to interested persons upon request. Additionally, the FAA will propose separate rulemaking action which would revise Part 25, taking advantage of the technical knowledge gained in the Light Transport Airplane Airworthiness Review Program. For example, several of the landing gear design and test requirements in Part 25 could be relaxed for airplanes of less than 35,000 pounds with less complex gear designs. Likewise, the aisle width requirements in Part 25 which are appropriate to wide-body airplanes could be relaxed for the smaller airplanes of less than 30 passengers. Thus, proposed changes would provide varying requirements and methods of compliance based on size, complexity, and sophistication of the proposed airplane. These varying requirements and methods of compliance would not degrade the level of safety envisaged by Part 25, but would recognize other avenues of compliance for less complex, smaller transport category airplanes. A less complex small turbopropeller powered transport with dual wheel landing gear, for instance, could achieve the desired level of safety with different specific requirements than is necessary for a typical wide-body transport. Such an amendment to Part 25 could also more appropriately cover the more complex multiengine general aviation airplanes currently certificated under Part 23. This would permit the FAA to also consider revising the applicability requirements of Part 23, seeking more rational criteria for certification of less complex, smaller general aviation airplanes.

Termination

In accordance with the reasons discussed in this notice, the Light Transport Airplane Airworthiness Review Program is hereby terminated.

(Secs. 313(a), 601 and 603, Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421, and 1423), Sec. 6(c), Department of Transportation Act (49 U.S.C. 16555(c)))

Issued in Washington, D.C., on December 19, 1980.

Langhorne Bond,

Administrator.

[FR Doc. 80-40162 Filed 12-24-80; 8:45 am]

BILLING CODE 4910-13-M

federal register

Monday
December 29, 1980

Part IV

Department of Transportation

Federal Aviation Administration

Special Air Traffic Rules and Airport Traffic Patterns; Flushing, N.Y.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 93

[Docket No. 21215; Amdt No. 93-40]

Special Air Traffic Rules and Airport Traffic Patterns; Flushing (N.Y.) Interim, Special Airport Traffic Rules

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Interim rule; request for comments.

SUMMARY: This amendment prescribes interim, special air traffic rules for persons operating aircraft under Visual Flight Rules (VFR) to or from Flushing Airport, N.Y., in a designated airspace area immediately east of LaGuardia Airport and beneath the floor of the New York Terminal Control Area (TCA). The rule establishes requirements for communication and navigational equipment, prohibits student-pilot and training operations in the affected area, and provides improved separation between LaGuardia and Flushing Airport operations. This amendment is issued without prior notice and public procedure to immediately rectify an air traffic situation which presents an unacceptable risk of a mid-air collision between uncontrolled and controlled aircraft operating at LaGuardia and Flushing Airports. The objective of this amendment is to increase the level of control over VFR traffic in the Flushing area while accommodating the legitimate concerns of the airspace users, and to provide the highest degree of safety for passengers in public transportation.

EFFECTIVE DATE: January 8, 1981.

ADDRESSES: Send comments on the amendment in duplicate to: Rules Docket (AGC-204), Room 916, Office of the Chief Counsel, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591.

The official docket may be examined in the Rules Docket on weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION, CONTACT: Harold W. Becker, Acting Chief, Air Traffic Rules Branch, AAT-220 Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 426-3656; or Alfred J. Reale, Airspace Section Chief, Airspace and Procedures Branch, AEA-530, Federal Aviation Administration, Federal Building, John F. Kennedy Airport, Jamaica, N.Y. 11430; telephone (212) 995-3390.

SUPPLEMENTARY INFORMATION:

Request for Comments on the Amendment

Although this action is in the form of an amendment which involves flight procedures and requirements affecting immediate flight safety and, thus, was not preceded by notice and public procedure, comments are invited on the amendment. Interested persons are invited to submit such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address indicated above. All communications received on or before March 8, 1981, will be considered. When the comment period ends, the FAA will use the comments submitted, together with other available information, to review the amendment. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the amendment that suggest a need to modify the amendment. Commenters wishing the FAA to acknowledge receipt of their comments in response to this amendment shall submit with these comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 21215." The postcard will be date/time stamped and returned to the commenter.

Additional rulemaking action is being prepared which would include the Flushing Airport within the boundary of the New York TCA. The proposed change to the New York TCA will be published in the Federal Register as a notice of proposed rulemaking (NPRM). The final determination to include Flushing Airport within the TCA will be made after a thorough analysis of the comments to this amendment, comments to the NPRM, and the effectiveness of this special air traffic rule during the interim.

Background

Flushing Airport is a general aviation airport with one active runway. An FAA survey of operations at Flushing indicated an annual activity level of approximately 20,000 operations. All landings at Flushing are conducted under VFR, although there are a limited number of Instrument Flight Rules (IFR) departures coordinated through LaGuardia Departure Control.

Flushing Airport is currently the only general aviation airport in the five boroughs of New York City. The primary advantage to users of the airport is the ability to operate general aviation aircraft into a location which is nearly as close to mid-town Manhattan as is LaGuardia Airport. Additionally, since Flushing Airport is not included within the New York TCA airspace, general aviation pilots are able to operate to or from Flushing without entering the TCA.

The proximity of Flushing and LaGuardia Airports, and the various types of aircraft using the airspace combine to create an increased collision potential between controlled and uncontrolled aircraft. It has become apparent that there are increasing numbers of incursions of Flushing traffic into the TCA airspace near LaGuardia, necessitating the immediate implementation of this amendment.

Between January 1979 and December 1980, there have been 43 reported incursions into TCA airspace by aircraft operating to and from Flushing Airport. It should be noted that only the more serious penetrations are reported, and the FAA estimates that for every reported incursion, at least two others occur.

When LaGuardia-bound aircraft are landing on Runway 31, Flushing Airport usually is using Runway 36. In that configuration, when Flushing traffic is on its base leg, the aircraft are on converging courses with LaGuardia traffic at about the same altitude. The greatest number of incursions occurs when those runways are in use. In that situation, only 3500 feet separate aircraft on the base leg to Flushing and the extended centerline of LaGuardia Runway 31. A similar set of circumstances exists when Flushing departures are using Runway 18.

Alternate Approaches

The FAA considered four different options to alleviate the identified safety problem:

(1) Recommend to the City of New York the closing of Flushing Airport, or FAA prohibition of operations to and from the airport through rulemaking action. This option would have negated the benefits of the airport to the metropolitan area as well as Flushing Airport's potential for relieving LaGuardia of some general aviation traffic.

(2) Include Flushing Airport in the New York TCA airspace through direct rule action without a prior comment period. That action would have some immediate adverse impact on traffic at both LaGuardia and Flushing Airports. The amendment adopted here will not adversely affect LaGuardia traffic and the effect on Flushing traffic will be minimal. As discussed above, the FAA will publish an NPRM proposing such a rule to include Flushing in the TCA. After the close of the comment period on that notice and this action, the FAA will

determine whether to finalize this interim amendment or to expand the TCA to include Flushing Airport.

(3) Allow the present situation to continue until a final decision is made on whether or not to include Flushing Airport in the New York TCA.

The FAA determined that the present margin of safety in the airspace between controlled and uncontrolled aircraft operating at LaGuardia and Flushing Airports is unacceptable and warrants the immediate implementation of this amendment.

(4) Establish a control tower at Flushing Airport to provide takeoff and landing clearances, establish an orderly flow of traffic for arrivals and departures and provide a certain measure of traffic discipline in the airspace. The primary FAA concern with Flushing Airport, however, is its proximity to LaGuardia and the unauthorized penetrations of the New York TCA by uncontrolled aircraft executing arrivals and departures at Flushing Airport. In order to prevent incursions, tower controllers at Flushing would need a radar display to monitor aircraft positions relative to the TCA. The FAA has determined that the level of traffic at Flushing does not justify the expense of a radar-equipped tower when similar monitoring services can be provided by LaGuardia Tower under the amendment implemented by this action.

Explanation of the Amendment

The purpose of this amendment is to establish a new Subpart P in Part 93 to prescribe a special air traffic rule for Flushing Airport. Subpart P contains the designation of the affected airspace and prescribes the air traffic rules that apply in that airspace. The FAA's primary concern is the inadvertent penetrations of the New York TCA by traffic arriving and departing Flushing Airport and the collision potential between Flushing and LaGuardia air traffic. This situation can be alleviated by placing requirements on pilot qualifications and aircraft equipment, prohibiting certain operations, establishing mandatory communications requirements, and prescribing aircraft operations and traffic patterns. Those requirements are discussed as follows:

Pilot Qualification and Equipment Requirements

To provide the required level of safety between operations at Flushing and LaGuardia Airports, LaGuardia Tower must be able to communicate with, and identify on radar, all aircraft flying to and from Flushing. In addition, the aircraft must adhere to prescribed traffic patterns and altitudes which requires a certain level of pilot experience and skill. To satisfy these conditions, the rule, under § 93.183, requires that pilots flying to and from Flushing Airport, within the designated area, must have at least a private pilot certificate, and the aircraft must be equipped with two-way radio, an operable VOR receiver, and a Mode C transponder (with altitude reporting capability).

Prohibited Operations

The converging flight paths of certain arrival and departure configurations at Flushing and LaGuardia Airports requires that some restrictions be placed on the direction of traffic at Flushing. Also, uncontrolled training or proficiency flights in the affected airspace present the possibility of additional penetrations of the TCA because of the increased airspace and traffic pattern congestion. Thus, § 93.185 prohibits certain operations, including landing on Runway 36 or taking off on Runway 18 at Flushing when Runway 31 approaches or Runway 13 departures are being conducted at LaGuardia. It eliminates the most critical situation between the two airports where traffic converges with approximately 3500 feet between flight paths. The amendment further prohibits training and proficiency flights in the designated area, thereby eliminating the added potential for TCA penetrations resulting from such activity.

Communications and ATC Authorization

It is essential that Flushing Airport traffic establish communication with LaGuardia Tower prior to operating in the airspace designated in the amendment. Without this requirement, air traffic control (ATC) would not be able to provide an adequate margin of safety between operations at Flushing and LaGuardia. Furthermore, there is no control over the number of flights operating in the limited airspace excluded from the TCA for Flushing Airport. The arrival of several aircraft in the traffic pattern at the same time usually results in an expansion of the pattern as pilots manuever to maintain an adequate landing interval. Such expansion makes TCA penetration almost inevitable because of the proximity of the TCA boundaries to the Flushing pattern. The rule (§ 93.187) requires that all Flushing traffic establish and maintain communications with LaGuardia Tower so that ATC can monitor and regulate the flow of Flushing traffic and provide advisory service or separation from LaGuardia traffic, if necessary. To reduce airspace congestion, the section also requires aircraft inbound to Flushing to obtain authorization from LaGuardia Tower before entering the affected airspaces; Flushing departures must obtain authorization prior to takeoff.

Aircraft Operations

Transient pilots, in general, are not familiar with the landmarks that can be used to avoid the TCA; most of the reported TCA incursions were transient aircraft. The rule designates traffic flow for Flushing arrivals and departures, thereby providing all pilots with information necessary to avoid TCA airspace.

ATC Authorized Deviations

The FAA recognizes that certain deviations from the provisions of the rules should be authorized to prevent undue hardship on pilots and aircraft owners, and to avoid imposing unnecessary restrictions on Flushing operations. The rule, therefore, allows ATC, in accordance with § 91.191, to authorize deviations from the aircraft equipment requirements in the case of equipment failure while an aircraft is in flight or on the ground at Flushing. Also, ATC may authorize deviations from the prohibition on operations on Runways 36 and 18 prescribed under § 93.185. Those deviations, however, may be authorized only for individual flights when traffic conditions permit.

Effective Date

This amendment is effective on January 8, 1981. The FAA has determined that the immediate necessity for alleviating the potential hazard of a mid-air collision in the affected area makes a notice and public procedure impracticable in this instance. As discussed above, there have been 43 reported incursions into TCA airspace by aircraft operating to and from Flushing Airport from January 1979 to December 1980. FAA data indicates that 17 of those incursions occurred in the 8-month period between April 1980 and December 1980. Those incursions are continuing despite a vigorous enforcement policy which the FAA had hoped would alleviate the problem. Since January 1979, FAA enforcement elements have issued 16 warning notices, 7 $100 civil penalties, and suspended 13 pilots' licenses as a result of incursions into TCA airspace near LaGuardia. Enforcement actions are pending for each of the remaining reported incursions, unless the aircraft operator was not identified. FAA does not feel that more stringent enforcement action would alleviate the frequency of violations, since nearly all incursions are made by transient aircraft, whose

operators would probably not be aware of any intensive enforcement effort.

To illustrate the seriousness of the incursions, three of the reported incidents are summarized below:

(1) On September 26, 1980, LaGuardia Tower observed an aircraft, both visually and on radar, proceeding southeast from Flushing Airport into the TCA. The aircraft crossed the final approach course of Runway 31 at LaGuardia, reversed course, and recrossed the final approach course; finally landing on Runway 36 at Flushing. LaGuardia traffic was landing and departing on Runway 31, and at no time did the Flushing pilot establish communications with LaGuardia Tower.

(2) On October 27, 1980, LaGuardia Tower observed an aircraft crossing the Runway 22 final approach course to LaGuardia. The aircraft passed beneath a Boeing 727 that was on a two-mile final approach to LaGuardia. Separation between the two aircraft was estimated to be 500 feet vertical and one-half mile horizontal. The aircraft then turned onto the final approach course to Runway 18 at Flushing Airport and landed. The pilot never contacted LaGuardia Tower.

(3) On October 30, 1980, an aircraft was sighted visually from the LaGuardia Tower penetrating the TCA, two miles southeast of LaGuardia Airport. The aircraft crossed the LaGuardia Runway 31 final approach course and appeared to make a low approach to Flushing Airport. The aircraft then entered a right-hand traffic pattern for Runway 36 at Flushing, crossing the LaGuardia Runway 31 final approach course a second time. At no time did the Flushing pilot establish communication with LaGuardia.

Incidents similar to those described above are continuing, and create the necessity for the immediate implementation of this rule. This was highlighted by a report completed by the Eastern Region on November 26, 1980. Public comments will be considered in determining whether this interim rule, the expansion of the TCA, or some other measure will serve as the permanent solution. Thus, I find that prior notice and public procedure is impracticable. I further find that good cause exists for making this interim rule effective in less than 30 days after publication.

Adoption of the Amendment

Accordingly, Part 93 of the Federal Aviation Regulations (14 CFR Part 93) is amended, effective January 8, 1981, by adding a new Subpart P to read as follows:

Subpart P—Flushing (New York) Airport Traffic Rule

Sec.
93.181 Applicability; designated airspace.
93.183 Pilot qualifications and aircraft equipment requirements.
93.185 Prohibited operations.
93.187 Communications and ATC authorization.
93.189 Aircraft operations.
93.191 ATC authorized deviations.

Authority: Secs. 307 (a) and (c), 313(a), and 601(a), Federal Aviation Act of 1958, as amended (49 U.S.C. 1348 (a) and (c), 1354(a), and 1421(a)); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)).

Subpart P—Flushing (New York) Airport Traffic Rule

§ 93.181 Applicability; designated airspace.

This subpart prescribes special air traffic rules for persons operating under VFR to or from Flushing Airport and in that airspace from the surface up to, but not including, the floor of the New York TCA, within an area beginning at the north stanchion of the Throgs Neck Bridge; thence westerly to the Kennedy VORTAC 341°T radial 10-mile DME fix; thence southerly to the Kennedy VORTAC 340°T radial 9-mile DME fix; thence direct to the southern edge of Leavitts Park; thence direct to the south edge of Bowne Park; thence easterly to the intersection of the Clearview Expressway and the LaGuardia VOR 101°T radial; thence northerly along the Clearview Expressway to the point of origin.

§ 93.183 Pilot qualifications and aircraft equipment requirements.

Except as authorized under § 93.191, no person may operate an aircraft within the airspace designated under § 93.181 unless—

(a) The pilot holds at least a private pilot certificate; and

(b) The aircraft is equipped with—

(1) An operating two-way radio capable of communicating with ATC on the appropriate frequency;

(2) An operating VOR receiver; and

(3) The transponder equipment specified in § 91.24.

§ 93.185 Prohibited operations.

Except as provided under § 93.191, no person may—

(a) Conduct any flight training;

(b) Conduct touch and go landings, low approaches, or closed traffic pattern operations at Flushing Airport; or

(c) When Runway 31 approaches or Runway 13 departures are being conducted at LaGuardia Airport, land on Runway 36 or depart Runway 18 at Flushing Airport.

§ 93.187 Communications and ATC authorization.

No person may operate an aircraft within the airspace designated in § 93.181 unless—

(a) Two-way radio communication is established and maintained on the appropriate LaGuardia Tower frequency;

(b) *For departures*—Before taking off, ATC authorization has been received from LaGuardia Clearance Delivery by two-way radio communications, or from LaGuardia Tower by other means; and

(c) *For arrivals*—Before entering the designated area, ATC authorization has been received from LaGuardia Tower on the appropriate frequency.

§ 93.189 Aircraft operations.

Unless otherwise authorized by ATC, aircraft operators shall adhere to the following traffic flow—

(a) *For arrivals:* (1) *For Runway 18*—From over Fort Totten fly direct toward the Western Electric Building; cross Clearview Expressway below 1,200 feet mean sea level (MSL); turn downwind abeam the Whitestone Bridge at or below 800 feet MSL; turn left base leg south of the south tower of the bridge; and proceed over the Powell's Cove shoreline so as to avoid TCA airspace.

(2) *For Runway 36*—From over Fort Totten, fly direct toward the Western Electric Building; cross Clearview Expressway below 1,200 feet MSL; turn downwind abeam the Whitestone Bridge at or below 800 feet MSL; and execute right base leg turn to final approach, so as to avoid TCA airspace by not overshooting the Runway 36 extended centerline.

(b) *For Departures:* (1) *For Runway 18*—Execute a 90 degree left turn so as to avoid TCA airspace; proceed direct to Little Neck Bay south of Fort Totten; and cross Clearview Expressway below 1,200 feet MSL.

(2) *For Runway 36*—Execute a 90 degree right turn over the Powell's Cove shoreline; proceed direct to Little Neck Bay north of Fort Totten; and cross Clearview Expressway below 1,200 feet MSL, avoiding TCA airspace.

§ 93.191 ATC authorized deviations.

Notwithstanding the deviation authority under § 93.1(b), of this part, deviations from this subpart may not be authorized except from §§ 93.183(b) and 93.185(c), for individual flights when traffic conditions permit.

(Secs. 307 (a) and (c), 313(a), and 601(a), Federal Aviation Act of 1958, as amended (49 U.S.C. 1348 (a) and (c), 1354(a); and 1421(a)); and Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c))

Note.—The FAA has determined that this document involves an emergency regulation under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket, otherwise, an evaluation is not required. A copy of it, when filed, may be obtained by contacting the person identified above under the caption "FOR FURTHER INFORMATION CONTACT."

This rule is a final rule of the Administrator as defined by section 1005 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1485). As such, it is subject to review only by the courts of appeals of the United States or the United States Court of Appeals for the District of Columbia.

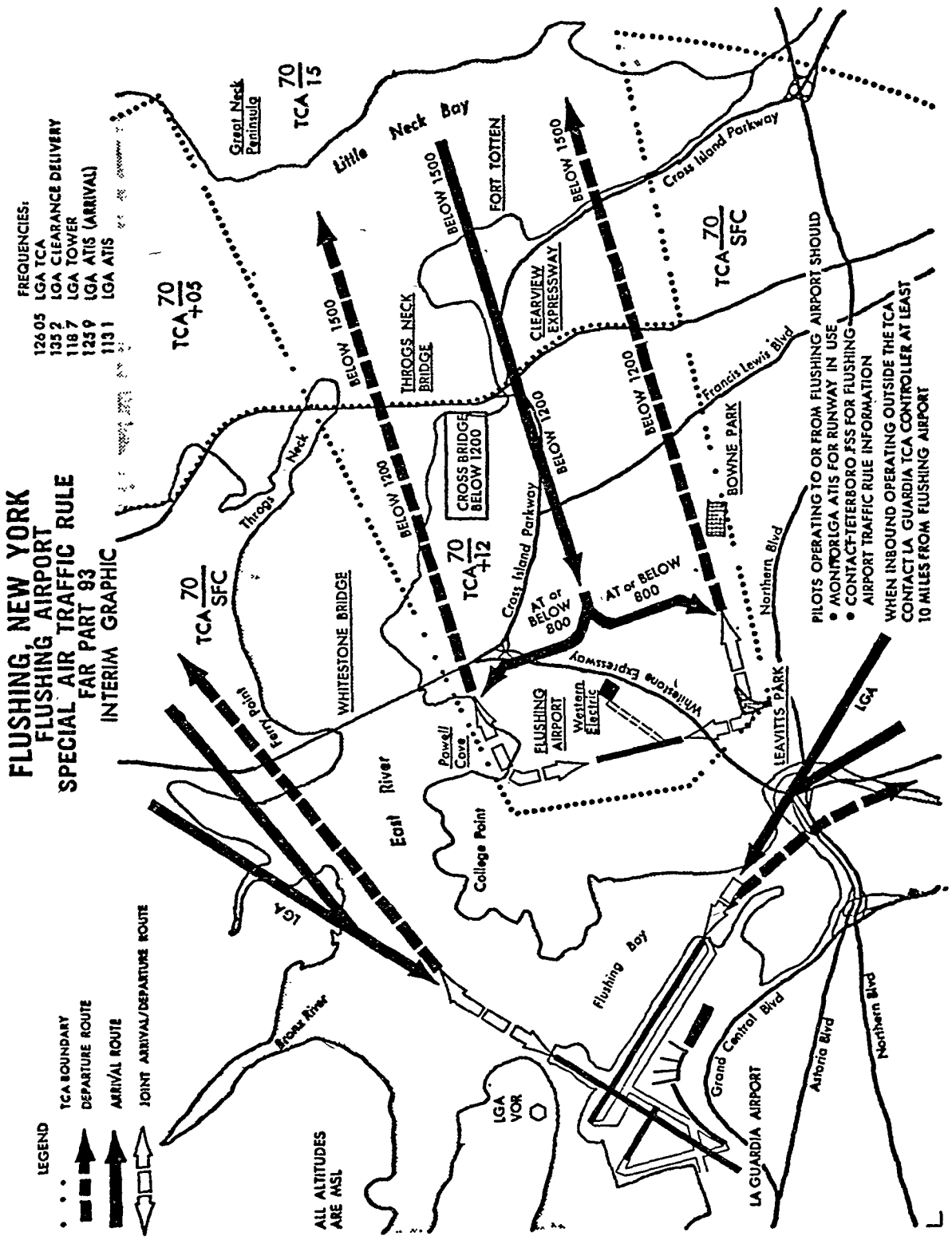
Issued in Washington, D.C. on December 19, 1980.

Langhorne Bond,

Administrator.

BILLING CODE 4910-13-M

(NOT TO BE USED FOR NAVIGATION)



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Federal Register

Monday
December 29, 1980

Part V

Department of Energy

Office of Conservation and Solar Energy

Grant Programs for Schools and Hospitals, and for Buildings Owned by Units of Local Government and Public Care Institutions

DEPARTMENT OF ENERGY

Office of Conservation and Solar Energy

10 CFR Part 455

[CAS-RM-78-503]

Grant Programs for Schools and Hospitals and for Buildings Owned by Units of Local Government and Public Care Institutions

AGENCY: Department of Energy.

ACTION: Notice of proposed rulemaking and public hearings.

SUMMARY: The Department of Energy proposes to issue revised regulations for administration of the grant programs providing financial assistance for schools, hospitals, buildings owned by units of local government, and public care institutions for the purpose of reducing energy consumption through technical assistance and energy conservation measure projects. In so doing, the Department proposes to amend 10 CFR 455 by making revisions to regulations published in the Federal Register on April 2, 1979 (44 FR 19340) and April 17, 1979 (44 FR 22940). Written comments are requested with respect to these proposed regulations, and public hearings will be held on the dates and in the locations specified below.

DATES: Written comments must be received no later than January 28, 1981. A national hearing will be held on January 16, 1981 in Washington, D.C. Regional hearings will be held on January 15, 1981 in Chicago, IL and on January 20, 1981 in San Francisco, CA. Requests to speak at the national hearing must be received no later than 4:30 p.m., e.s.t., January 6, 1981; requests to speak at the regional hearings must be received no later than January 7, 1981 at 4:30 p.m., local time. Grant program Cycle III dates will be announced in a separate notice in the Federal Register. A discussion of Cycle III dates is found in part II of this preamble.

ADDRESSES: Send all written comments and requests to speak at the national hearing to Ms. Carol Snipes, Attn: Docket CAS-RM-78-503, Hearings and Dockets, Conservation and Solar Energy, Department of Energy, Mail Stop 6B-025, Washington, D.C. 20585, (202) 252-9319. Requests to speak at the regional hearings should be submitted to Kenneth Johnson, Department of Energy, 175 West Jackson Blvd., Room A-333, Chicago, IL 60604, (312) 886-1587, or Terry Osborne, Department of Energy, 333 Market St., San Francisco, CA 94105, (415) 764-7027. The national hearing will be held at Room 2105, 2000 M Street NW, Washington, D.C.; the regional hearings will be held at the Georges Room, Ambassador West Hotel, 1300 North State Parkway, Chicago, IL, and at the Oregon/Nevada Room, Golden Gateway Holiday Inn, 1500, Van Ness Avenue, San Francisco, CA.

FOR FURTHER INFORMATION CONTACT:

Frank M. Stewart, or Richard W. Minning, Office of Institutional Conservation Programs, Office of Conservation and Solar Energy, Department of Energy, Mail Stop 2H027, 1000 Independence Ave. S.W., Washington, D.C. 20585, (202) 252-2198

Edward H. Pulliam, Office of General Counsel, Department of Energy, Mail Stop 6A-152, 1000 Independence Ave. S.W., Washington, D.C. 20585, (202) 252-9510

SUPPLEMENTARY INFORMATION:

I. Introduction
II. Discussion of Comments and Proposed Revisions
III. Comment Procedures

I. Introduction

Parts 1 and 2 of Title III of the National Energy Conservation Policy Act (NECPA), Pub. L. 95-619, 42 U.S.C. 6371 *et seq.*) established cost sharing energy conservation grant programs to fund technical assistance programs for public and private nonprofit schools, hospitals, buildings owned by units of local government and public care institutions, and energy conservation measure programs for schools and hospitals.

On April 2, 1979 and April 17, 1979, the Department of Energy (DOE) issued final regulations governing the conduct of preliminary energy audits and energy audits (PEA/EA) (44 FR 19340) and technical assistance and energy conservation measure programs (TA/ECM) (44 FR 22940). These regulations amended Chapter II of Title 10, Code of Federal Regulations, by adding Part 455, Subparts A through I. The first grant program cycle for TA/ECM grants ended on March 15, 1980. In order to improve the effectiveness of the TA/ECM program by building on experience gained in the first grant program cycle, DOE issued a Notice of Inquiry, published in the Federal Register on April 21, 1980 (45 FR 26717). This notice solicited public comment concerning possible revisions to the present TA/ECM regulations for use in future grant program cycles. A total of 42 responses were received and considered by DOE. DOE also sought and received input from major governmental, institutional and professional associations and from State energy office representatives.

The proposed rulemaking presents amendments to most subparts of 10 CFR 455. In its regulatory revisions, however, DOE focused on those subparts governing the TA/ECM grant program. Subpart B, which relates to the PEA/EA program, was not addressed, since funding for this phase of the program is not expected to be reauthorized in subsequent years. For those charged with administering the program or desiring to participate, § 455.10, Purpose and Scope, of Subpart B is presented in this proposed rule for purposes of reference only: § 450.43, Contents of an Energy Audit, from Subpart E of 10 CFR 450, is presented unchanged as a new section, § 455.18, for ease of reference and continuity.

Although a number of the amendments proposed here will provide opportunities to make the program more effective, it is possible that the implementation of these amendments for the third grant program cycle, ending September 30, 1981, might not provide sufficient time for States and eligible institutions to make the necessary program changes to take advantages of these new provisions or might delay the cycle three grant awards. Although it is presently DOE's intent to make these amendments effective for the third program cycle, the Department is particularly interested in receiving comments and suggestions on the timing of the implementation of these modifications to the present regulations, including the possibility that these modifications not become effective until the fourth grant program cycle.

The Catalog of Federal Domestic Assistance (CFDA) program number and title are 81.052, Energy Conservation Programs for Schools and Hospitals and Buildings Owned by Units of Local Government and Public Care Institutions. OMB Circular No. A-95, Part III procedures are applicable to the review of the State Plan. When the State energy office prepares its list of recommended TA and ECM applications, a copy of that list must be forwarded to the State clearinghouse. The State clearinghouse, as appropriate, should send this list to areawide clearinghouses, which may contact the ranked institutions for additional information on projects with a perceived local significance.

II. Discussion of Comments and Proposed Revisions

The following comments and revisions are by subpart of the regulations. Where no change in the regulations is proposed, it is so noted.

Subpart A—General Provisions

§ 455.1 Purposes and scope.

No change.

§ 455.2 Definitions.

Pertaining to energy conservation measures, one comment was received requesting energy consuming systems, such as parking lot lighting, be eligible for grants. While DOE recognizes the importance of conserving energy in these systems, NECPA specifically defines "building" as a "structure . . . which includes a heating or cooling system, or both." Such systems, since they are not structures, as defined in NECPA, are not eligible for grants under this program.

One comment was received concerning the inclusion of metering devices, which in and of themselves do not conserve energy but which do measure the amount of energy used, as an eligible energy conservation measure. Several other comments suggested this modification also. DOE interprets the definition of "energy conservation measure" to provide for such control and measurement devices provided they are an intergral part of an energy conservation measure being applied for, and has amended the regulation to make the interpretation specific. Two clarifying additions are proposed to the definition of "Energy conservation measures"; first, subsection (3) is amended to add the phrase "which would reduce energy consumption" after "Automatic energy control systems"; and second subsection (8) is amended to add the phrase "Addition of" before "Caulking and weather-stripping." Finally, it should be noted that the list of energy conservation measures is not intended to include all possible eligible measures that a technical assistance analyst should consider, but represents an outline of some major system areas.

One comment concerned whether or not school and hospital building ownership definitions precluded funding for projects in such institutions when there is a leasehold interest. In those instances where there exists a legally enforceable agreement that the title to a leased building transfers to the leasee at the end of the lease period, such a building may be eligible to participate. Ownership is, of course, limited to public or private non-profit institutions, as defined in § 455.2.

As a result of a number of comments; DOE had reviewed the definitions of "construction completion," "cooling degree days," "grant program cycle," and "heating degree days." DOE has added the phase "or the date the building is ready for occupancy, as determined by DOE" for added flexibility in the definition of "construction completion". The definitions for both cooling and heating degree days have been retained from the earlier rulemaking. However, DOE seeks comment as to whether the current definition reflects actual experience of institutions and States. DOEs definition of "grant program cycle" has been amended to underline that the cycle does not refer to the grantee's performance period.

As a result of comments, DOE has included proposed definitions of "coordinating agency," and "primarily occupied." Coordinating agencies (such as the State, a State school or hospital facilities agency, or regional or district organizations representing schools or hospitals) introduce economies of scale for applicants, and expedite the processing of applications. Such an arrangement must be with the mutual consent of the institution and coordinating agent. The definition of "primarily occupied" is based on consideration of either of two occupancy factors: percent of time, or percent of space used by the units of local government. Consideration of whether the building produces revenue for the unit of local government cannot be a criteria for determining eligibility of that building to participate in these grant programs. A comment was received concerning whether the definition of "energy conservation maintenance and operating procedure" encouraged the funding of projects that were the result of deferred maintenance. While no change to the definition has been made, DOE does not intend for grant funds to be used for meeting problems arising solely from deferred maintenance of systems facilities. Discretion in handling such projects will be at the State and DOE Regional level on a case-by-case basis.

Comment was received regarding a window or through-the-wall air conditioner as being a "heating or cooling system" as defined in § 455.2. DOE is not proposing to include such devices, as these devices are not a "mechanical system for distributing air throughout the building."

Definitions of "gross square feet" and "fuel" have been moved from 10 CFR 450.41 to accompany the move of 10 CFR 450.43 to a new § 455.18.

One comment requested a clearer statement from DOE on the funding of active solar projects. DOE encourages the consideration of such projects, particularly as they replace fuel systems using oil or gas, and is retaining the application ranking criteria which provides for additional weight to be given for those proposed measures which convert to solar and other renewable resource measures. Active solar measures are among those types of eligible measures listed under the definition of "energy conservation measures".

Finally, one comment asked that off-site computerized maintenance service administration systems be allowed as an eligible energy conservation measure. Facility operations and maintenance is a key part of an institution's energy management program, but such off-site administrative services are not properly "an installation or modification of an installation in a building . . ." that defines an energy conservation measure under NECPA, Section 391(2), and cannot be judged eligible.

§ 455.3 Administration of grants.

DOE has updated paragraph (a)(8), now paragraph (a)(4), concerning civil rights compliance to conform with DOE regulation, 10 CFR 1040, Nondiscrimination in Federally Assisted Programs, dated June 13, 1980 (45 FR 40514). The attention of institutions is directed to policies and procedures prescribed in 10 CFR 1040 including the requirement for a signed civil rights assurance. This is available at State energy offices. Institutions' attention is also directed to requirements and assurances governing Federal grants which are incorporated in the application form for these and other Federal grant programs. These forms are available from State energy offices.

Finally, the proposed rule has dropped some guidelines from the listing found in § 455.3 and added several that pertain to this program.

§ 455.4 Recordkeeping.

This section has been updated to include a reference to DOE Assistance Regulations.

§ 455.5 Suspension and termination.

No change is proposed.

Subpart B—Preliminary Energy Audit and Energy Audit Grant Procedures

DOE has made no revisions to the language of this subpart. § 455.10 is presented here to establish a context and for reference. Other sections of Subpart B are not reprinted here. However, the present § 450.43, Contents of an energy audit, has been proposed as an addition to this Subpart as a new § 455.18, and has been reprinted in its proposed new location. No changes have been made to its content.

Subpart C—Technical Assistance Programs for Schools, Hospitals, Units of Local Government and Public Care Institutions

§ 455.40 Purpose and scope.

No change is proposed.

§ 455.41 Eligibility.

To consolidate eligibility requirements in this section, paragraphs (d) and (e), § 455.60, concerning ineligibility of certain local government, public care and school buildings, have been incorporated into paragraph (a) of this section.

§ 455.42 Contents of program.

Several comments recommended that DOE prescribe the point of use conversion factor for electricity, 3,413 Btu per kilowatt hour, rather than point of generation, or 11,600 Btu per kilowatt hour.

DOE has only required the point of generation conversion factor for the preliminary energy audit and energy audits (for a discussion, see the April 2, 1979 Federal Register, p. 19342).

For determining Btu equivalents for fuels, States should designate uniform conversion factors for use of TA analysts. A new paragraph covering cost consideration factors has been added to provide guidance in determining some fuel costs.

Two comments addressed the issue of coal conversion energy conservation measures. Under the previous rulemaking, calculations to determine the payback of conversions to coal-using systems were limited to showing cost savings resulting only from reductions in energy consumption. This inadvertently discouraged such conversions by producing a higher payback than if total cost savings associated with the change in fuel were taken into account. The comments suggested that DOE provide for calculating the overall annual cost savings resulting from such conversions, rather than cost savings resulting from energy savings alone. DOE is proposing to amend paragraph (c)(5)(vii) to permit such calculations in determining payback for coal conversions. Program participants should note that this proposed change could result in the funding of more coal conversion projects, which tend to be of a larger scale and more costly than other measures, thus potentially reducing the number of funded projects within a State. Also an Environmental Impact Statement may have to be prepared for such conversions, adding somewhat to the project's timing. In addition, DOE is proposing exceptions to calculations of cost savings from energy savings for solar and other renewable resource measures, as well as leased equipment. This does not alter the ranking formula addressed in § 455.71. DOE requests comments on these proposed changes in payback calculations procedures.

One comment expressed concern regarding a State mandatory technical assistance reporting form. The commenter indicated that a set format throughout the State was too restrictive. DOE recognizes the need for analysts to have the flexibility to assess needs in unique facilities and to exercise their own analytical approach. States must also have some uniformity in order to facilitate their summarizing activities. To balance these concerns, DOE urges analysts to make known to their State energy office any aspects of the form that impedes effective analysis.

Another comment expressed concern that the technical assistance procedures were too flexible and asked that regulations require minimum survey, testing, and calculations procedures. Current and proposed regulations for technical assistance programs already provide the minimum content of a technical assistance analysis. It is left to the professional judgement of the technical analyst to select the procedures or methods best suited to the building which is being analyzed.

DOE is proposing several minor changes, which include striking the word "possible" from the first sentence of paragraph (a) and substituting the word "feasible"; striking the words "preliminary energy audit and" from paragraph (b)(1)(i), now paragraph (c)(i) as a preliminary energy audit is subsumed in an energy audit; a revision of (b)(6), now paragraph (c)(6), to call for actual or estimated energy use and cost data by month and fuel type for the preceding 12-month period as this more accurately reflects the manner in which such fuels are billed and records are kept, rather than the existing requirement for annual data; and adding a reference to technical analyst qualifications to paragraph (a).

One comment was received requesting that a 12-month inflation factor be allowed in technical assistance projections. The existing regulations do not exclude inflation costs from the technical assistance projections, and DOE proposes no change. DOE has also received inquiries regarding the treatment of demand charges in the analyst's calculations of costs and payback. The rule generally requires use of savings from energy savings only. To the extent that cost savings result merely from reductions in demand charges, they must be excluded from the payback for purposes of ranking the measure for this program. Several comments were received requesting that each State be required to specify in their State Plan an exception for large medical facilities beyond the cost per square foot guidelines for technical assistance. States presently have the latitude to make these exceptions and DOE believes each case should be judged on its own merit.

Subpart D—Energy Conservation Measures for Schools and Hospitals

§ 455.50 Purpose and scope.

No change is proposed.

§ 455.51 Eligibility.

This section is unchanged in substance from the regulatory language now in effect. A clarifying reference to § 455.90(j) has been added and the phrase "an energy audit and" was deleted, since these results are subsumed in the technical assistance analysis, § 455.51(4). However, DOE requires implementation of the operations and maintenance recommendations in the energy audit prior to participation in TA/ECM programs. Paragraph (e), § 455.60 concerning ineligibility of school buildings used principally for administration has been incorporated into paragraph (a)(i) of this section. In regard to eligible energy conservation measures, one comment requested that the current 1–15 year payback limitations be loosened to permit high cost energy conservation measures with a payback of less than one year. DOE does not propose a change to § 455.51(b) for the reason that such a project under one year payback could be completed by the institution within one budget cycle, and would pay for itself in energy savings within the equivalent of a grant program cycle. Such projects are clearly in the interest of the institution, and should not require Federal assistance.

One comment was received requesting that DOE establish limitations on the volume and dollar size of ECM projects. The intent of this program is to conserve energy, and any project which meets State ranking criteria and shows an energy savings should be funded. The States already have discretion in setting limits as addressed in their approved State Plan as to the equitable apportionment of funds among eligible applicants, and DOE does not intend to propose any further limitations.

§ 455.52 Contents of program.

The energy conservation measures previously listed in § 455.52, Contents of Program, have been deleted from this

section and incorporated with the list provided under the definition of "energy conservation measures" in § 455.2. Since the list in § 455.52 was essentially an elaboration on the definition, several examples previously listed have been deleted or modified in this procedure. Experience with the program to date suggests certain structural modifications are essential to specific installations. Such structural changes are not energy conserving measures and are therefore not treated in the proposed regulatory language; however, DOE does recognize that some structural work is a necessary part of installing a measure and should be an allowable cost to the extent the work must be done to accommodate the measure. For example, conversion to a coal-fired boiler may necessitate a structural modification to accommodate fuel storage and conveyor equipment. Any structural work not essential to a measure is not an allowable cost.

DOE is aware that unforeseen circumstances may require the reduction or elimination of one or more funded energy conservation measures in a building project. However, as pointed out in connection with § 455.80, it is DOE policy that no supplemental funds will be provided after the initial grant award, and changes of this nature will not be made to circumvent the requirement that cost overruns be borne by the institution. Institutions must obtain prior approval by DOE and provide revised budgets and resulting changes in costs, energy savings and cost savings in their request for a change in the scope of work.

Many comments were received requesting funds for energy conserving measures for units of local government. The National Energy Conservation Policy Act (NFCPA), Pub. L. 95-619, 42 U.S.C. § 6371 *et seq.*, does not authorize the Secretary to make such grants.

Subpart E—Applicant Responsibilities

§ 455.60 Grant application submittals.

Four comments expressly noted that the application forms were too complicated, confusing, and asked for too much detail. Others more generally noted that the process needed simplifying and there was an excessive amount of paperwork. DOE appreciates these concerns and will be reviewing the applications forms to simplify their content and information requirements where possible. The demographics necessary to identify the applicant and the information to evaluate the merits of the application have been retained. Wherever possible items have been deleted. The written statement of eligibility certification under § 455.60(b)(2) and (c)(2) has been deleted as this condition is satisfied under § 455.61(a). The results of the preliminary energy audit have been deleted from the technical assistance application (§ 455.60(b)(3), now § 455.60(b)(2)) as this information is subsumed in the energy audit results being submitted. Section 455.61(b), certifying that funds will be expended for purposes stated in the application, was deleted as it was redundant with the signed application. DOE would welcome any specific comments regarding other ways these requirements could be reduced without loss of information necessary to the program's effectiveness. When the changes to the rule are final, DOE will review and revise the forms associated with the program.

The application forms are disseminated from the State level and encompass the minimum requirements set forth in this part. DOE encourages program participants to work with their State energy offices to assure that forms requires only information germane to the effective operation of the program. One commenter asked that a single application be used for the energy audit, technical assistance, and energy conservation measures grants. Since the State is the grantee for energy audits and is not eligible (except as a coordinating agency) for energy conservation measures grants, this is not feasible.

Paragraphs (d) and (e) have been moved to § 455.41 and § 455.51.

References to "measure" in § 455.60 (c)(3) and (5) for budget, schedule, cost and payback purposes have been included to bring this section into line with the proposed State option to rank either measure by measure or building by building as addressed in § 455.71. References to OMB Circular A-110 have been added to the references to OMB Circular A-102 in § 455.60(b)(3) and (c)(3). A-102 refers to Uniform Administrative procedures for State and local government while A-110 refers to those for institutions of higher education, hospitals, and other non-profit institutions. This change does not impose any new conditions. In § 455.61, the deletion of (b)(2), expended funds certifications, causes a redesignation wherein (b)(3), (4), (5), (6) become (b)(2), (3), (4), and (5); and the deletion of § 455.60(c)(2) redesignates (c)(3), (4), (5), (6), (7), (8) and (9) as (c), (2), (3), (4), (5), (6), (7), and (8). In addition, paragraph (c)(8) has been modified to expand the examples of additional information an applicant might want to include in his application.

§ 455.61 Applicant certifications.

The eligibility certification requirement previously addressed in § 455.60 has been incorporated under § 455.61, Applicant Certifications, for continuity and brevity. This inclusion as § 455.61(a) causes the previous paragraph (a) to become (b). As the previous § 455.61(b) was deleted, the (c) designation is the same.

One comment suggested that allowing a technical assistance analyst to perform design work on an energy conservation measure recommended in the technical assistance report prepared by the analyst constitutes a conflict of interest. DOE believes that in many instances institutions may not have a sufficient local pool of qualified technical assistance analysts to draw from to avoid such a situation. While DOE does not propose to incorporate this concern into the proposed rulemaking, institutions should note that the requirements still stand for them to obtain a signed statement that the technical analyst is free from conflicting financial interest prior to beginning technical assistance or energy conservation measure work and that they need to comply with the appropriate OMB Circulars in using competitive procedures in obtaining the services of a technical analyst.

Paragraph (3) has been changed to clarify the situations when the Davis-Bacon Act applies.

§ 455.62 Grant applications for state administrative expenses.

No change is proposed. Current regulations provide that the State may apply for up to 2 percent of its total allocation and after forwarding its applications to DOE may apply for further administrative expenses not to exceed 5 percent of all grant awards, so that State administrative funds are related to the level of institutional participation in this program. DOE proposes to retain the current procedures, until such time as a coordinated State grant system is instituted by DOE. A proposed rule was published October 28 governing this system (45 FR 71498), to be effective in fiscal 1982.

Some comments requested that DOE provide for waivers of the 50 percent cost sharing requirement for State administrative grants. While NECPA allows DOE to determine the amount of funds allocated to a State for administrative purposes, it requires 50 percent cost sharing on all grants.

Waivers of the cost sharing requirement for State administrative grants are not authorized by NECPA, and therefore requests for such cannot be acted upon by DOE.

§ 455.63 Grantee records and reports.

Institutional grantee reporting requirements have been reduced in response to comments regarding the need to reduce paperwork. The proposed rule no longer asks for a semi-annual report on technical assistance grants. Since most of these grants are of such short duration, they are not apt to extend beyond one reporting period. The deletion of any reference to a semi-annual technical assistance report does not preclude the State or the Secretary asking for such a report if it is deemed that individual cases so warrant. The proposed language also provides that a final report for an energy conservation measures grant will satisfy the need to submit a semi-annual report should the reporting time frames coincide:

Section 455.63(b) has been amended to reduce the information requested in the final report. The proposed rule requires that the grantee final report contain the technical analysts report in its entirety and the grantee's plans to implement the analyst's recommendations. Language asking for milestones accomplished, status of in-progress activities, problems encountered and any remedial action for the technical assistance report has been deleted as the report will no longer be interim in nature.

Final reports for energy conservation measures grants addressed in § 455.63(c)(5) in the existing regulations are presented under (b)(2) in the proposed rule. A request for any plans the institution may have to install additional energy conservation measures has been added to (b)(2)(ii). The requirement for follow-up annual reports for three years following energy conservation measures installation, § 455.63(e), has been redesignated (b)(2)(iii). The content of these reports remains unchanged.

Section 455.63(b)(3) addresses the State reporting requirement treated in the existing regulations under § 455.73(b). Paragraph (3)(i) speaks to the element of State administrative milestones. Paragraph (b)(3)(ii) provides for the summary action of the institutional grantee semi-annual reports and most recent final reports. Paragraph (b)(3)(iii) describes the annual report regarding estimated energy use reductions attributable to the program.

Subpart F—State Responsibilities

§ 455.70 State evaluation of grant applications.

As a result of comments requesting constrained health and education facilities review, DOE is proposing that the health and education facilities agencies perform an abbreviated review of applications limited to those selected areas of importance, and has inserted the word "abbreviated" in the first sentence of § 455.70(b).

Several informal comments prompted DOE to determine if a technical assistance application required review by the State educational facilities agency. NECPA requires under section 395(c)(1) (42 U.S.C. § 6371d(c)(1)) that such applications are subject to this review. Several comments were related to waiving the requirement for hospitals to obtain a certificate of need as required by the Public Health Service Act as a condition for participating in this program. DOE requests comments as to whether this requirement for hospitals presents an unnecessary burden unrelated to the purposes of this program.

§ 455.71 State ranking of grant applications.

Several comments were received requesting that the ranking of grant applications be on a measure by measure basis. DOE recognizes that adoption of this request may provide a broader distribution of projects among potential applicants, and that dollars expended could produce more energy savings. Conversely, longer payback projects such as solar and renewable resource measures would not be likely to receive funding under a measure by measure approach. DOE hopes that States will work with Regional Solar Energy Centers to assure full consideration of solar and renewable resource measures by technical analysts. DOE proposes to allow States the flexibility of ranking applications on either a measure by measure or a building by building basis as reflected in the change to paragraph (b). Such ranking must be consistent within the State, as set forth in an approved State Plan. DOE solicits comments on this approach to ranking.

Several comments were received requesting State option in the energy conservation measure ranking criteria for setting priorities among fuels in type and quantity of energy saved. As DOE recognizes varying fuel priorities among States, DOE proposes to modify the ranking criteria set forth in § 455.71(b)(3) to allow State discretion in determining fuel priorities among oil, natural gas and electricity. A few comments suggested that climate be deleted as an energy conservation measure ranking factor. Since payback calculations would encompass climate considerations, DOE proposes the deletion of climate as a mandatory ranking factor.

Several comments were received suggesting that hardship applications be funded in their entirety from the 10 percent hardship allocation. Several comments suggested using hardship funds only for that portion requested in excess of 50 percent, with the remaining Federal funds being drawn from the 50 percent matching fund allocation. DOE recognizes that the States already have discretion in determining hardship under their ranking criteria for hardship applications as set forth in their approved State Plan. DOE proposes that States be given the option under new § 455.71(e)(1) of whether hardship applications will be funded wholly or partially out of the hardship allocation.

Several comments were received requesting that the 30 percent minimum allocation to either schools or hospitals be removed. NECPA requires States to allocate not less than 30 percent of the funds for schools and hospitals, so that both would be assured of a minimum availability of funds. However, in the event that either schools or hospitals within a State fail to apply for all their reserved funds, the excess funds could be utilized to fund additional, eligible energy conservation projects, thus utilizing those funds within the same grant program cycle for the purpose intended by NECPA, energy conservation. Similarly, excess hardship funds not applied for could also be utilized within the same grant program cycle for additional eligible energy conservation projects even through they might not qualify as hardship applicants. To permit the fullest utilization of funds, DOE proposes to add paragraph (f) to provide that, if after the State's deadline for submitting applications there are insufficient eligible applications in the reserved categories to enable DOE to expend funds allocated to a given State, the State may recommend the remaining matching or hardship funds for other eligible applicants who have properly submitted applications. This provision, however, does not permit the shifting of funds between the allocation for schools and hospitals and the allocation for local government and public care institutions.

Several comments recommended that DOE continue to use simple payback as the economic analysis ranking factor. One comment suggested that using simple payback as a ranking factor

discourages institutions having already completed measures at their own initiative. Finally, one comment expressed the view that payback should receive a lower weight in the ranking scale. DOE has considered adopting a life-cycle costing methodology to detemine the payback of energy conservation measures for ranking purposes. A life-cycle costing methodology considers the time value of money, fuel price escalations and future operating and other costs over the life of the building or measure. DOE requests comment as to whether it should retain simple payback as the ranking factor, or to adopt a life-cycle costing methodology.

Finally, engineering analyses for renewable resource installations tend to be substantially more expensive than those for conservation measures due to a need for more senior engineers, more substantial research, and more extensive analysis. In recognition of the difficulty in performing these analyses, DOE through the Regional Solar Energy Centers and the Solar Energy Research Institute, will provide technical expertise upon request from applicants and potential applicants, architects and engineers, States, and DOE Regional offices. In the event that DOE technical resources become constrained, DOE is proposing to provide assistance according to the following priority: (1) States for review of applications; (2) DOE regional offices for grant selection; (3) ECM applicants previously funded under the TA portion of the program; and (4) all others.

§ 455.72 Forwarding of applications.

DOE is proposing to amend § 455.72(a) in order to specify that the States must forward all recommended applications along with a listing of buildings or measures covered by eligible applications for schools, and hospitals or for units of local government and public care institutions. For further clarification, DOE has added a statement that the list forwarded to DOE must contain the standings of buildings or measures if ranking has been employed.

This program is designed such that applicant data is assembled on a building by building basis. However, this proposed revision allows the States to rank measure by measure. Further, the program structure has always allowed institutions to apply for funding for more than one building under one grant application. This additional language simply requires the State to insure that projects are consolidated (i.e., if the State uses measure by measure ranking) into the buildings to which they pertain prior to submission to DOE.

Further, in order to minimize the number of applications for review, buildings should be presented under a single grant application for each institution or coordinating agency to the extent possible.

§ 455.73 State liaison, monitoring and reporting.

This section was formerly entitled "State Duties." Two comments were received expressing concern over the lack of effective publicity and program information. DOE recognizes that the success of this program relies heavily on institutions being aware of policy and procedures governing this program. DOE encourages the States to utilize all means possible in their outreach activities to disseminate timely program information, and will work with the States in improving DOE Regional State communications. A requirement of a State Plan is for States to consult with, and disseminate information to, eligible institutions on program activities and requirements. DOE has amended § 455.73(a)(3), now § 455.73(c), by inserting the word "specific" before "reasons" to highlight the importance of the States informing those applicants whose applications were not recommended exactly why the application was not funded.

DOE proposes to amend § 455.73 by addressing State reporting requirements in conjunction with other reporting requirements in § 455.63(b)(3). Since reporting is a State duty, it is cited as such in the new § 455.73(f) and crossreferenced to the reporting section.

Two comments spoke to the levels of responsibility assigned to the States. One comment urged less control and one urged more control at the State level. The Conference Report accompanying NECPA envisions the States as a partner with DOE in program oversight and implementation, and this proposed rulemaking attempts to balance the roles of States and DOE to provide flexibility where its useful.

Subpart G—Grant Awards

§ 455.80 Approval of grant applications.

No comments were received relevant to the actual awarding of grants. DOE's experiences with the program prompts some proposed modifications in this part for purposes of clarification. One substantive addition is a new part which allows pregnant costs from application submission date.

Section 455.80(a) remains unchanged. The last sentence of § 455.80(b) becomes (c) with the added phrase "and will be considered to the extent funds are available." One comment called attention to the fact that under existing regulations a resubmitted grant could force a reordering of previously recommended and approved applications. This procedure would not only place an undue burden on the States, but it would give the applicant resubmitting the opportunity to benefit from knowing where lines had been drawn on earlier rankings. The added phrase is to clarify DOE's intent that an application resubmitted after State deadlines need not be considered in competition with applications already recommended, but only to the extent funds are available within that cycle. In order to further clarify the procedure, two other sentences were added, stating, "However, nothing in this provision shall obligate either the State or Secretary to take final action regarding a resubmitted application within a grant program cycle. An application not acted upon may be resubmitted in a subsequent program cycle."

Program history suggests the need to clarify existing regulatory intent regarding subsequent awards to the same building. The existing language, "Financial assistance under this part for any single technical assistance program or energy conservation measure shall not exceed the amount of the initial grant award," has been, in part, misconstrued so as to prevent additional awards to the same building or to new and exclusively different work to the same aspect of the facility. This was not DOE's intent. To clarify this issue, the former (c) is expanded and becomes (d) and (e). The new paragraph (d) clarifies that DOE shall not provide supplemental funds for a grant and that only one technical assistance grant per building will be funded. Paragraph (e) similarly provides that DOE shall not provide supplemental funds for a grant for energy conservation measures nor shall it permit more than one grant per building per cycle.

DOE is concerned that the elapsed time from submission of an application to actual awarding of grant may be a waiting time that works as a disincentive. In addition, the potential grantees' construction costs might change during this period. To help allay these difficulties, paragraph (f) has been added which provides that DOE may fund pregnant costs incurred after application submission. DOE stresses that this provision does not assure that the applicant will receive a grant and the applicant bears the responsibility for

the entire project cost unless the application is approved by DOE.

§ 455.81 Grant awards for units of local government and public care institutions.

Section 455.81, paragraph (c) has been inserted to clarify that, pursuant to NECPA, local government and public care institutions are not eligible for financial assistance for severe hardship. The former (c) has been redesignated (d).

§445.82 Grant awards for schools and hospitals.

The set percentages for technical assistance funds within State allocations which were set in the law have been deleted from § 455.82(a) since the referenced period has nearly elapsed. DOE has instead substituted a provision that notification of the technical assistance portion of the State allocations will accompany the Federal Register Notice of these allocations. In § 455.82(c) the words "up to" have been inserted before the phrase "The Secretary may award * * *" in order to allow available funds within a State to be used for other eligible applications should insufficient eligible applications be submitted to utilize the 10 percent set aside.

Paragraph (d) has been deleted to bring this section into line with the proposed revisions in § 455.71. Paragraphs (e) and (f) have been redesignated (d) and (e). The new (e) has been modified to clarify the conditions under which former work may serve as non-Federal share credit. It stipulates that only work in the grant building which otherwise be an eligible measure and satisfy the required element of the programs can be used for non-Federal share credit. Further clarification is provided by stating credit shall not exceed and amount to the non-Federal share of the proposed energy conservation measure.

One comment was received requesting energy conservation measure credit up to 12–18 months before application. Congressional intent was that any form of credit should date back to the time the President signed NECPA (November 8, 1978). Therefore, the requested time frame would be met in any future cycles.

§ 455.83 Grant awards for state administrative expenses.

The content remains unchanged from the current rule.

Subpart H—State Plan Development and Approval

§ 455.90 Contents of state plan.

DOE's intent is that States adhere to the same procedures set forth in § 455.90 (a) and (b) for involving eligible institutions in the development of State Plan amendments and for notifying institutions of any major changes to their State Plan. Section 455.90(e) was amended to conform to § 455.71(b)(3) giving States the option for determining the order of priority given to oil, natural gas and electricity.

Several comments were received inquiring as to what constitutes a written justification for not implementing maintenance and operating procedures. DOE proposes to amend § 455.90(j) to establish criteria for determining satisfactory justification for not implementing maintenance and operating procedures. DOE proposes to delete § 455.90(m) in its entirety because it was dealt with in a substantive fashion in other sections.

Several comments were received requesting that, under § 455.90(o), now § 455.90(n), the words "financial auditing" be deleted. Under OMB Circulars A–102 and A–110, grantee financial management systems are supposed to provide for "examinations in the form of audits or internal audits" not less than once every two years. These audits are meant to ascertain the effectiveness of the financial management systems and internal procedures established to meet the terms and conditions of the grant and should be conducted on an organization-wide, rather than grant-specific, basis. While DOE proposes the deletion of financial auditing of institutional grantees as a State task, States should, as part of their program monitoring responsibility, see that institutional grantees have met or will meet the audit requirements prescribed by OMB. States are expected to review reports submitted by grantees, which include financial status reports, and refer any significant inadequacies found to DOE. Several comments were received questioning whether the cost of a financial audit was an allowable cost. The cost of a financial audit is an allowable cost for all grantees.

DOE is proposing to add § 455.90(p) which addresses data gathering requirements under the law which were not explicitly addressed in the previous rulemaking.

§ 455.91 Submission and approval of state plans.

DOE is proposing to change the submittal time frame for State Plans from 120 days to 90 days. DOE proposes a new paragraph (d) to provide for submission and approval procedures for State Plan amendments, and for resubmission of State Plans and amendments without such a formal consent procedure on the part of the Secretary.

§ 455.92 State plans developed by the Secretary.

No change is proposed.

Subpart I—Allocation of Appropriations Among the States

§ 455.100 Allocation of funds.

Paragraph (b) has been amended to address amounts allocated for grants within a State for technical assistance and energy conservation measure grants for schools and hospitals under the new (i) and for technical assistance grants for units of local government and public care institutions under the new (ii).

Paragraph (d) has been amended to reflect the proposed § 455.71(f) providing flexibility in the use of hardship funds for schools and hospitals when there are insufficient applications for hardship assistance. Specifically, the words "shall apportion" in the first sentence have been replaced with "make available up to," and the phrase "in excess of the 50 percent Federal share but" has been deleted so as not to confuse the proposed State option for the treatment of hardship funds as referenced in proposed § 455.71(e)(1). The words "Federal share" have been added after "90 percent" in the same sentence for clarity. In the second sentence of paragraph (d), the cross-reference to § 455.71(d) has been updated to § 455.71(e).

§ 455.101 Allocation formulas.

No change is proposed.

§ 455.102 Reallocation of funds.

DOE proposes to combine paragraphs (c) and (d) of the existing rulemaking under a new paragraph (c) that speaks to DOE's reallocation all of funds remaining at the end of any grant program cycle among all States in the next grant program cycle.

Miscellaneous

Most of DOE's proposed revisions are designed to allow more State discretion in the preparation and amendment of their State Plans so that they might be more responsive to the concerns and interests of their respective participants. The option of prioritizing fuels to be saved, or the alternative ranking measure by measure or building by building are two examples. It remains the State's responsibility to inform

eligible institutions of the options it has selected, even if the State chooses not to vary its present procedures.

Other proposed revisions are matters of clarification, some of which have been previously discussed with States and presented in program directives. Such items as the definition of a coordinating agency or what constitutes a satisfactory written justification for not implementing operations and maintenance procedures will probably not involve any changes in State Plans as they reaffirm earlier understandings. Other items, while deemed a clarification by DOE, such as factors to determine costs, are apt to interject new conditions in most States' plans. To the extent that matters of clarification constitute a change in the State's interpretation, these proposed revisions mandate changes.

There are several proposed modifications to the regulations that will clearly require a change in State Plans and/or will impact on program operation. The reduction in the number of grantee reports as well as fewer pieces of information requested in the technical assistance and energy conservation measures final reports will effect change in the operations but should not require attention prior to opening the next program cycle.

Changes that would require immediate modifications to Plans and/or to operations are:

1. Option to rank by measure
2. Coal conversion projects' payback determination
3. Removal of financial auditing as a State duty
4. Deletion of preliminary energy audit information from technical assistance application as well as a separate certification that funds will be expended for purposes stated in the application. Changes in the manner in which eligibility is certified could constitute a modification in some States.
5. The time frame for submitting State Plans or amendments has been reduced from 120 to 90 days

It is DOE's intention to work with the respective States to be sure the implications of any changes in the final rule are thoroughly understood and implemented as expeditiously as possible.

A number of comments recommended that DOE seek to disallow indirect costs as eligible grant costs for these programs. Indirect costs are those costs incurred for a common or joint purpose that benefit more than one cost objective, and are not readily assignable to the cost objective specifically benefited. The applicable cost principles govern indirect costs, and allowability of indirect costs is not addressed in the proposed rulemaking.

One comment each was received on the following areas: the program should receive greater funding; the funds should be made available until expended; energy audits should be eliminated; institutional sector categories should be eliminated for purposes of this program, and the program should be extended over the next few fiscal years. All of the above areas are outside of DOE's authority, and properly fall under the purview of Congress (insofar as program funding and expiration are concerned) or are specifically required by NECA (insofar as the elimination of energy audits and institutional sector categories eligible for funding are concerned).

One comment requested that DOE consider retroactive funding, or reimbursement of projects already completed. The intent of Congress, as expressed in the conference report on NECPA, clearly prohibits funding for projects commenced prior to November 8, 1978. The applicant under current regulations may claim projects initiated since that date with non-federal funds as credit in determining their non-Federal share for additional technical assistance or energy conservation measure projects within the same building.

Seven comments addressed the timing of grant program cycles. Three of the comments wanted longer cycles, two comments asked for advance notice of potential funding times and dates, one comment asked for two cycles per year so that TA and ECM grants for a given project could be funded within one year, and one comment requested the cycles be timed to match the school year. A number of comments favored a 12-month cycle.

DOE proposes a 12-month grant program cycle, and requests comment on whether the annual cycle should be a fiscal, calendar, or construction year cycle. Finally, while the beginning and ending dates of the grant program cycle will be set uniformly by DOE, it is proposed that individual States, in conjunction with their DOE Regional Offices, have the latitude for negotiating and determining intermediate submittal dates of reviewed and ranked applications from the States to their DOE Regional Offices.

One comment was received requesting a simple change order process be addressed in the proposed rulemaking. The degree of change affected by such an order requires a judgmental decision as to whether it significantly affects the original intent of the application and subsequent assurance of compliance on a case specific basis. DOE believes this is an administrative matter and should not be prescribed by rule.

One comment was received from the Government of American Samoa noting the relevance of Public Law 96-205 Title VI Section 601 (48 USC 1469a) to the match requirements. Since this is a concern of limited purview, it will be dealt with outside the regulations.

III. Comment Procedures

Interested persons are invited to submit written comments with respect to the proposed regulation to Docket Number CAS-RM-78-503, Office of Hearings and Dockets, Conservation and Solar Energy, Department of Energy, Mail Stop 6B-025, Washington, D.C. 20585. All comments received will be available for public inspection in the DOE Reading Room, Room 1E-190, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585 between the hours of 8 a.m. and 4:30 p.m., Monday through Friday. All comments and related information must be received on or before January 28, 1981, to ensure consideration.

All information or data considered by the person furnishing it to be confidential must be so identified and submitted in writing, or it will not be treated as confidential. DOE reserves the right to determine the confidential status of the information or data and to treat it according to its determination.

Public hearings will be held in two DOE Regions, in addition to the national hearing in Washington, D.C., to receive oral presentations from interested persons.

A. *Public Hearings.* The national hearing will be held at 9:00 a.m. e.s.t., on January 16, 1981, Room 2105, 2000 M Street NW., Washington, D.C. Regional hearing dates and locations are found below. Any person who has an interest in the proposed regulation or who is a representative of a group or class of persons which has an interest in it may make a written request for an opportunity to make an oral presentation. The person making the request should describe his or her interest in the proceeding and provide a concise summary of the proposed oral presentation and a phone number where he or she may be reached. Each person who, in DOE's judgment, proposes to present relevant material and information shall be selected to be heard and shall be notified by DOE of their participation before 4:30 p.m., local time, January 8, 1981, for the national

hearing, and January 9, 1981 for the regional hearings, and shall bring 15 copies of their proposed statement to the hearing. Requests to make an oral presentation must be submitted to the parties listed below:

Hearing dates	Submit requests to testify to—	Hearing location
Jan. 16	Carol Snipes, Dept. of Energy, Mail Stop 6B-025, Washington, D.C. 20585.	Rm. 2105, 2000 M St. N.W., Washington, D.C.
Jan. 15	Ken Johnson, Dept. of Energy, 175 W. Jackson Blvd., Chicago, Illinois 60604.	Ambassador West Hotel, George's Room, 1300 N. State Pky., Chicago, Illinois.
Jan. 20	Terry Osborn, Dept. of Energy, 333 Market Street, San Francisco, CA 94105.	Golden Gateway Holiday Inn, Oregon/Nevada Room, 1500 Van Ness Ave., San Francisco, CA.

B. *Conduct of Hearings.* DOE reserves the right to arrange the schedule of presentations to be heard, and to establish the procedures governing the conduct of the hearing. The length of presentations may be limited, based on the number of persons requesting to be heard. A DOE official will be designated as presiding officer of the hearing, and questions may be asked only by those conducting the hearing. There will be no cross-examination of persons presenting statements. Any participant who wishes to ask a question at the hearing may submit the question in writing to the presiding officer, who will determine whether the questions are relevant and material, and whether time limitations permit a response.

Any further procedural rules needed for the proper conduct of the hearing will be announced by the presiding officer.

A transcript of each hearing will be made, be retained by DOE, and be made available for inspection at the DOE Freedom of Information Reading Room, 1E-190, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585 between 8:00 a.m. and 4:30 p.m., Monday through Friday, and at DOE's Region 5 (Chicago) and Region 9 (San Francisco) Reading Rooms. A copy of the transcript may be purchased from the reporter.

Environmental and Regulatory Assessments. Pursuant to the requirements of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, DOE published a Notice of Availability of an environmental assessment (EA) of the entire Title III on March 12, 1979, in the Federal Register (44 FR 13554). Based on this EA, DOE determined that the NECPA Title III program did not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of NEPA, and that an environmental impact statement (EIS) was not needed to support the action.

DOE has reviewed the environmental impacts of the amendments proposed herein. It is DOE's judgment that the effect of these amendments will be to improve the administrative aspects of the program, and provide greater flexibility in the program at the State level. No new or additional environmental impacts are associated with the new amendments, nor do these new amendments require the addition of any mitigating measures beyond those already contained in the program.

It is thus DOE's determination that the environmental impacts of the amendments have been adequately analyzed in the March 1979 EA, and that these impacts are not significant. Hence, no additional EA or EIS is required.

This proposed rulemaking has been reviewed in accordance with Executive Order 12044, 43 FR 12661, and has determined that the proposed rulemaking is "significant" but not major and therefore does not require regulatory analysis. This proposed rulemaking has also been reviewed in accordance with OMB Circular A-116 to assess the impacts on urban centers and communities, and DOE has determined that the proposed rule does not constitute a major proposal requiring formal analysis.

In consideration of the foregoing, DOE proposes to amend Chapter II, Title 10, in Part 455 of the Code of Federal Regulations by revising Subpart A; revising § 455.10 and adding new § 455.18 in subpart B; and revising subparts C-I to read as follows:

Issued in Washington, D.C., December 17, 1980.

T. E. Stelson,

Assistant Secretary, Conservation and Solar Energy.

PART 455—GRANT PROGRAMS FOR SCHOOLS AND HOSPITALS AND BUILDINGS OWNED BY UNITS OF LOCAL GOVERNMENT AND PUBLIC CARE INSITITUTIONS

Subpart A—General Provisions

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Authority: Title III of the National Energy Conservation Policy Act, Pub. L. 95-619, 92 Stat. 3206 et seq., which establishes Parts G and H of Title III of the Energy Policy and Conservation Act, 42 U.S.C. 6371 *et seq.*; Section 365(e)(2), 42 U.S.C. 6325(e)(2), of the Energy Conservation and Production Act, Pub. L. 94-385, 42 U.S.C. 3801 *et seq.*; and Department of Energy Organization Act, Pub. L. 95-91, 42 U.S.C 7101 *et seq.*

Subpart A—General Provisions

§ 455.1 Purpose and scope.

(a) This part establishes programs of financial assistance pursuant to Parts 1

and 2 Title III of the National Energy Conservation Policy Act, Pub. L. 95–619, 92 Stat. 306 *et seq.*; which adds Parts G and H, rspectively, to Title III of the Energy Policy and Conservation Act, Pub. L. 94–163, 42 U.S.C. 6321 *et seq.*

(b) This subpart authorizes grants to States or to public or non-profit schools and hospitals to assist them in conducting preliminary energy audits and energy audits, in identifying and implementing energy conservation maintenance and operating procedures and in evaluating, acquiring and installing energy conservation measures, including solar energy or other renewable resource measures, to reduce the energy use and anticipated energy costs of buildings owned by schools and hospitals.

(c) This subpart also authorizes grants to States or units of local government and public care institutions to assist them in conducting preliminary energy audits and energy audits, in identifying and implementing energy conservation maintenance and operating procedures and evaluating energy conservation measures, including solar energy and other renewable resource measures, to reduce the energy use and anticipated energy costs of buildings owned by units of local government and public care institutions.

§ 455.2 Definitions.

"Act", as used in this part, means the Energy Policy and Conservation Act, Pub. L. 94–163, 42 U.S.C. 6321 *et seq., as amended* by the National Energy Conservation Policy Act, Pub. L. 95–619, Stat. 3206.

"Auditor" means any person who is qualified in accordance with 10 CFR 450.44 to conduct an energy audit.

"Building" means any structure, the construction of which was completed on or before April 20, 1977, which includes a heating or cooling system, or both.

"Complex" means a closely situated group of buildings on a contiguous site, or a closely situated group of buildings served by a central utility plant, such as a college campus or a multibuilding hospital.

"Construction completion" means the date of issuance of an occupancy permit for a building or the date the building is ready for occupancy, as determined by DOE.

"Cooling degree days" means the annual sum of the number of Fahrenheit degrees of each day's mean temperature above 65° for a given locality.

"Coordinating agency" means any public or non-profit organization legally constituted within a State for either administrative control or services for a roup of institutions within a State and which acts, and is authorized by eligible institutions to so act, as the agent for such institutions with respect to their participation in the program.

"DOE" means the Department of Energy.

"Energy audit" means any survey of a building or complex conducted in accordance with the requirements of Subpart E of 10 CFR Part 450.

"Energy conservation maintenance and operating procedures" means modifications in the maintenance and operations of a building, and any installation therein, which are designed to reduce the energy use in such building and which require no significant expenditure of funds.

"Energy conservation measure" means installation or modification of an installation in a building which is primarily intended to reduce energy consumption or allow the use of an alternative energy source, which may contain an internal control and measurement devices, including, but not limited to—

(a) Insulation of the building structure and systems within the building;

(b) Storm windows and doors, multiglazed windows and doors, heat absorbing or heat reflective glazed and coated windows and door systems, additional glazing, reductions in glass area, and other window and door systems modifications;

(c) Automatic energy control systems which would reduce energy consumption;

(d) Equipment required to operate variable steam, hydraulic, and ventilating systems adjusted by automatic energy control systems;

(e) Active or passive solar space heating or cooling systems, solar electric generating systems, or any combination thereof;

(f) Active or passive solar water heating systems;

(g) Furnace or utility plant and distribution system modifications including—

(1) Replacement burners, furnaces, boilers, or any combination thereof, which substantially increase the energy efficiency of the heating system;

(2) Devices for modifying flue openings which will increase the energy efficiency of the heating system;

(3) Electrical or mechanical furnace ignition systems which replace standing gas pilot lights; and

(4) Utility plant system conversion measures including conversion of existing oil and gas-fired boiler installations to alternative energy sources, including coal;

(h) Addition of caulking and weatherstripping;

(i) Replacement or modification of lighting fixtures to increase the energy efficiency of the lighting system without increasing the overall illumination of a facility, unless such increase in illumination is necessary to conform to any applicable State or local building code or, if no such code applies, the increase is considered appropriate by the Secretary;

(j) Energy recovery systems;

(k) Cogeneration systems which produce steam or forms of energy such as heat, as well as electricity for use primarily within a building or a complex of buildings owned by an eligible institution and which meet such fuel efficiency requirements as the Secretary may by rule prescribe;

(l) Costs of installation and connection of such leased equipment as would otherwise be an eligible energy conservation measure;

(m) Such other measures as the Secretary identifies by rule for purposes of this part, as set forth in Subpart D of 10 CFR 455; and

(n) Such other measures as a grant application show will save a substantial amount of energy and are identified in an energy audit in accordance with Subpart E of 10 CFR 450.

"Fuel" means any commercial source of energy used within the building or complex being surveyed such as natural gas, fuel oil, electricity, or coal.

"Governor" means the chief executive officer of a State, including the Mayor of the District of Columbia, or a person duly designated in writing by the Governor to act on her or his behalf.

"Grantee" means the entity or organization named in the Notice of Grant Award as the recipient of the grant.

"Grant program cycle" means the period of time specified by DOE which relates to the fiscal year or years for which monies are appropriated for grants under this part, during which one complete cycle of DOE grant activity occurs, including fund allocations to the States, receipt, applications review, approval or disapproval, and DOE grant awards, but which does not include the grantee's performance period.

"Gross square feet" means the sum of all heated or cooled floor areas enclosed in a building, calculated from the outside dimensions, or from the centerline of common walls.

"Heating or cooling system" means any mechanical systems for heating or cooling conditioned areas of a building. For purposes of this part, any mechanical system for distributing air throughout the building is considered a cooling system.

"Heating degree days" means the annual sum of the number of Fahrenheit degrees of each day's mean temperature below 65° for a given locality

"Hospital" means a public or non-profit institution which is a general hospital, tuberculosis hospital, or any other type of hospital, other than a hospital furnishing primarily domiciliary care; and which is duly authorized to provide hospital services under the laws of the State in which it is situated.

"Hospital facilities" means buildings housing a hospital and related facilities, including laboratories, laundries, outpatient departments, nurses' home and training facilities and central service facilities operated in connection with a hospital, and also includes buildings housing education or training facilities for health profession personnel operated as an integral part of a hospital.

"Indian tribe" means any tribe, band nation, or other organized group or community of Indians, including any Alaska native village, or regional or village corporation, as defined in or established pursuant to the Alaska Native Claims Settlement Act, Pub. L. 92-203; 85 Stat. 688, which (a) is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians; or (b) is located on, or in proximity to, a Federal or State reservation or rancheria.

"Local educational agency" means a public board of education or other public authority or a non-profit institution legally constituted within, or otherwise recognized by, a State for either administrative control or direction of, or to perform administrative services for, a group of schools within a State.

"Maintenance" means activities undertaken in a building to assure that equipment and energy-using systems operate effectively and efficiently.

"Native American" means a person who is a member of an Indian tribe.

"Operating" means the operation of equipment and energy-using system in a building to achieve or maintain specified levels of envrionmental conditions or service.

"Owned" or "Owns" means a property interest, including without limitation a leasehold interest, which is, or shall become, a fee simple title in a building or complex.

"Preliminary energy audit" means any survey of a building or complex conducted in accordance with the requirements of Subpart E of 10 CFR Part 450.

"Primarily occupied" means that in excess of 50 percent of a building's square footage or time of occupancy is occupied by a public care institution or or an office or agency of a unit of local government.

"Public care institution" means a public or non-profit institution which owns—

(a) A facility for long-term care, rehabilitation facility, or public health center, as described in Section 1633 of the Public Health Service Act (42 U.S.C. 300s-3; 88 Stat. 2270); or

(b) A residential child care center, which is an institution, other than a foster home, operated by a public full-time residential care with an average length of stay of at least 30 days for at least 10 minor persons who are in the care of such institution as a result of a finding of abandonment or neglect or of being persons in need of treatement or supervision.

"Public or non-profit institution" means an institution owned and operated by—(a) A State, a political subdivision of a State or an agency or instrumentality of either; or

(b) A school or hospital which is, or would be in the case of such entities situated in American Samoa, Guam, Puerto Rico, and the Virgin Islands, exempt from income tax under Section 501(c)(3) of the Internal Revenue Code of 1954; or

(c) A unit of local government or public care institution which is, or would be in the case of such entities situated in American Samoa, Guam, Puerto Rico, and the Virgin Islands, exempt from income tax under Section 501(c)(3) or 501(c)(4) of the Internal Revenue Code of 1954.

"School" means a public or non-profit institution which—(a) Provides, and is legally authorized to provide, elementary education or secondary education, or both, on a day or residential basis;

(b)(1) Provides, and is legally authorized to provide, a program of education beyond secondary education, on a day or residential basis;

(2) Admits as students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such certificate;

(3) Is accredited by a nationally recognized accrediting agency or association; and

(4) Provides an educational program for which it awards a bachelor's degree or higher degree or provides not less than a two-year program which is acceptable for full credit toward such a degree at any institution which meets the preceding requirements and which provides such a program;

(c) Provides not less than a one-year program of training to prepare students for gainful employment in a recognized occupation and which meets the provisions cited in paragraph (b)(1)-(3) of this section; or

(d) Is a local educational agency.

"School facilities" means buildings housing classrooms, laboratories, dormitories, athletic facilities, or related facilities operated in connection with a school.

"Secretary" means the Secretary of the Department of Energy.

"State" means, in addition to the several States of the Union, the District of Columbia, Puerto Rico, Guam, American Samoa, and the Virgin Islands.

"State energy agency" means the State agency responsible for developing State energy conservation plans pursuant to Section 362 of the Energy Policy and Conservation Act, or, if no such agency exists, a State agency designated by the Governor of such State to prepare and submit the State Plan required under Section 394 of the Energy Policy and Conservation Act, as amended by the Energy Conservation and Production Act.

"State hospital facilities agency" means an existing agency which is broadly representative of the public hospitals and the non-profit hospitals, or, if no such agency exists, an agency designated by the Governor of such State which conforms to the requirements of this definition.

"State school facilities agency" means an existing agency which is broadly representative of public institutions of higher education, non-profit institutions of higher education, public elementary and secondary schools, non-profit elementary and secondary schools, public vocational education institutions, non-profit vocational education institutions, and the interests of handicapped persons in a State or, if no such agency exists, an agency which is designated by the Governor of such State which conforms to the requirements of this definition.

"Technical assistance" means a program of activity for (a) the conduct of specialized studies to identify and specify energy savings and related cost savings that are likely to be realized as a result of either modifying maintenance and operating procedures in a building, and the acquisition and installation of one or more energy conservation measures, (b) the planning or administration of such specialized studies. For States, schools and hospitals, which are eligible to receive grants to carry out energy conservation measures, the term also means the planning or administration of specific remodeling, renovation, repair,

replacement or insulation projects related to the installation of energy conservation, solar energy or renewable resource measures in a building.

"Unit of local government" means the government of a county, municipality, parish, borough, or township, which is a unit of general purpose government below the State, determined on the basis of the same principles as are used by the Bureau of the Census for general statistical purposes; the District of Columbia, American Samoa, Guam, and the Virgin Islands; the recognized governing body of an Indian tribe which governing body performs substantial governmental functions; libraries owned by any of the foregoing; and public libraries which serve all residents of a political subdivision below the State level, such as a community, district or region, free of charge and which derive at least 40 percent of their operating funds from tax revenues of a taxing authority below the State level.

§ 455.3 Administration of grants.

(a) Grants provided under this part shall comply with applicable law, regulation or procedure including, but without limitation, the requirement of—

(1) Federal Management Circular 74-4, 34 CFR Part 255, entitled "Cost Principles Applicable to Grants and Contracts with State and Local Governments";

(2) Office of Management and Budget Circular A-102, entitled "Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments";

(3) Office of Management and Budget Circular A-110, entitled "Grants and Agreements with Institutions of Higher Education, Hospitals, and other Nonprofit Organizations";

(4) DOE regulation, 10 CFR 1040, entitled "Non-discrimination In Federally Assisted Programs", which implements the following public laws: title VI of the Civil Rights Act of 1964; Section 16 of the Federal Energy Administration Act of 1974; Section 401 of the Energy Reorganization Act of 1974; Title IX of the Education Amendments of 1972; and Section 504 of the Rehabilitation Act of 1973;

(5) OMB Circular A-122, "Cost Principles for Non-profit Organziations";

(6) OMB Circular A-21, "Cost Principles for Institutions of Higher Education";

(7) 45 CFR 74, Appendix E, "Cost Principles for Hospitals";

(8) OMB Circular A-95 Part III, "Review, Evaluation, and Coordination of Federal and Federally-Assisted Programs and Projects";

(9) DOE Assistance Regulation 10 CFR Part 600, Subparts A and B.

(b) Grantees shall comply with such additional requirements applicable to this part as DOE may from time to time prescribe for the administration of grants.

§ 455.4 Recordkeeping.

Each State or other entity within a State receiving financial assistance under this part shall make and retain records required by DOE, including records which fully disclose the amount and disposition of the financial assistance received; the total cost of the administration and the activities for which assistance is given or used; the source and amount of any funds not supplied by DOE and any data and information which DOE determines are necessary to protect the interest of the United States and to facilitate an effective financial audit and performance evaluation. The Secretary, or any of her or his duly authorized representatives, shall have access, as prescribed by DOE Assistance Regulations, to any books, documents, receipts or other records which the Secretary determines are related or pertinent, either directly or indirectly, to any financial assistance provided under this part.

§ 455.5 Suspension and termination of grants.

The Secretary may suspend or terminate financial assistance under a previously approved application if the Secretary determines the applicant has failed to comply substantially with the trms and conditions set forth in the application and this part. Suspension and termination procedures shall be as set forth in OMB circulars A-102 and A-110 as applicable. A decision to terminate pursuant to this section may be appealed to the DOE Financial Assistance Appeals Board, pursuant to 10 CFR 1024.

Subpart B—Preliminary Energy Audit and Energy Audit Grant Procedures.

§ 455.10 Purpose and scope.

(a) This subpart contains the regulations whereby the Federal Government shall provide financial assistance for preliminary energy audits and energy audits.

(b) Preliminary energy audits are to be performed by States for the purpose of—(1) Determining the energy use characteristics of eligible school and hospital facilities, and buildings owned by units of local government and public care institutions, including the size, type, rate of energy use and major energy using systems of such buildings within the State;

(2) Establishing a data base from which reasonably accurate estimates can be made of the number of eligible institutions, the number of qualifying buildings, and patterns of energy conservation needs including an indication of the opportunities for use of solar or other renewable energy sources; and

(3) Assisting States in development of a sound and complete State Plan which is a prerequisite to receipt of financial assistance for technical assistance or energy conservation measures, including solar energy or other renewable resource measures.

(c) Energy audits are to be performed by States or eligible schools, hospitals, units of local government and public care institutions for the purpose of—(1) Determining the energy use characteristics of eligible school and hospital facilities, and buildings owned by units of local government and public care institutions, including the size, type, rate of energy use and major energy using systems of such buildings within the State;

(2) Identifying and encouraging adoption of energy conservation maintenance and operating procedures;

(3) Indicating potential, if any, for acquiring and installing energy conservation measures, including possible use of solar energy or other renewable resources; and

(4) Providing, to the greatest extent practical, consistent information necessary to identify those buildings to receive priority for additional financial assistance.

§ 455.18 Contents of an energy audit.

(a) An energy audit shall contain the information required for a preliminary energy audit, in accordance with § 450.42, and shall also include a description of—(1) Major changes in functional use or mode of operation planned in the next fifteen years, such as demolition, disposal, rehabilitation, or conversion from office to warehouse;

(2) For a building in excess of 200,000 gross square feet, if available—(i) Peak electric demand for both daily and annual cycles; and

(ii) Annual energy use by fuel type of the major mechanical or electrical systems if the information is available or can be reasonably estimated;

(3) Terminal heating or cooling, or both, such as radiators, unit ventilators, fancoil units, or double-duct reheat systems;

(4) Building site and structural characteristics related to solar energy or

other renewable resource potential, including but not limited to—

(i) Climatic factors, specifically—

(A) Average annual heating degree days and cooling degree days;

(B) Average solar insolation by month;

(C) Average monthly wind speed; and

(ii) Roof characteristics, including—

(A) An identification of primary structural component such as steel, wood, concrete; and

(B) Type of roofing material such as shingles, slate, or built-up materials; and

(5) A description of general building conditions.

(b) An energy audit shall—

(1) Indicate that appropriate energy conservation maintenance and operating procedures have been implemented for the building, supported by a demonstration based on actual records, that energy use has been reduced in a given year through changes in maintenance and operating procedures, by not less than 20 percent from a corresponding based period having a degree day variance of less than 10 percent; or

(2) Recommended appropriate energy conservation maintenance and operating procedures, on the basis of an on-site inspection and review of any scheduled preventive maintenance plan, together with a general estimate or range of energy and cost savings if practical, which may result from—

(i) Effective operation of ventilation systems and control of infiltration conditions, including—

(A) Repair of caulking or weatherstripping around windows and doors;

(B) Reduction of outside air intake, shutting down ventilation systems in unoccupied areas, and shutting down ventilation systems when the building is not occupied; and

(C) Assuring central or unitary ventilation controls, or both, are operating properly;

(ii) Changes in the operation of heating or cooling systems through—

(A) Lowering or raising indoor temperatures;

(B) Locking thermostats;

(C) Adjusting supply or heat transfer medium temperatures; and

(D) Reducing or eliminating heating or cooling at night or at times when a building or complex is unoccupied;

(iii) Changes in the operation of lighting systems through—

(A) Reducing illumination levels;

(B) Maximizing use of daylight;

(C) Using higher efficiency lamps; and

(D) Reducing or eliminating evening cleaning of buildings;

(iv) Changes in the operation of water systems through—

(A) Repairing leaks;

(B) Reducing the quantity of water used, e.g., flow restrictors;

(C) Lowering settings for hot water temperatures;

(D) Raising settings for chilled water temperatures; and

(v) Changes in the maintenance and operating procedures of the utility plant and distribution system through—

(A) Cleaning equipment;

(B) Adjusting air/fuel ratio;

(C) Monitoring combustion;

(D) Adjusting fan, motor, or belt drive systems;

(E) Maintaining steam traps; and

(F) Repairing distribution pipe insulation; and

(vi) Such other actions as the State may determine useful or necessary, consistent with the purposes of the energy audit and acceptable cost constraints of § 450.46.

(c) Based on information gathered under paragraphs (a) and (b) of § 450.42, and paragraphs (a) (1) and (2) of this section, an energy audit shall indicate the need, if any, for the acquisition and installation of energy conservation measures and shall include an evaluation of the need and potential for retrofit based on consideration of one or more of the following—

(1) An energy use index or indices, for example, Btu's per gross square foot per year;

(2) An energy cost index or indices, for example, annual energy costs per gross square foot; or

(3) The physical characteristics of the building envelope and major energy-using systems.

(d) Based on information gathered under paragraph (c) of § 450.42 and paragraph (a)(4) of this section, an energy audit shall include an indication of whether building conditions or characteristics present an opportunity for use of solar heating and cooling systems or solar hot water systems.

(e) An energy audit may include an assessment of the estimated costs and energy and cost savings likely to result from the purchase and installation of one or more energy conservation measures.

Subpart C—Technical Assistance Programs for Schools, Hospitals, Units of Local Government and Public Care Institutions

§ 455.40 Purpose and scope.

This subpart specifies what constitutes a technical assistance program eligible for financial assistance under this part, and sets forth the eligibility criteria for schools, hospitals, units of local government and public care institutions to receive grants for technical assistance to be peformed in buildings owned by such institutions.

§ 455.41 Eligibility.

To be eligibile to receive financial assistance for technical assistance program, an applicant mut—

(a) Be a school, hospital, unit of local government, public care intitution or coordinating agency, all as defined in § 455.2, except that—

(1) Financial assistance for units of local government and public care institutions will be provided only for buildings which are owned and primarily occupied by offices or agencies of a unit of local government or public care institution and which are not intended for seasonal use and not utilized primarily as a school or hospital eligible for assistance under this program;

(2) Financial assistance provided to a school which is a local education agency as defined in § 455.2 must not be used for technical assistance program or acquisition or installation of any energy conservation measure in any building of such agency which is used principally for administration.

(b) Be located in a State which has an approved State Plan as described in Subpart H of this part;

(c) Have conducted an energy audit or its equivalent, as determined by the State in accordance with the State Plan, for the building for which financial assistance is to be requested, subsequent to the most recent contruction, reconfiguration or utilization change which significantly modified energy use within the building;

(d) Give assurance that it has implemented all energy conservation, maintenance and operating procedures identified as a result of the energy audit, or provide a satisfactory written jutification satisfactory to the Secretary, pursuant to § 455.90(j);

(e) Submit an application in accordance with the provisions of this part and the approved State Plan.

§ 455.42 Contents of program.

(a) A technical assistance program shall be conducted by a technical assistance analyst, who has the qualifications established in the State Plan in accordance with § 455.90(d) and who shall consider all feasible energy conservation operating and maintenance procedure changes and energy conservation measures for a building, including solar or other renewable resource measures. A technical assistance program shall include a detailed engineering analysis to identify the estimated costs of, and

the energy and cost savings likely to be realized from, implementing each identified energy conservation maintenance and operating procedure. A technical assistance program shall also identify the estimated cost of, and the energy and cost savings likely to be realized from, acquiring and installing each energy conservation measure, including solar and other renewable resource measures, that indicate a significant potential for saving energy based upon the technical assistance analyst's initial consideration.

(b) The technical assistance analyst shall use the following cost consideration factors in developing their calculations—

(1) Current prices, excluding demand charges

(2) Marginal prices where incremental prices apply

(c) At the conclusion of a technical assistance program, the technical assistance analyst shall prepare a report which shall include—

(1) A description of building characteristics and energy data including—

(i) The results of the energy audit (or its equivalent) of the building;

(ii) The operating characteristics of energy using systems; and

(iii) The estimated remaining useful life of the building;

(2) An analysis of the estimated energy consumption of the building, by fuel type (in total Btu's and Btu/sq. ft./yr), at optimum efficiency (assuming implementation of all energy conservation maintenance and operating procedures);

(3) An evaluation of the building's potential for solar conversion, including water heating systems;

(4) A listing of any known local zoning ordinances and building codes which may restrict the intallation of solar systems;

(5) A description and analysis of all recommendations, if any, for operating and maintenance procedure changes and acquisition and installation of energy conservation measures, including solar and other renewable resource measures, setting forth—

(i) A description of each recommended operating and maintenance procedure change and an estimate of the cost of design, acquisition and installation of each energy conervation measure;

(ii) An estimate of the cost of design, acquisition and installation of each energy conservation measure;

(iii) Estimated useful life of each energy conservation measure;

(iv) An estimate of increases or decreases in maintenance and operating costs that would result from each conservation measure if any;

(v) An estimate of the salvage value or disposal cost of each energy conservation measure at the end of its useful life, if any;

(vi) An estimate showing calculations, of the annual energy and energy cost savings (using current energy prices excluding demand charges) expected from the acquisition and installation of each operating and maintenance procedure change and energy conservation measure. In calculating the potential energy cost savings or energy savings of each recommended energy conservation measure, including solar or other renewable resource measure, technical assistance analysts shall—

(A) Assume that all energy savings obtained from energy conservation maintenance and operating procedures have been realized;

(b) Calculate the total energy and energy cost savings, by fuel type, expected to result from the acquisition and installation of all recommended energy conservation measures, taking into account the interaction among the various measures;

(C) Calculate that portion of the total energy and energy costs savings, as determine in paragraph (c)(5)(vi) (B) of this section, attibutable to each individual energy conservation measure; and

(D) Consider climate and other variables.

(vii) The simple payback period of each recommended energy conservation measure, taking into account the interactions among the various measures. The simple payback period is calculated by dividing the estimated total cost of the measure, as detemined pursuant to § 455.42(c)(5)(ii), by the estimated annual cost saving accruing from the measure, as determined pursuant to § 455.42(c)(5)(vi). For the purposes of ranking applications, the simple payback period shall be calculated using the cost savings resulting from energy savings only, determined on the basis of current energy prices except:

(A) For energy conservation measures which result in conversion from oil, natural gas, other petroleum products or electricity to coal, the simple payback period shall be calculated based on the annual cost savings (using current energy prices) associated with the change in fuels; or

(B) For energy conservation measures which displace fossil fuels with solar or other renewable resources, the simple payback period shall be calculated using the cost of the fossil fuels displaced (using current energy prices) as the annual cost savings.

(C) For energy conservation measures installing leased equipment, only the cost of installation and connection of the leased equipment are eligible for financial assistance under this program. The payback period shall be determined by dividing the total installation and connection costs by the result of subtracting the average annual recurring leased costs from the projected average annual energy cost saving;

(viii) The estimated cost of the measure shall be the total cost for design and other professional service (excluding cost of a technical assistance program), if any, and acquisition and installation costs. Other economic analyses, such as life-cycle costing, which consider all costs and cost savings, such as maintenance costs and/or savings, resulting from an energy conservation measure, are recommended, but not required, for use by the institution in its decision-making process;

(6) Monthly energy use and cost data, actual or estimated, for each fuel type used for the prior 12-month period.

(7) A signed and dated certification that the technical assistance program has been conducted in accordance with the requirements of this section and that the data presented is accurate to the best of the technical assistance analyst's knowledge.

Subpart D—Energy Conservation Measures for Schools and Hospitals

§ 455.50 Purpose and scope.

This subpart indicates what constitutes an energy conservation measure that may receive financial assistance under this part and sets forth the eligibility criteria for schools and hospitals to receive grants for energy conservation measures, including solar and other renewable resource measures.

§ 455.51 Eligibility.

(a) To be eligible to receive financial assistance for an energy conservation measure, including solar or other renewable resource measures, an applicant must—

(1) Be a school, hospital or coordinating agency as defined in § 455.2, provided that financial assistance provided to a school which is a local education agency as defined in § 455.2 must not be used for a technical assistance program or acquisition or installation of any energy conservation measure in any building of such agency which is used principally for administration;

(2) Be located in a State which has an approved State Plan as described in Subpart H of this part;

(3) Have completed a technical assistance program or its equivalent, as determined by the State in accordance with the State Plan, for the building for which financial assistance is to be requested, subsequent to the most recent construction, reconfiguration or utilization change to the building which significantly modified energy use within the building;

(4) Have implemented all energy conservation maintenance and operating procedures which are identified as the result of a technical assistance program, or have provided a satisfactory written justification for not implementing any specific maintenance and operating procedures so identified, as described in § 455.90(j).

(5) Have no plan or intention at the time of application to close or otherwise dispose of the building for which financial assistance is to be requested within the simple payback period of any energy conservation measure recommended for that building; and

(6) Submit an application in accordance with the provisions of this part and the approved State Plan.

(b) To be eligible for financial assistance, the simple payback period of each energy conservation measure for which financial assistance is requested shall not be less than 1 year nor greater than 15 years, and the estimated useful life of the measure shall be greater than its simple payback period.

§ 455.52 Contents of program.

The programs to be funded under this part will be for the design, acquisition, and installation of energy conservation measures to reduce energy consumption or measures to allow the use of solar or other alternative energy resources for schools and hospitals. Such measures include, but are not necessarily limited to those included in the definition of "energy conservation measures" in § 455.2.

Subpart E—Applicant Responsibilities

§ 455.60 Grant application submittals.

(a) Each eligible applicant desiring to receive financial assistance shall file an application in accordance with the provisions of this subpart and the approved State Plan of the State in which such building is located. The application, which may be amended in accordance with applicable State procedures at any time prior to the State's final determination thereon, shall be filed with the State energy agency designated in the State Plan.

(b) Applications from schools, hospitals, units of local government, public care institutions and coordinating agencies for financial assistance for technical assistance programs shall include the certifications contained in § 455.61 and—

(1) The applicant's name and mailing address;

(2) The energy audit (or its equivalent) for each building for which financial assistance is requested;

(3) A project budget, by building, which stipulates the intended use of all Federal and non-Federal funds; including in-kind contributions (valued in accordance with the guidelines in OMB Circular A-102 or OMB Circular A-110, as appropriate), to be used to meet the cost-sharing requirements described in Subpart G;

(4) A brief description, by building, of the proposed technical assistance program, including a schedule, with appropriate milestone dates, for completing the technical assistance program; and

(5) Additional information required by the applicable State Plan, and any other information which the applicant desires to have considered, such as information to support an application from a school or hosptial for financial assistance in excess of the 50 percent Federal share on the basis of severe hardship or an application which proposes the use of Federal funds, paid under and authorized by another Federal agreement, to met cost sharing requirements.

(c) Applications from schools and hospitals and coordinating agencies for financial assistance for energy conservation measures, including solar and other renewable resource measures, shall include the certifications contained in § 455.61 and—

(1) The applicant's name and mailing address;

(2) Identification of each building pursuant to 10 CFR 450.42(a) (1) through (5) for which financial assistance is requested, including—

(i) Name or other identification of each building and its address;

(ii) Building category;

(iii) Description of functional use;

(iv) Ownership; and

(v) Size of building expressed in gross square feet.

(3) A project budget, by measure or by building, as provided in the State Plan which stipulates the intended use of all Federal and non-Federal funds, and indentifies the sources and amounts of non-Federal funds, including in-kind contributions (valued in accordance with the guidelines in OMB Circular A-102 or OMB Circular A-110, as appropriate), to be used to meet the cost sharing requirements described in Subpart G;

(4) A schedule, including appropriate milestone dates, for the completion of the design, acquisition and installation of the proposed energy conservation measures for each building;

(5) For each energy conservation measure proposed for funding, the projected cost, and the projected simple payback period as contained in § 455.42(c)(5)(vii). Applications with more than one energy conservation measure per building shall include projected costs and paybacks for each measure, and the average simple payback period for all measures proposed for the building;

(6) The report of the technical assistance analyst. This report must have been completed since the most recent construction, reconfiguration or utilization change to the building, which significantly modified energy use, for each building.

(7) If the applicant is aware of any adverse environmental impact which may arise from adoption of any energy conservation measure, an analysis of that impact and the applicant's plan to minimize or avoid such impact; and

(8) Additional information required by the applicable State Plan, and any additional information which the applicant desires to have considered, such as information to support an application for financial assistance in excess of the 50 percent Federal share on the basis of severe hardship, or an application which proposes the use of Federal funds, paid under and authorized by another Federal agreement, to meet cost sharing requirements.

§ 455.61 Applicant certifications.

Applications for financial assistance for technical asistance programs and eneregy conservation measures, including solar and other renewable resource measures, shall include certification that the applicant—

(a) Is eligible under §§ 455.41 for technical assistance or §455.51 for energy conservation measures;

(b) Has satisfied the requirements set forth in § 455.60;

(c) Has implemented all energy conservation maintenance and operating procedures recommended as a result of the energy audit and for applications for energy conservation measures, those recommended in the report obtained under a technical assistance program. If any such procedure has not been implemented, the application shall contain a satisfactory written justification for not

implementing that procedure as prescribed pursuant to § 455.90(j);

(d) Will obtain from the technical assistance analyst, before the analyst performs any work in connection with a technical assistance program or energy conservation measure, a signed statement certifying that the technical assistance analyst has no conflicting financial interests and is otherwise qualified to perform the duties of technical assistance analyst in accordance with the standards and criteria established in the approved State Plan;

(e) If the grant is for more than $5,000 and is not for technical assistance, any construction contract in excess of $2,000 let by the grantee must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. Section 276a to 276a-5) pertaining to minimum wages for construction in the applicant's locality; and

(f) Will comply with all reporting requirements contained in § 455.63.

§ 455.62 Grant applications for State administrative expenses.

(a) Each State desiring to receive grants to help defray State administrative expenses shall file applications therefor in accordance with the provisions of this section. Each State may apply for an amount not exceeding 2 percent of its total allocation for technical assistance and energy conservation measures during the initial grant program cycle to the Secretary for approval; or, for subsequent grant program cycles, any time after notice by DOE of the amounts allocated to each State for that grant program cycle. In addition, each State after it makes the submittal to DOE required under § 455.72 may apply for a further grant not exceeding 5 percent of the total of all grant awards for technical assistance and energy conservation measures within that State in that grant program cycle, less any amounts previously awarded the State for administrative expenses in the same grant program cycle.

(b) Applications for financial assistance to defray State administrative expenses shall include—

(1) The name and address of the person designated by the State to be responsible for the State's functions under this part;

(2) An identification of the intended use of all Federal and non-Federal funds, for the State administrative expenses listed in § 455.83(b) and a list of the sources and amounts of the required matching non-Federal funds, including in-kind contributions valued in accordance with the guidelines in OMB Circular A-102, "Uniform Requirements for Grants-in-Aid to State and Local Governments") to be used to meet the cost-sharing requirements described in Subpart G of this part; and

(3) Any other information required by DOE.

§ 455.63 Grantee records and reports.

(a) Each State, school, hospital, unit of local government, public care institution and coordinating agency which receives a grant for a technical assistance program, energy conservation measure, including solar and other renewable resource measures or State administrative expenses shall keep all the records required by § 455.4 in accordance with DOE Assistance Regulations.

(b) Each grantee shall submit reports as follows—

(1) For technical assistance projects, two copies of a final report of the analysis completed on each building for which financial assistance was provided shall be submitted to the State energy agency no later than 90 days following completion of the analysis. These reports shall contain—

(i) The report submitted to the institution by the technical assistance analyst, and

(ii) The institution's plan to implement energy conservation maintenance and operating procedures, and plans to acquire and install energy conservation measures, including solar and other renewable resources.

(2) For energy conservation measure projects—

(i) Semi-annual progress reports shall be submitted by grantees. Two copies shall be submitted to the States energy agency no later than the end of July and January and shall detail and discuss milestones accomplished, those not accomplished, status of in-progress activities and remedial actions if needed to achieve project objectives. A final report may be submitted in lieu thereof provided it satisfied the semi-annual progress report and final report designated time frame;

(ii) Two copies of a final report which list and describe the energy conservation measures acquired and installed, a final estimated simple payback period for each measure and the project as a whole, a statement that the completed energy conservation measures conform to the approved grant application and plans, if any, to install additional energy conservation measures, will be submitted to the State within 90 days of installation.

(iii) Within 60 days of the close of each 12-month period, grantees shall submit annual reports to the State for a three-year period following installation of an energy conservation measure, or for the life of the program, whichever is shorter. These reports shall identify each building and provide data on energy use for that building for the preceding 12-month period. A financial status report shall not be required for such annual reports.

(3) For State administrative grants, each State shall submit reports to the Secretary, by the close of each February and August following State Plan approval, which provide—

(i) A discussion of administrative activities pursuant to § 455.83(b), and a discussion of milestones accomplished, those not accomplished, status of in-progress activities, problems encountered, and remedial actions, if any, planned pursuant to § 455.73(e);

(ii) A summary of grantee reports received by the States since the previous semi-annual grantee report submission pursuant to subparagraphs (b)(1) and (b)(2) of this section; and

(iii) For the August report, an estimate of annual energy use reductions in the State, by energy source, attributable to implementation of energy conservation maintenance and operating procedures and installation of energy conservation measures under this program. Such estimates shall be based upon a sampling of institutions participating in the technical assistance phase of this program and upon the reports submitted to the State pursuant to § 455.63(b)(2)(iii).

(4) Such other information as the Secretary may, from time to time request.

(5) Each copy of any technical assistance, energy conservation measures, or State administrative report shall be accompanied by a financial status report completed in accordance with the documents listed in § 455.3. Unless the State administrative grant funding period coincides with its semi-annual report requirements under paragraph (b)(3) of this section, the State shall also submit a financial status report covering its administrative activities at the conclusion of its State administrative grant funding period.

(6) Grantee technical assistance, energy conservation measures, and financial status reports submitted to the State shall be submitted by the State to DOE as required by the DOE Regional Representative.

Subpart F—State Responsibilities

§ 455.70 State evaluation of grant applications.

(a) If an application received by a State is reviewed and evaluated by that

State and determined to be in compliance with Subparts C, D and E of this part, § 455.70(b), any additional requirements of the approved State Plan, State environmental laws, and other applicable laws and regulations, then such application will be eligible for financial assistance.

(b) Concurrently with its evaluation and ranking of grant applications pursuant to § 455.71, the State will forward applications for technical assistance or for energy conservation measures for a school or hospital to the State school facilities agency or the State hospital facilities agency, as the case may be, for review and certification that each school application is consistent with related State programs for educational facilities, and each hospital application is consistent with State health plans under sections 1524(c)(2) and 1603 of the Public Health Service Act (42 U.S.C. 300m-3 and 300o-2, respectively), and that each has been coordinated through abbrievated review mechanisms under section 1523 of the Public Health Service Act (42 U.S.C. 300m-2) and section 1122 of the Social Security Act. No application from a school or hospital shall be eligible for funding until such certification has been issued.

§ 455.71 State ranking of grant applications.

All eligible applications received by the State will be ranked by the State in accordance with its approved State Plan.

(a) For technical assistance programs, buildings shall be ranked in descending priority based upon the energy conservation potential of the building as determined from an energy audit (or its equivalent) in accordance with the procedures established in the State Plan and one or more of the methods indicated in 10 CFR 450.43(c). In the case of buildings having equivalent energy conservation potential, preference shall be given to those buildings which have completed an energy audit without the use of Federal funds.

(1) Each State shall develop separate rankings for all buildings covered by eligible applications for—

(i) Technical assistance programs, for units of local government and public care institutions, and

(ii) Technical assistance programs for schools and hospitals.

(2) Within each ranking for technical assistance, a State shall indicate the amount of financial assistance requested by the applicant for each eligible building and, for those buildings with the highest ranking within the limits of the State's allocation, the amount recommended for funding. If the amount recommended is less than the amount requested by the applicant, this list shall also indicate the reason for that recommendation.

(b) All eligible applications for energy conservation measures received will be ranked by the State on an individual building-by-building or a measure-by-measure basis. Several buildings may be ranked as a single building if the application proposes a single energy conservation measure which directly involves all of the buildings. Buildings or measures shall be ranked in accordance with the procedures established by the State Plan, on the basis of the information developed during a technical assistance program (or its equivalent) for the building and the criteria for ranking applications, which are listed below in the descending order in which weights for each criterion are to be applied by the State—

(1) Payback, calculated in accordance with § 455.42(c)(5)(vii);

(2) The types of energy sources to which conversion is proposed, including in descending priority—

(i) Renewable; and

(ii) Coal;

(3) The types and quantities of energy to be saved, including oil, natural gas, or electricity, in a priority as established in the approved State Plan;

(4) Other factors as determined by the State.

(c) A State is exempt from the ranking requirements of this section when—

(1) The total amount requested by all applications for schools and hospitals for technical assistance and energy conservation measures in a given grant program cycle for grants up to 50 percent is less than or equal to the funds available to the State for such grants and the total amount recommended for hardship funding is less than or equal to the amounts available to the State for such grants.

(2) The total amount requested by all applications for buildings owned by units of local government and public care institutions in a given grant program cycle is less than or equal to the total amount allocated to the State for technical assistance program grants in the State.

(d) Within the rankings of school and hospital buildings for technical assistance and energy conservation measures, including solar or other renewable resource measures, to the extent that approvable applications are submitted, a State shall initially assure that—

(1) Schools receive at least 30 percent of the total funds allocated for schools and hospitals to the State in any grant program cycle; and

(2) Hospitals receive at least 30 percent of the total funds allocated for schools and hospitals to the State in any grant program cycle.

(e) To the extent provided in § 455.82(c), financial assistance will be initially available for schools and hospitals experiencing severe hardship based upon an applicant's long-term need or inability to provide the 50 percent non-Federal share. This additional financial assistance will be available only to the extent necessary to enable such insitutions to participate in the program.

(1) The State shall recommend funds for severe hardship applications wholly or partially from the funds reserved in accordance with § 455.100(d) and as stated in an approved State Plan.

(2) Applications for Federal funding in excess of 50 percent based on claims of severe hardship shall be given an additional evaluation by the State to assess on a quantifiable basis, to the maximum extent practicable, the relative need among eligible institutions. The minimum amount of additional Federal funding necessary for the applicant to participate in the program will be determined by the State in accordance with the procedures established in the State Plan and will be based upon one or more of the following—

(i) The ratio of the cost of the proposed technical assistance programs or energy conservation measures to the institution's total annual budget;

(ii) The borrowing capacity of the institution;

(iii) The average unemployment rate for the institution's locality at the time the application is submitted;

(iv) The ratio of the amount expended annually by the institution for energy to the institution's total annual operating budget;

(v) The median annual family income of the institution's locality; and

(vi) Other special conditions of the institution or its locality as determined by the State.

(3) A State shall indicate, for those schools and hospitals with the highest rankings, determined pursuant to subparagraphs (a) and (b) of this section—

(i) The amount of additional hardship funding requested by each eligible applicant for each building determined to be in a class of severe hardship; and

(ii) The amount of hardship funding recommended by the State based upon relative need as determined in accordance with the State Plan, to the limit of the hardship funds available.

(f) Institutions shall be recommended for funding within the allocations specified in paragraphs (d) and (e) of this section unless, after the State deadline for submitting applications has passed, there are insufficient applications meeting the requirements of §§ 455.41 or 455.51 of this part to expend funds thus allocated, in which case the State may recommend use of remaining funds for other eligible applications.

§ 455.72 Forwarding of applications.

(a) Each State shall forward all recommended applications to the Secretary once each grant program cycle along with a listing of buildings or measures covered by eligible applications for schools, hospitals, units of local government and public care institutions, and ranked by the State pursuant to the provisions of § 455.71. If ranking has been employed, the list shall include the standings of buildings or measures.

(1) Measure by measure rankings will be recombined for the respective building with more than one recommended measure.

(2) Buildings will be consolidated under one grantee application.

(b) State shall indicate the amount of financial assistance requested by the applicant for each eligible building and, for those buildings recommended for funding within the limits of the State's allocation, the amount recommended for funding. If the amount recommended is less than the amount requested by the applicant, the list shall also indicate the reason for that recommendation.

(c) States shall certify applications submitted are eligible pursuant to § 455.70(a).

§ 455.73 State liaison, monitoring and reporting.

Each State shall be responsible for—

(a) Consulting with eligible institutions and coordinating agencies representing such institutions in the development of its State Plan;

(b) Notifying eligible institutions and coordinating agencies of the content of the approved State Plan;

(c) Notifying each applicant, prior to submittal of applications to the Secretary, how the applicant's building or measure ranked among other similar applications, and whether and to what extent its application will be recommended for funding or, if not to be recommended for funding, the specific reason(s) therefor;

(d) Certifying that each institution has given its assurance that it is willing and able to participate on the basis of any changes in amounts recommended for that institution in the State ranking pursuant to § 455.71; and

(e) Direct program oversight and monitoring of the activities for which grants are awarded as defined in the State Plan. States shall immediately notify the Secretary of any non-compliance or indication thereof.

(f) Reporting requirements pursuant to § 455.63(b)(3).

Suppart G—Grant Awards

§ 455.80 Approval of grant applications.

(a) The Secretary shall review and approve applications submitted by a State in accordance with § 455.72 if the Secretary determines that the applications meet the objectives of the Act, and comply with the applicable State Plan and the requirements of this part. The Secretary may disapprove all or any portion of an application to the extent funds are not available to carry out a program or measure (or portion thereof) contained in the application, or for such other reason as the Secretary may deem appropriate.

(b) The Secretary shall notify a State and the applicant of the final approval or disapproval of an application at the earliest practicable date after the Secretary's receipt of the application, and, in the event of disapproval, shall include a statement of the reasons therefor.

(c) An application which has been disapproved for reasons other than lack of funds may be amended to correct the cause of its disapproval and resubmitted in the same manner as the original application at any time within the same grant program cycle and will be considered to the extent funds are available. However, nothing in this provision shall obligate either the State or the Secretary to take final action regarding a resubmitted application within the grant program cycle. An application not acted upon may be resubmitted in a subsequent grant program cycle.

(d) The Secretary shall award only one grant per building for a technical assistance program and shall not provide supplemental funds beyond those awarded.

(e) The Secretary shall award only one grant per building per grant program cycle for energy conservation measures, and shall not provide supplemental funds beyond those awarded for a given grant. An institution may apply, and the Secretary may make grant awards in another grant building for which financial assistance was not previously and specifically provided, even though the measures relate to a building which previously received grants for other energy conservation measures.

(f) Within a given grant program cycle, the Secretary may fund grant costs incurred by an institution for technical assistance and energy conservation measure projects from the date of submission of the grant application to the State energy agency. Such costs shall be accepted when, in the judgement of the Secretary, the institution has complied with program requirements and the costs incurred are allowable under applicable cost principles and the approved project budget. The applicant bears the responsibility for the entire project cost unless the application is approved by the Secretary in accordance with this Part.

§ 455.81 Grant awards for units of local government and public care institutions.

(a) The Secretary may make grants to units of local governments, public care institutions and coordinating agencies for up to 50 percent of the costs of performing technical assistance programs for buildings covered by an application approved in accordance with § 455.80.

(b) Total grant awards within any State to units of local government and public care institutions are limited to funds allocated to each State in accordance with Subpart I of this part.

(c) Units of local government and public care institutions are not eligible for financial assistance for severe hardship.

(d) No grant awarded under this section for a technical assistance program shall include funding for the purchase of any single item of equipment or tangible personal property having an acquisition cost in excess of $500.

§ 455.82 Grant awards for schools and hospitals.

(a) The Secretary may make grants to schools, hospitals and coordinating agencies for up to 50 percent of the cost of performing technical assistance programs for buildings covered by an application approved in accordance with § 455.80. Grant awards for technical assistance programs in any State within any grant program cycle shall be limited to a portion of the total allocation as specified in the Subpart I.

(b) The Secretary may make grants to schools, hospitals and coordinating agencies for up to 50 percent of the costs of acquiring and installing energy conservation measures, including solar and other renewable resource measures, for buildings covered by an application approved in accordance with § 455.80.

(c) The Secretary may award up to 10 percent of the total amount allocated to a State for schools and hospitals in a class of severe hardship, ascertained by the State in accordance with the State Plan, for buildings recommended by the State pursuant to § 455.71(e)(3), and in amounts determined pursuant to § 455.71(e)(2).

(d) No grant awarded under this section for a technical assistance program shall include funding for the purchase of any single item of equipment or other tangible personal property having an acquisition cost in excess of $500.

(e) Applicant expenditures for a technical assistance program or one or more energy conservation measures commenced after November 8, 1978 for a building may be wholly and partially classified in the discretion of the Secretary as matching non-Federal funds for the purposes of matching grants awarded for additional energy conservation measures in the same building. Credit will be considered only when the projects for which credit is sought meet program requirements and credit for energy conservation measures will be considered only when supported by a technical assistance analysis performed prior to the installation of the energy conservation measure. Applications for credit will be considered in conjunction with applications for additional energy conservation measures. The application shall reflect both the work done and the work to be done and will be reviewed and ranked on that basis. In no case shall the credit exceed an amount equal to the non-Federal share of the proposed energy conservation measures.

§ 455.83 Grant awards for state administrative expenses.

(a) For the purpose of defraying State expenses in the administration of technical assistance programs in accordance with Subpart C and energy conservation measures in accordance with Subpart D, the Secretary may make grant awards to a State—

(1) Immediately following approval of the State Plan, or for subsequent grant program cycles, immediately following public notice of the amounts allocated to a State for the grant program cycle, and upon approval of the grant application for administrative costs, in an amount not exceeding 2 percent of that State's total allocation for a given grant program cycle for technical assistance and energy conservation measures. Grants for such purposes may be made for up 50 percent of a State's projected administrative expenses, as approved by the Secretary; and

(2) Concurrently with grant awards for approved applications for technical assistance or energy conservation measures for institutions in that State, and upon approval of an application for administrative costs, in an amount not exceeding the difference between the amount granted pursuant to subparagraph (1) of this paragraph and 5 percent of the total amount of grants awarded within the State for technical assistance programs and energy conservation measures in the applicable grant program cycle. Grants for such purposes may be made for up to 50 percent of a State's projected administrative expenses, as approved by the Secretary. The total of all grants for State administrative costs, technical assistance programs and energy conservation measures in that State shall not exceed the total amount allocated for that State for any grant program cycle.

(b) A State's administrative expenses shall be limited to those directly related to administration of technical assistance programs and energy conservation measures including costs associated with—

(1) Personnel, whose time is expended directly in support of such administration;

(2) Supplies, and services, expended directly in support of such administration;

(3) Equipment purchased or acquired solely for, and utilized directly in support of such administration, provided that no single item of equipment or other tangible personal property costing more than $300 shall be acquired without the express consent of DOE;

(4) Printing, directly in support of such administration; and

(5) Travel, directly related to such administration.

Subpart H—State Plan Development and Approval

§ 455.90 Contents of state plan.

Each State shall develop a State Plan for technical assistance programs and energy conservation measures, including solar and other renewable resource measures. The State Plan shall include—

(a) A statement setting forth the procedures by which the views of eligible institutions or coordinating agencies representing such institutions, or both, were solicited and considered during development of the State Plan, and any amendment to a State Plan;

(b) The procedures the State will follow to notify eligible institutions and coordinating agencies of the content of the approved State Plan, or any approved amendment to a State Plan;

(c) The procedures for submittal of grant applications to the State;

(d) A description and evaluation of the results of preliminary energy audits (described in Subpart B of this part) which have been conducted in the State including, but not limited to—

(1) In the case of a State which has completed preliminary energy audits of all potentially eligible buildings, a summary of the data gathered pursuant to § 450.42 for all such buildings;

(2) In the case of a State which has completed preliminary energy audits of a sample of all potentially eligible buildings within the State—

(i) Reasonably accurate estimates of the preliminary energy audit data required by 10 CFR 450.42 for all potentially eligible buildings within the State; and

(ii) A plan which describes further actions to be taken to complete preliminary energy audits of all potentially eligible buildings;

(e) The procedures to be used by the State for evaluating and ranking technical assistance and energy conservation measure grant applications pursuant to § 455.71, including the weights assigned to each criterion set forth in § 455.71(b). In addition, for the criteria set forth in § 455.71(b)(3), the State shall determine the order of priority given to fuel types that include oil, natural gas, and electricity.

(f) The procedures that the State will follow to insure that funds will be allocated equitably among eligible applicants within the State, including procedures to insure that funds will not be allocated on the basis of size or type of institution but rather on the basis of relative need taking into account such factors as cost, energy consumption and energy savings, in accordance with § 455.71;

(g) The procedures that the States will follow for identifying schools and hospitals experiencing severe hardship and for apportioning the funds that are available for schools and hospitals in a class of severe hardship. Such policies and procedures shall be in accordance with § 455.71(e).

(h) A statement setting forth the extent to which, and by which methods, the State will encourage utilization of solar space heating, cooling and electric systems and solar water heating systems;

(i) The procedures to assure that all financial assistance under this part will be expended in compliance with the requirements of the State Plan, in compliance with the requirements of this part, and in coordination with other State and Federal energy conservation programs;

(j) The procedures to insure implementation of energy conservation maintenance and operating procedures in those buildings for which financial assistance is requested under this part. At a minimum, the plan shall provide that all operating and maintenance procedure changes recommended in an energy audit report or a technical assistance report have been implemented prior to initial or additional financial assistance under this part being provided, unless it is shown that—

(1) The recommendation is infeasible because of factors not considered by the auditor or analyst;

(2) There is a cost involved which exceeds the institution's limit on operating expenditures;

(3) The implementation of the change requires some item of supply or material which is not available; or

(4) Other factors as approved by the Secretary;

(k) The procedures designed to insure that financial assistance under this part will be used to supplement, and not to supplant, State, local or other funds;

(l) The procedures for determining that energy audits performed without the use of Federal funds have been performed in substantial compliance with the requirements of 10 CFR Part 450 for the purposes of satisfying the eligibility requirements contained in § 455.41(c);

(m) The procedures for determining that technical assistance programs performed without the use of Federal funds have been performed in complance with the requirements of § 455.42, for the purposes of satisfying the eligibility requirements contained in § 455.51(a)(3);

(n) The procedures for State management, monitoring and evaluation of technical assistance programs and energy conservation measures receiving financial assistance under this part;

(o) A description of the State's program for establishing and insuring compliance with qualifications for technical assistance analysts. Such policies shall require that technical assistance analysts—

(1) Have experience in energy conservation and be a registered professional engineer licensed under the regulatory authority of the State;

(2) Be an architect-engineer team, the principal members of which are licensed under the regulatory authority of the State; or

(3) Be otherwise qualified in accordance with such criteria as the State may prescribe in its State Plan to insure that individuals conducting technical assistance programs possess the appropriate training and experience in building energy systems. Such policies shall also require that technical assistance analysts be free from financial interests which may conflict with the proper performance of their duties;

(p) A procedure for gathering data and reporting:

(1) An estimate of energy savings which may result from the modification of maintenance and operating procedures and installation of energy conservation measures;

(2) A recommendation as to the types of energy conservation measures considered appropriate within the State; and

(3) An estimate of the costs of carrying out technical assistance and energy conservation measures programs.

§ 455.91 Submission and approval of state plans.

(a) Proposed State Plans or amendments necessitated by a change in regulations shall be submitted to the Secretary within 90 days of the effective date of this subpart or any amended regulations. The Secretary, upon request and for good cause shown, may grant an extension of time.

(b) The Secretary shall, within 60 days of receipt of a proposed State Plan, review each Plan and, if it is found to conform to the requirements of this part, approve the State Plan. If the Secretary does not disapprove a State Plan within the 60-day period, the Secretary will be deemed to have approved the State Plan.

(c) If the Secretary determines that a proposed State Plan fails to comply with the requirements of this part the Secretary shall return the Plan to the State with a statement setting forth the reasons for disapproval.

(d) The Secretary shall review each amendment submitted by the State and, if it is found to conform to the requirements of this part, approve the amendment(s). If the Secretary determines that a proposed State Plan amendment fails to comply with the requirements of this part, the Secretary shall return the amendment to the State with a statement setting forth reasons for disapproval. With the consent of the Secretary, the State may submit a new or amended Plan at any time.

§ 455.92 State plans developed by the Secretary.

(a) If a State Plan has not been approved by February 7, 1981, or within 90 days after completion of the preliminary energy audits, whichever is later, the Secretary may develop and implement a State Plan on behalf of the schools and hospitals in the State.

(b) Subsequent to the development of a State Plan by the Secretary, the State may submit its own State Plan and the Secretary shall approve or disapprove such plan within 60 days after receipt by the Secretary. If the proposed plan meets the requirements of this part, and is not inconsistent with any plan developed and implemented by the Secretary, the Secretary shall approve the State Plan which shall automatically replace the plan developed by the Secretary.

Subpart I—Allocation of Appropriations Among the States

§ 455.100 Allocation of funds.

(a) The Secretary will allocate available funds among the States for the purpose of awarding grants to schools, hospitals, units of local government, and public care institutions and coordinating agencies to implement technical assistance and energy conservation measures grant programs in accordance with this part.

(b) By notice published in the Federal Register, the Secretary shall notify each State of the total amount allocated for grants within the State for any grant program cycle—

(1) For schools and hospitals, the allocation amount shall be for technical assistance programs, together with any limitation placed on technical assistance, and energy conservation measures; and

(2) For units of local government and public care institutions, the allocation amount shall be solely for technical assistance programs.

(c) By notice published in the Federal Register, the Secretary shall notify each State of the period for which funds allocated for a grant program cycle will be made available for grants within the State.

(d) Each State make available up to ten percent of its allocation for schools and hospitals in each grant program cycle to provide financial assistance not to exceed a 90 percent Federal share, for technical assistance programs and energy conservation measures for schools and hospitals determined to be in a class of severe hardship. Such determinations shall be made in accordance with § 455.71(e).

§ 455.101 Allocation formulas.

(a) Financial assistance for conducting technical assistance programs for units of local government and public care institutions shall be allocated among the State by multiplying the sum available

by the allocation factor set for in paragraph (c) of this section.

(b) Financial assistance for conducting technical assistance programs and acquiring and installing energy conservation measures, including solar and other renewable resource measures, for schools and hospitals shall be allocated among the States by multiplying the sum available by the allocation factor set forth in paragraph (c) of this section.

(c) The allocation factor (K) shall be determined by the formula—

$$K = \frac{0.07}{N} + 0.1\,\frac{(sfc)}{(Nfc)} + 0.83\,\frac{(SP)(SC)}{(NPC)}$$

where, as determined by DOE—

(1) Sfc is the average retail cost per million Btu's of energy consumed within the region in which the State is located, as reflected in the 1985, Series C projections prepared for DOE's Energy Information Administration Administrator's Annual Report, 1977;

(2) Nfc is $271.95, the summation of the Sfc numerators for all States;

(3) n is the total number of eligible States;

(4) SP is the population of the State, as determined from 1976 census estimates, "Current Population Reports" Series P-25, number 603;

(5) SC is the sum of State's heating and cooling degree days, as determined from National Oceanic and Atmospheric Administration data for the thirty year period, 1941 through 1970;

(6) NPC is 1,277,259,000, the summation of the (SP) (SC) numerators for all States.

(d) Except for the District of Columbia, Puerto Rico, Guam, American Samoa and the Virgin Islands, no allocation available to any State may be less than 0.5 percent of all amounts allocated in any grant program cycle. No State will be allocated more than 10 percent of the funds allocated in any grant program cycle.

§ 455.102 Reallocation of funds.

(a) If a State Plan has not been approved and implemented by a State by the close of the period for which allocated funds are available as set forth in the notice issued by the Secretary pursuant to § 455.100(c), funds allocated to that State for technical assistance and energy conservation measures will be reallocated among all States for the next grant program cycle, if available.

(b) If a State Plan has not been approved by February 7, 1981, or within ninety days after completion of the preliminary energy audits, whichever is later, the Secretary may develop and implement a State Plan on behalf of the schools and hospitals within the State. If the Secretary does not develop a State Plan for a State, the funds reserved for that grant program cycle for schools and hospitals in that State will be reallocated for the next grant program cycle among all States for schools and hospitals.

(c) The Secretary reallocate the funds which remain unobligated by DOE at the end of any grant program cycle among all States in the next grant program cycle.

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December 29, 1980

Part VI

Equal Employment Opportunity Commission

Guidelines on Discrimination Because of National Origin

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1606

Guidelines on Discrimination Because of National Origin

AGENCY: Equal Employment Opportunity Commission.

ACTION: Final guidelines.

SUMMARY: The Equal Employment Opportunity Commission is revising its *Guidelines on Discrimination Because of National Origin* to clarify them and to specifically inform the public of unlawful employment practices which discriminate on the basis of national origin. These Guidelines reaffirm the Commission's position on national origin discrimination as expressed in Commission decisions and other legal interpretations.

EFFECTIVE DATE: December 29, 1980.

FOR FURTHER INFORMATION: Karen Danart, Acting Director, or Raj K. Gupta, Supervisory Attorney, Office of Policy Implementation, 2401 E Street NW., Room 4002, Washington, D.C. 20506, (202) 634-7060.

SUPPLEMENTARY INFORMATION:

I. Background

On January 13, 1970, (35 FR 421) the Commission adopted its *Guidelines on Discrimination Because of National Origin.* These Guidelines were issued as a result of charges filed by individuals alleging denial of equal employment opportunity because their last names suggested association with certain national origin groups, or because of their association with persons, schools, churches and other lawful organizations identified with certain national origin groups. The Guidelines were last amended on March 18, 1974, to conform to the Supreme Court decision in *Espinoza* v. *Farah Manufacturing Co., Inc.,* 414 U.S. 86, 92 (1973).

In order to allow interested persons an opportunity to participate in all stages of its guideline process and in compliance with Executive Order 12044 (43 FR 12661, March 24, 1978, as amended by E.O. 12221, 45 FR 44249, July 1, 1980), the Commission noticed its intent to review these Guidelines (45 FR 51229 at 51231, August 1, 1980). On September 19, 1980, 45 FR 62728, the Commission published a proposed revision of its current Guidelines which appear at 29 CFR 1606. The proposed Guidelines were published for public comment for 60 days. In compliance with Executive Order 12160 (44 FR 44787, September 28, 1979) and with the Commission's Final Consumer Program, (45 FR 38930, June 9, 1980), the Commission notified members of the public of their opportunity to comment on the proposed Guidelines by directly mailing them to various interested groups and individuals.

These Guidelines are a significant regulation under Executive Order 12044, (43 FR 12661, Mar. 24, 1978, as amended by E.O. 12221, 45 FR 44249, July 1, 1980). The Commission has determined that they will not have a major impact on the economy and that a regulatory analysis is not necessary.

In compliance with Executive Order 12067, (43 FR 28967, July 5, 1978), the Commission has consulted with representatives from the necessary federal departments and agencies on the revision of these Guidelines.

II. An Overview of the Guidelines and Public Comments

The Commission's main purpose in revising its Guidelines is to restructure and clarify the preceding Guidelines, and to incorporate into the Guidelines the Commission's major interpretations of Title VII discrimination on the basis of national origin. Therefore, each section of the Guidelines is based on existing policy which the Commission has stated in its Decisions, in the preceding *Guidelines on Discrimination Because of National Origin* or in other interpretations of Title VII.

During the 60 day comment period, the Commission received approximately 250 comments from individuals, civil rights organizations, business associations, educational institutions, and public and private employers. About two-thirds of these comments were general statements, either in support of, or against the Guidelines, and did not contain specific substantive comments on the Guidelines. Many of these commentators, focussing only on the section relating to the speak-English-only rules, incorrectly equated the Guidelines with the bilingual education programs and other bilingual programs. The Commission wants to emphasize that the Guidelines have no relationship to the bilingual education programs or other bilingual programs. The Commission also wants to emphasize that the Guidelines do not promote or require bilingualism in the workplace. The goal of the Guidelines is to protect employees from discriminatory employment practices and to remove unnecessary barriers, such as the broad speak-English-only rules, which result in the denial of employment opportunities to individuals on the basis of their national origin.

Many commentators strongly supported this revision of the Guidelines and indicated that these Guidelines would be beneficial in achieving equal job opportunities for all individuals regardless of their national origin, or their cultural or linguistic characteristics.

The following is an analysis of each section, the major comments received and the changes made to the proposed Guidelines.

§ 1606.1—Definition of National Origin Discrimination

This section is based on § 1606.1(b) of the preceding *Guidelines on Discrimination Because of National Origin.* It defines national origin discrimination broadly as including, but not limited to, employment discrimination because of an individual's, or his or her ancestor's place of origin, or because of an individual's physical, cultural or linguistic characteristics. As a result of the comments, the Commission has added physical characteristics to this definition. As several commentators noted, physical characteristics, such as facial features, are often the most obvious bases for national origin discrimination.

The Commission will carefully examine charges involving the denial of equal employment opportunity because of an individual's name, marriage to a person of a national origin group, or association with persons, organizations, schools or religious institutions identified with any national origin group. Some commentators suggested that the definition was too broad in extending protection to an individual merely because he or she is married to someone of a certain national origin or associates with institutions identified with a certain national origin. These comments are based on a misreading of the section. The section only states that such charges will be examined with particular concern to determine if, indeed, the alleged discrimination was based on national origin. To clarify this misunderstanding, the Commission has added a sentence stating that it will determine whether there has been unlawful national origin discrimination by applying general Title VII principles, such as disparate treatment and adverse impact. For example, it would be unlawful national origin discrimination for an employer to disparately treat an employee who it thought belonged to a certain national origin group because the employee's spouse had a pronounced foreign appearance or a foreign name.

A few commentators stated that the definition of national origin discrimination was too broad because it not only included minorities but also all white persons. National origin discrimination may often overlap with discrimination because of race or color. The Commission's definition of national origin discrimination is necessarily broad because Title VII protects all individuals from national origin discrimination regardless of their race or color.

Some commentators believed that the definition does not recognize national origin discrimination grounded in a person's manner of dressing, such as, the wearing of turbans or saris. If the facts of a case show that, under general Title VII principles, there has been discrimination on the basis of national origin, such discrimination would be covered under the definitional phrase "cultural characteristics of a national origin group."

Several commentators correctly noted that for an individual to be protected against national origin or his ancestors have their origins in a sovereign nation. See, for example, *Roach* v. *Dresser Industries*, 23 FEP Cases 1073 (W.D. La. 1980), where the court held that a person of Acadian descent ("Cajun") could sue under Title VII for national origin discrimination. Because the phrase "country of origin" may imply a reference to a sovereign nation, it has been substituted by the phrase "place of origin".

Also, the phrase "particular national origin" in the proposed Guidelines has been changed to "national origin group" throughout this section. In order to have a claim of national origin discrimination under Title VII, it is not necessary to show that the alleged discriminator knew the *particular* national origin group to which the complainant belonged. To prove a national origin claim, it is enough to show that the complainant was treated differently than others because of his or her foreign accent, appearance or physical characteristics. See, for example, *Berke* v. *Ohio Department of Public Welfare*, 24 EPD ¶31,217 (6th Cir. 1980), which held that defendants had discriminated against Berke because of her accent which flowed from her national origin. The Court of Appeals, in a per curiam opinion, affirmed the unpublished district court opinion. The district court had held that it was immaterial that the employer could not have discriminated against the employee because she was of Polish origin; the employer did not know that the employee was Polish. It was sufficient that the employer treated her differently because she had a "foreign" accent.

§ 1606.2—Scope of Title VII Protection

The first sentence of this section is based on § 1606.1(c) of the preceding Guidelines, and has been revised to conform with the coverage of Title VII. Section 1606.2 also recognizes that Title VII principles of disparate treatment and adverse impact equally apply to national origin discrimination.

One commentator suggested that the Commission clarify the responsibility of labor organizations regarding national origin discrimination. The last sentence has been restated to clarify that the Guidelines use the term "employer" to refer to all entities covered by Title VII. Therefore, the Guidelines apply to all entities covered by Title VII, including labor organizations, joint labor management committees controlling apprenticeship or other training or retraining, and public or private employment agencies.

§ 1606.3—The National Security Exception

Section 1606.3 is based on the exception in § 1606.1(d) of the preceding Guidelines. This Section recognizes the national security exception as it appears in Section 703(g) of Title VII.

The Commission did not receive any comments from the public on this section. However, as a result of interagency coordination under Executive Order 12067, a footnote has been added to refer to the national security provision for federal employment under 5 U.S.C. 7532.

§ 1606.4—The Bona Fide Occupational Qualification Exception

This section reiterates the last sentence in § 1606.1(a) of the preceding Guidelines and is based on the Commission's long held position that the bona fide occupational qualification exception under Section 703(e) of Title VII shall be strictly construed. Several commentators supported the Commission's strict construction of the BFOQ exception. There were no substantive comments on this section and no changes have been made.

§ 1606.5—Citizenship Requirements

This section is based on § 1606.1 (d) and (e) of the preceding Guidelines. In those circumstances where citizenship requirements have the purpose or effect of discriminating against an individual on the basis of national origin, they are prohibited by Title VII. See *Espinoza* v. *Farah Mfg. Co. Inc.*, 414 U.S. 86, 92 (1973).

Some commentators noted that the Guidelines do not indicate whether an employer would be liable under Title VII, if a State law prohibits the employment of illegal aliens and if the employer refuses to hire an "illegal alien" because of that State Law. The commentators mentioned twelve states which have laws prohibiting the employment of "illegal aliens". They also cited to the Supreme Court decision in *De Canas* v. *Bica*, 424 U.S. 351 (1976), which held that the State of California was not totally barred, by virtue of the Immigration and Nationality Act (INA), from regulating the employment of "illegal aliens" within its boundaries. However, the Court left the question open for the lower court to determine whether the California statute is too broad and therefore in conflict with the purposes and objectives of Congress in enacting the Immigration and Nationality Act. For example, the Court noted that the California statute prohibits the employment of aliens who are "not entitled to lawful residence in the United States"; and, that therefore, on its face, it appears to conflict with the INA which permits certain aliens, not entitled to lawful residence, to work in the United States. In *De Canas*, the Court was not presented with the issue of whether the California law was consistent with the purposes and objectives of Title VII. Similar analysis, however, would have to be made in determining whether a particular State law conflicts with Title VII. In Title VII, Congress only specifically excluded from coverage the employment of aliens outside the United States. See Section 702 of Title VII, 42 U.S.C. 2000e-1. Moreover, even if such a State law is found not to have been superseded under Section 708 of Title VII, 42 U.S.C. 2000e-7, as one of these commentators recognized, an employer may be liable under Title VII if it is shown that the employer treats applicants who look or speak like aliens differently than other applicants. Since the Commission has not been presented with charges involving respondent defenses based on such State laws, it has not developed policy in this area. If the Commission should receive such a charge, it will base its decision on the provisions of the State law involved and on the employer's application of the State law to its employment practices.

As a result of interagency coordination under Executive Order 12067, the Commission has added to footnote 2, a reference to Executive Order 11935, 5 CFR Part 7.4, and to 31 U.S.C. 699(b), which set forth citizenship

requirements for certain types of Federal employment.

§ 1606.6—Selection Procedures

This section is derived from several of the concepts stated in § 1606.1(b) of the preceding Guidelines. As a result of the comments, this section has been revised. It affirms that in investigating selection procedures for adverse impact on the basis of national origin, the Commission will apply the principles of the *Uniform Guidelines on Employee Selection Procedures* (UGESP), 29 CFR Part 1607. As some commentators correctly noted, height and weight requirements are exceptions to the "bottom line" concept under Section 4C(2) of the UGESP. Section 1606.6(a)(2) now clearly states this. Some commentators also stated that the effect of § 1606.6(b) of the proposed Guidelines was to include fluency-in-English requirements and foreign training or education requirements as exceptions to the "bottom line" concept. Section 1606.6(b) now clarifies that the Commission does not consider these selection procedures to be exceptions to the "bottom line" concept. However, this section emphasizes that fluency-in-English and foreign training or education requirements are often the basis of national origin discrimination. Therefore, the Commission will carefully examine charges involving these requirements for evidence of discrimination under both the disparate treatment and adverse impact theories.

Some commentators were concerned with the lack of guidance on how to determine adverse impact and job relatedness for selection criteria identified in § 1606.6. They also wanted to know the recordkeeping requirements for national origin groups. The Commission has given detailed guidance in the UGESP on how to determine adverse impact and on validation. Proposed § 1606.6(a)(1) has been revised to clarify that these are the standards which employers should apply in evaluating selection procedures for unlawful national origin discrimination. The UGESP, sections 4 and 15, specify the national origin groups for which employers are required to keep records in evaluating selection procedures for unlawful national origin discrimination. Those recordkeeping requirements apply to all the selection procedures mentioned in § 1606.6.

Most of the comments on this section concerned the selection procedures mentioned in §1606.6(b)(2), *i.e.*, the denial of employment opportunities because of an individual's foreign accent or inability to communicate well in English. An employer who considers a person's foreign accent or ability to communicate in English as one of its criteria in selecting applicants for a job or other employment opportunities, should examine these practices for evidence of disparate treatment on the bases of national origin, as well as for evidence of adverse impact under the UGESP. If there is adverse impact based on national origin, the employer must justify the use of the selection procedure by showing that it is job related or otherwise justified under Federal law. For example, knowing how to speak English could be job related for the job of selling shoes to English-speaking customers. However, if the employer required its sales people to speak without an accent or to have a certain degree of fluency in English, and if these requirements had an adverse impact based on national origin, the employer would have to show the job relatedness of the no-foreign-accent requirement, or of the degree of fluency in English which it required.

Several commentators were concerned about the liability under Title VII of employers who require their employees to be bilingual for certain jobs. A job requirement of bilingualism is a selection procedure under the UGESP, and employers should follow the principles of the UGESP in analyzing these jobs for adverse impact on the basis of national origin.

Some commentators were concerned that the Guidelines would discourage employees from improving their ability to speak English. A few employers mentioned that they had programs for their employees from non-English speaking backgrounds to study and improve their English language skills. The Commission strongly supports such programs, and nothing in these Guidelines precludes employers from encouraging their employees to improve their ability to speak English. Simply stated, the Commission's concern is that individuals are not deprived of employment opportunities on the basis of non-job-related language proficiency requirements which under the UGESP have an adverse impact on the basis of national origin, or which are used to disparately treat individuals because of their national origin.

Some commentators stated that it would be difficult and impractical to evaluate foreign training and education, especially in the professional fields, and that in some instances, a state licensing requirement for the job may treat foreign education or training differently. It is noted that an individual's foreign training or education is particularly susceptible to subjecting the individual to employment discrimination on the basis of national origin. Therefore, charges alleging discrimination on this basis will be carefully examined by the Commission for national origin discrimination. The Commission's investigation will focus on such questions as: does the employer treat all foreign training or education on the same basis, or does it discriminate between foreign training or education on the basis of an individual's national origin; although a job may ordinarily require a state license, does the employer uniformly and always require such license for the job. (For licensing or certification requirements that have an adverse impact, *inter alia*, on the basis of national origin, see also Sections 2B and 16W of the UGESP, 29 CFR 1607.2B and 1607.16W; and UGESP Questions and Answers #7, 44 FR 11996, 11997 (March 2, 1979).

§ 1606.7—Speak-English-Only Rules

This section recognizes that an individual's primary language is often an essential national origin characteristic. According to estimates from the Survey of Income and Education conducted by the U.S. Bureau of Census in Spring 1976, approximately 28 million persons in the United States (about 13% of the total U.S. population) have non-English language backgrounds and may be affected by an employer's speak-English-only rule. The survey identifies persons with non-English language backgrounds as persons whose mother tongue is not English, who normally use languages other than English, or who live in households where languages other than English are spoken. About 21 million, or seventy five percent, of this group are above the age of 18. The study shows the following approximate numbers for each of these language backgrounds: Spanish, 10.6 million; Italian, 2.9 million; German, 2.7 million; French, 1.9 million; Chinese, Japanese, Korean and Vietnamese, 1.8 million; Polish, 1.5 million. Approximately 2.4 million persons in the United States do not speak any English at all.*

An employer's rule which requires employees to speak English at all times, including during their work breaks and lunch time, is one example of an employment practice which discriminates against persons whose primary language is not English.

* See U.S. Department of Health, Education and Welfare, National Center for Education Statistics, Bulletin 78 B-5, August 22, 1978, "Geographic Distribution, Nativity, and Age Distribution of Language Minorities in the United States: Spring 1976"; Waggoner, Dorothy, "Non-English Language Background Persons: Three U.S. Surveys", TESOL Quarterly, vol. 12, No. 3 at 247-262, September, 1978.

Under § 1606.7(a), the Commission presumes that totally prohibiting employees from speaking their primary language, violates Title VII because it is a burdensome term and condition of employment which discriminates on the basis of national origin by disadvantaging an individual's employment opportunities and by creating a discriminatory working environment. Therefore, where such a rule exists, the Commission will closely scrutinize it. However, § 1606.7(b) also recognizes that an employer may require its employees to speak only in English at certain times and that this would not be discriminatory if the employer shows that the rule is justified by business necessity; for example, where safety requires that all communications be in English so that everyone can closely follow a particular task, such as, surgery or drilling of oil wells;** or where a salesperson is attending to English-speaking customers. When the employer believes that the rule is justified by business necessity, the employer should clearly inform its employees of the general circumstances under which they are required to speak only in English and the consequences of violating the rule. Notice of the rule is necessary because it is common for individuals whose primary language is not English to inadvertently change from speaking English to speaking their primary language. Any adverse employment decision against an individual based on a violation of the rule will be considered as evidence of discrimination when an employer has not given effective notice of the rule.

Most of the general, non-substantive comments were directed toward this section of the Guidelines. These comments reflected a misunderstanding of the Guidelines either by equating them with bilingual education and other bilingual programs or by concluding that their purpose is to promote bilingualism in the workplace. As we stated at the beginning of this analysis, the Guidelines are not concerned with bilingual education or other bilingual programs, and they do not promote bilingualism in the workplace. the purpose of the guidelines is to explain to employers, and other entities covered by Title VII, the Commission's interpretation of what constitutes national origin discrimination.

As the Court noted in *Garcia* v. *Gloor*, 618 F. 2d 264, 268 n.1 (5th Cir. 1980), the Commission's previous Guidelines did not give any standards for testing employer rules which prohibit the use of languages other than English. The purpose of § 1606.7 is to provide this guidance. The Commission's concern is to prevent employers from imposing speak-English-only rules, as arbitrary and oppressive terms and conditions of employment, on people who come from non-English-speaking backgrounds in order to deprive them of an equal employment opportunity for jobs they are otherwise fully qualified to perform. Section 1606.7 does not conflict with the *Gloor* decision. *Gloor* did not involve a speak-English-only rule which was applied at all times. Neither did the facts in *Gloor* involve a bilingual employee whose primary language was not English. In the Court's view, Mr. Garcia, who spoke both English and Spanish failed to prove that Spanish was his primary language

Several commentators objected to the presumption in § 1606.7(a) that a speak-English-only rule which is applied at all times, including break and lunch time, violates Title VII. The Commission believes that this would create such a burdensome term and condition of employment, for employees whose primary language is not English, that the mere application of such a rule would shift the burden to the employer. Therefore, the Commission believes it is necessary to closely scrutinize such an absolute prohibition. However, employers may require that English be spoken when it is justified by business necessity.

Section 1606.7(a) has been restructured, and the phrase "in the workplace has been added. The words "narrowly drawn" have been eliminated in § 1606.7(b) because they are redundant.

Some commentators stated that to notify employees of the "exact circumstances and times" of speak-English-only rules would be impractical for employers to implement. Therefore, the Commission has changed the phrase, "exact circumstances and times" in § 1606.7(c), to the more flexible concept of "general circumstances." The manner in which an employer notifies its employees does not matter. However, the notice must be effective, *i.e.*, the employee should know under what circumstances he or she is required to speak only in English and what will happen if he or she violates the rule.

Section 1606.8—Harassment

This section states that harassment on the basis of national origin is a violation of Title VII and that an employer has an affirmative duty to maintain a working environment free from harassment on the basis of national origin. Section 1606.8(c) applies general Title VII principles to the issue of harassment and states that an employer is responsible for the acts of its supervisory employees or agents, regardless of whether the acts were authorized or forbidden by the employer and regardless of whether the employer knew or should have known of the acts. Section 1606.8(d) distinguishes the employer's responsibility for the acts of its agents or supervisors from the responsibility it has for conduct between fellow employees. This subsection states that liability for acts of national origin harassment in the workplace between fellow employees exists only when the employer, its agents or supervisory employees, knows or should have known of the conduct, and the employer cannot demonstrate that it took immediate and appropriate corrective action. Section 1606.8(e) recognizes that in certain circumstances, an employer may also be responsible for the acts of non-employees with respect to harassment of employees on the basis of national origin.

Some commentators objected to the strict liability of an employer under § 1606.8(c) for the acts of harassment of its supervisory employees or agents. Other commentators objected to an employer's responsibility for the conduct of non-employees as set forth in § 1606.8(e).

This Commission has not made any change in this section. The principles of this section are the same as stated in the recently published Commission's *Guidelines on Sexual Harassment*, 45 FR 74676 (November 10, 1980). These principles have been carefully developed by the Commission and fully commented upon in the supplementary information to the Commission's final *Guidelines on Sexual Harassment*, 45 FR 74676, 74677.

Date: December 22, 1980.

Eleanor Holmes Norton,

Chair, Equal Employment Opportunity Commission.

Accordingly, 29 CFR Chapter XIV is amended by revising Part 1606 to read as follows:

PART 1606—GUIDELINES ON DISCRIMINATION BECAUSE OF NATIONAL ORIGIN

Sec.

1606.1 Definition of national origin discrimination.
1606.2 Scope of Title VII protection.
1606.3 The national security exception.
1606.4 The bona fide occupational qualification exception.
1606.5 Citizenship requirements.
1606.6 Selection procedures.
1606.7 Speak-English-only rules.

** See for example, *Saucedo* v. *Brothers Well Service, Inc.*, 464 F. Supp. 919 (S.D. Texas 1979).

1606.8 Harassment.

Authority: Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e et seq.

§ 1606.1 Definition of national origin discrimination.

The Commission defines national origin discrimination broadly as including, but not limited to, the denial of equal employment opportunity because of an individual's, or his or her ancestor's, place of origin; or because an individual has the physical, cultural or linguistic characteristics of a national origin group. The Commission will examine with particular concern charges alleging that individuals within the jurisdiction of the Commission have been denied equal employment opportunity for reasons which are grounded in national origin considerations, such as (a) marriage to or association with persons of a national origin group; (b) membership in, or association with an organization identified with or seeking to promote the interests of national origin groups; (c) attendance or participation in schools, churches, temples or mosques, generally used by persons of a national origin group; and (d) because an individual's name or spouse's name is associated with a national origin group. In examining these charges for unlawful national origin discrimination, the Commission will apply general Title VII principles, such as disparate treatment and adverse impact.

§ 1606.2 Scope of Title VII protection.

Title VII of the Civil Rights Act of 1964, as amended, protects individuals against employment discrimination on the basis of race, color, religion, sex or national origin. The Title VII principles of disparate treatment and adverse impact equally apply to national origin discrimination. These Guidelines apply to all entities covered by Title VII (collectively referred to as "employer").

§ 1606.3 The national security exception.

It is not an unlawful employment practice to deny employment opportunities to any individual who does not fulfill the national security requirements stated in Section 703(g) of Title VII.[1]

§ 1606.4 The bona fide occupational qualification exception.

The exception stated in Section 703(e) of Title VII, that national origin may be a bona fide occupational qualification, shall be strictly construed.

§ 1606.5 Citizenship requirements.

(a) In those circumstances, where citizenship requirements have the purpose or effect of discriminating against an individual on the basis of national origin, they are prohibited by Title VII.[2]

(b) Some State laws prohibit the employment of non-citizens. Where these laws are in conflict with Title VII, they are superseded under Section 708 of the Title.

§ 1601.6 Selection procedures.

(a)(1) In investigating an employer's selection procedures (including those identified below) for adverse impact on the basis of national origin, the Commission will apply the *Uniform Guidelines on Employee Selection Procedures* (UGESP), 29 CFR part 1607. Employers and other users of selection procedures should refer to the UGESP for guidance on matters, such as adverse impact, validation and recordkeeping requirements for national origin groups.

(2) Because height or weight requirements tend to exclude individuals on the basis of national origin,[3] the user is expected to evaluate these selection procedures for adverse impact, regardless of whether the total selection process has an adverse impact based on national origin. Therefore, height or weight requirements are identified here, as they are in the UGESP,[4] as exceptions to the "bottom line" concept.

(b) The Commission has found that the use of the following selection procedures may be discriminatory on the basis of national origin. Therefore, it will carefully investigate charges involving these selection procedures for both disparate treatment and adverse impact on the basis of national origin. However, the Commission does not consider these to be exceptions to the "bottom line" concept:

(1) Fluency-in-English requirements, such as denying employment opportunities because of an individual's foreign accent,[5] or inability to communicate well in English.[6]

(2) Training or education requirements which deny employment opportunities to an individual because of his or her foreign training or education, or which require an individual to be foreign trained or educated.

§ 1606.7 Speak-English-only rules.

(a) *When Applied at all Times.* A rule requiring employees to speak only English at all times in the workplace is a burdensome term and condition of employment. The primary language of an individual is often an essential national origin characteristic. Prohibiting employees at all times, in the workplace, from speaking their primary language or the language they speak most comfortably, disadvantages an individual's employment opportunities on the basis of national origin. It may also create an atmosphere of inferiority, isolation and intimidation based on national origin which could result in a discriminatory working environment.[7] Therefore, the Commission will presume that such a rule violates Title VII and will closely scrutinize it.

(b) *When Applied Only at Certain Times.* An employer may have a rule requiring that employees speak only in English at certain times where the employer can show that the rule is justified by business necessity.

(c) *Notice of the Rule.* It is common for individuals whose primary language is not English to inadvertently change from speaking English to speaking their primary language. Therefore, if an employer believes it has a business necessity for a speak-English-only rule at certain times, the employer should inform its employees of the general circumstances when speaking only in English is required and of the consequences of violating the rule. If an employer fails to effectively notify its employees of the rule and makes an adverse employment decision against an individual based on a violation of the rule, the Commission will consider the employer's application of the rule as evidence of discrimination on the basis of national origin.

§ 1606.8 Harassment.

(a) The Commission has consistently held that harassment on the basis of national origin is a violation of Title VII. An employer has an affirmative duty to

[1] See also, 5 U.S.C. 7532, for the authority of the head of a federal agency or department to suspend or remove an employee on grounds of national security.

[2] See *Espinoza* v. *Farah Mfg. Co., Inc.*, 414 U.S. 86, 92 (1973). See also, E.O. 11935, 5 CFR Part 7.4; and 31 U.S.C. 699(b), for citizenship requirements in certain Federal employment.

[3] See CD 71-1529 (1971), CCH EEOC Decisions ¶6231, 3 FEP Cases 952; CD 71-1418 (1971), CCH EEOC Decisions ¶6223, 3 FEP Cases 580; CD 74-25 (1973), CCH EEOC Decisions ¶6400, 10 FEP Cases 260. *Davis* v. *County of Los Angeles*, 566 F. 2d 1334, 1341-42 (9th Cir., 1977) vacated and remanded as moot on other grounds, 440 U.S. 625 (1979). See also, *Dothard* v. *Rawlinson*, 433 U.S. 321 (1977).

[4] See Section 4C(2) of the *Uniform Guidelines on Employee Selection Procedures*, 29 CFR 1607.4C(2).

[5] See CD AL68-1-155E (1969), CCH EEOC Decisions ¶6008, 1 FEP Cases 921.

[6] See CD YAU9-048 (1969), CCH EEOC Decisions ¶6054, 2 FEP Cases 78.

[7] See CD 71-446 (1970), CCH EEOC Decisions ¶6173, 2 FEP Cases, 1127; CD 72-0281 (1971), CCH EEOC Decisions ¶6293.

maintain a working environment free of harassment on the basis of national origin.[8]

(b) Ethnic slurs and other verbal or physical conduct relating to an individual's national origin constitute harassment when this conduct: (1) Has the purpose or effect of creating an intimidating, hostile or offensive working environment; (2) has the purpose or effect of unreasonably interfering with an individual's work performance; or (3) otherwise adversely affects an individual's employment opportunities.

(c) An employer is responsible for its acts and those of its agents and supervisory employees with respect to harassment on the basis of national origin regardless of whether the specific acts complained of were authorized or even forbidden by the employer and regardless of whether the employer knew or should have known of their occurrence. The Commission will examine the circumstances of the particular employment relationship and the job functions performed by the individual in determining whether an individual acts in either a supervisory or agency capacity.

(d) With respect to conduct between fellow employees, an employer is responsible for acts of harassment in the workplace on the basis of national origin, where the employer, its agents or supervisory employees, knows or should have known of the conduct, unless the employer can show that it took immediate and appropriate corrective action.

(e) An employer may also be responsible for the acts of non-employees with respect to harassment of employees in the workplace on the basis of national origin, where the employer, its agents or supervisory employees, knows or should have known of the conduct and fails to take immediate and appropriate corrective action. In reviewing these cases, the Commission will consider the extent of the employer's control and any other legal responsibility which the employer may have with respect to the conduct of such non-employees.

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BILLING CODE 6570-06-M

[8] See CD CL68-12-431 EU (1969), CCH EEOC Decisions ¶6085, 2 FEP Cases 295; CD 72-0621 (1971), CCH EEOC Decisions ¶6311, 4 FEP Cases 312; CD 72-1561 (1972), CCH EEOC Decisions ¶6354, 4 FEP Cases 852; CD 74-05 (1973), CCH EEOC Decisions ¶6387, 6 FEP Cases 834; CD 76-41 (1975), CCH EEOC Decisions ¶6632. See also, Amendment to *Guidelines on Discrimination Because of Sex*, § 1604.11(a) n. 1, 45 FR 7476 sy 74677 (November 10, 1980).

federal register

Monday
December 29, 1980

Part VII

Interstate Commerce Commission

Railroad Transportation Contracts

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1039 and 1300

[Ex Parte No. 387]

Railroad Transportation Contracts

AGENCY: Interstate Commerce Commission.

ACTION: Notice of stay of interim rules.

SUMMARY: On November 5, 1980, at 45 FR 73481, the Commission issued interim rules in this proceeding. These rules were issued pursuant to Section 208 of the Staggers Rail Act of 1980 (Pub. L. No. 96-448, 94 Stat. 1895) to govern the process of contract filing, complaints, and approval and disapproval of contracts between rail carriers and purchasers of rail service. Notice is given of the stay of the interim rules. Elsewhere in the Federal Register today, the interim rules are being treated solely as proposed rules. We will evaluate all contracts on a case-by-case basis until final regulations are adopted.

EFFECTIVE DATE: December 16, 1980. The Comment period on the proposed rule ends January 8, 1981.

ADDRESS: An original and twenty copies of any comments should be mailed to: Interstate Commerce Commission, Room 5340, Washington, D.C. 20423, ATTENTION: Ex Parte No. 387

FOR FURTHER INFORMATION CONTACT: Richard Felder, (202) 275-7693 or Richard Schiefelbein, (202) 275-0826.

SUPPLEMENTARY INFORMATION: By decision of the Commission, Darius W. Gaskins, Jr., Chairman, served December 16, 1980, interim rules issued in this proceeding were stayed. Formal standards will not be imposed until the Commission has evaluated the comments submitted and has established final regulations. Comments in this matter are still being accepted under the notice of proposed rulemaking being published elsewhere in this issue. The comment period ends January 8, 1981, and the address to which comments are to be sent appears above.

Effective October 1, 1980, parties have been able to file contracts under Section 208, and the Commission must examine these contracts to ensure that they comply with the provisions of the new Act. Accordingly, we will evaluate all contracts on a case-by-case basis until final regulations are adopted. We will not in the interim adopt any formal requirements as to contract format, standing to complain, or how a complainant must make its case, parties should, however, closely follow the directives in Section 208, to assist the Commission in evaluating contracts and complaints before the effective date of final regulations.

Section 208 specifies the parties that can file, and the grounds for, complaints. Other individuals who believe that Section 707 or any other part of the Act confers upon them standing or additional grounds should submit their arguments with the complaint. This entire process of contract filing, complaints, and approval or disapproval of the contracts shall proceed on a case-by-case basis consistent with the statute until final rules become effective.

Dated: December 16, 1980.

By the Commission, Darius W. Gaskins, Jr., Chairman.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80-40319 Filed 12-24-80; 8:45 am]

BILLING CODE 7035-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1039 and 1300

[Ex Parte No. 387]

Railroad Transportation Contracts

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: On November 5, 1980 at 45 FR 73481, the Commission issued interim rules in this proceeding. These rules were issued pursuant to Section 208 of the Staggers Rail Act of 1980 (Pub. L. No. 96–488, 94 Stat. 1895) to govern the process of contract filing, complaints, and approval and disapproval of contracts between railroads and purchasers of rail service. Elsewhere in the Federal Register today notice is given of the rules being stayed. The interim rules should now be considered solely as proposed rules. While our orginal notice clearly requested comments on the rules, it may not have been clear to all interested persons that we were proposing that they be adopted as final rules. For this reason, we are extending the deadline for comments.

DATES: Comments on the proposed rules are due on or before January 8, 1981.

ADDRESS: An original and twenty copies of any comments should be mailed to: Interstate Commerce Commission, Room 5340, Washington, D.C. 20423, Attention: Ex Parte No. 387

FOR FURTHER INFORMATION CONTACT: Richard B. Felder, (202) 275–7656
or
Richard Schiefelbein, (202) 275–0826.

Decided: December 16, 1980.

(49 U.S.C. 10321 and 10713 and 5 U.S.C. 553.)

By the Commission, Darius W. Gaskins, Jr., Chairman.

Agatha L. Mergenovich,
Secretary.

[FR Doc. 80–40318 Filed 12–24–80; 8:45 am]
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federal register

Monday
December 29, 1980

Part VIII

Department of Transportation

Coast Guard

Deepwater Port Safety Zone; Final rule

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 148 and 150

[CGD 76-096]

Deepwater Port Safety Zone

AGENCY: Coast Guard, DOT.

ACTION: Final Rule.

SUMMARY: This document amends the Cost Guard's deepwater port navigation regulations by adding new requirements governing vessel activities at U.S. deepwater ports and publishing the boundaries of deepwater port safety zone and shipping safety fairways designated and developed as a function of the deepwater port license application review process. Included are modifications to existing rules and a number of editorial changes which clarify the requirements governing vessel navigation at deepwater ports. This action is required by the Deepwater Port Act of 1974. The purpose of this amendment is to promote marine environmental protection and navigational safety at deepwater ports.

EFFECTIVE DATE: January 28, 1981.

FOR FURTHER INFORMATION CONTACT: Frank A. Martin, Jr., Project Manager, Office of Marine Environment and Systems, U.S. Coast Guard Headquarters, Washington, D.C. 20593 (202) 472-5052.

SUPPLEMENTARY INFORMATION: On February 7, 1980, the Coast Guard proposed to make this amendment by issuing a notice of proposed rulemaking (45 FR 10172-82, February 14, 1980). That notice provided interested persons with the details of and reasons for this amendment and established a March 31, 1980 date by which written comments on the proposals could be submitted.

Comments were recieved from LOOP, Inc., the licensee of the only U.S. deepwater port presently under construction, the U.S. Department of the Interior (DOI), the American Petroleum Institute (API), the National Oceanic and Atmospheric Administration (NOAA), and various headquarters and field organizational components of the Coast Guard.

General Comments

The DOI commented that while the proposed navigation rules pertaining to deepwater port safety zones would have no effect on its operations, it did have an interest in safety zone boundaries, noting that 33 CFR 147.03 provides for the establishment of safety zones generally. The DOI would like to see the final rules contain a provision specifically requiring coordination with DOI when a safety zone boundary is proposed to be initiated or changed.

As explained in the preamble to the proposed rules, the formulation and designation of deepwater port safety zones is a function of the license application review process for each specific port proposal. Deepwater port safety zones are established under authority contained in section 10(d) of the Deepwater Port Act of 1974 (Act) (33 U.S.C. 1509(d)). Deepwater port safety zones should not be confused with other types of safety zones under the jurisdiction of the Coast Guard, such as those addressed at 33 CFR Parts 147 and 165.

Under section 10(d) of the Act, the DOI is specifically required to be consulted before the designation of deepwater port safety zone boundaries occurs. This consultation takes place during the license application review process. Further, because of the fair market rental value provision of section 5(h)(3) of the Act (33 U.S.C. 1504(h)(3)), any future proposed modification to deepwater port safety zone boundaries would have to be coordinated with the DOI for the reassessment or determination of the rent to be charged the deepwater port licensee. For these reasons the final rules do not contain the coordination provision requested by the DOI.

One comment correctly pointed out that the use of the term "safety zone" in the proposed rules, in specific contexts, was inconsistent with other contexts of the proposals. For example, where the term "safety zone" is used in the definition of "Marine site", proposed § 148.3, it appears that the term excludes anchorage areas. In the context of proposed § 150.301, however, it is clear that anchorages are included in a deepwater port safety zone.

In other places in the proposals, particularly in the preamble explaining the proposals, a wide range of terms were used to describe the general geographical areas around a deepwater port. These terms included marine site, safety zone, precautionary area, port safety precautionary area, deepwater port safety zone precautionary area, port approach area, port area, shipping approach fairway, and shipping safety fairway. To avoid possible confusion, the comment suggested defining the term "safety zone" and eliminating or consolidating use of the many other terms used to describe the various geographical areas associated with deepwater ports.

The first paragraph under existing § 148.3 definitions, states, in effect, that wherever terms defined in the Act are used in the deepwater port regulations at 33 CFR, Parts 148, 149, and 150, those terms have the same meaning as given in the Act unless otherwise provided for in the regulations. Section 3(16) of the Act defines "safety zone" to mean the safety zone established around a deepwater port as determined under section 10(d) of the Act. The determination under section 10(d) is that there be designated, during the deepwater port license application review process guided by the Act, a zone of appropriate size around and including any deepwater port, for the purpose of navigational safety.

Accordingly, it is inappropriate to specifically include a definition of "safety zone" in the final rule. As explained in the preamble to the proposed rules, the designation of the final deepwater port safety zone configuration for a particular port evolves from the license application review process. With the deepwater port license application review process experience gained thus far, the Coast Guard is of the view that the zone, under section 10(d) of the Act, of appropriate size around and including any deepwater port, should include the delineation therein of specific areas to be avoided anchorages, and such other ships' routing measures as vessel traffic lanes, and traffic separation schemes, as may be appropriate for a particular port. Editorial corrections have been made throughout the final rule to reflect the above view and eliminate potentially confusing modifiers such as "precautionary area".

Appendix A to the final rules, with its detailed description of specific deepwater port safety zone boundaries, and the subsequent charting of those boundaries before ports become operational will eliminate much of the apparent confusion generated over safety zone terminology.

The deepwater port regulations, as well as the proposed amendments, contain a number of references that imply jurisdiction of the Captain of the Port (COTP) over various deepwater port enforcement and operational matters. One comment correctly notes that existing Coast Guard regulations in 33 CFR Part 3, where geographical areas of responsibility for COTP Offices are defined, are not clear as regards jurisdiction over high seas areas where deepwater ports would be constructed. Future amendments to Part 3 will clarify this.

In the interim, 33 CFR 1.01-30, which defines COTP functions, was amended in 1977 to specifically include the

enforcement of regulations pertaining to deepwater ports.

To ensure that vessels calling at deepwater ports use the best available nautical chart, the NOAA requested that the final rule be specifically cross-referenced to 33 CFR Part 164 which requires vessels 1,600 or more gross tons to use National Ocean Survey charts, or foreign equivalent, while navigating in the vicinity of deepwater ports. This suggestion is not adopted because the masters of vessels that will be using a deepwater port will have detailed knowledge, through port Operation Manuals and advance scheduling arrangements, of the port's location and the shipping safety fairways leading to the port. Additionally, port provided Mooring Masters are required to be on vessels whenever those vessels are manuevering within the safety zone of the deepwater port.

The API requested that Annex A to the proposed rules, the description of the LOOP deepwater port safety zone and shipping safety fairway boundaries, be expanded to provide for a protective area prohibiting anchoring over the pipeline extending from the pumping platform complex to shore. The Coast Guard rejects this request for the reasons stated below.

The requirements governing offshore pipelines are a matter under the cognizance of the Materials Transportation Bureau (MTB) of the Department of Transportation Research and Special Programs Administration. Specifically, the Secretary of Transportation Bureau (MTB) of the Department of Transportation Research and Special Programs Administration. Specifically, the Secretary of Transportation delegated the authority to MTB to exercise the powers and perform the duties under section 21 of the Act (33 U.S.C. 1520) relating to the establishment, enforcement, and review of regulations concerning the safety, construction, operation, and maintenance of pipelines on federal lands and the Outer Continental Shelf.

In 1976, MTB amended its regulations in 49 CFR, Part 195, concerning transportation of liquids by pipeline, to more clearly delineate the applicability of that part to offshore liquid pipelines and to ensure the safe design, construction, operation and maintenance of those pipelines. That amendment (41 FR 34035–41, August 12, 1976) included the pipeline facilities that are a part of a deepwater port.

The pipelines associated with a deepwater port are subject to the MTB burial and cover requirements at 49 CFR 195.246 and 195.248. Those sections call for a cover of 48" over pipelines in a deepwater port safety zone, 36" over other offshore areas under less than 12 feet deep, as measured from mean low tide, and 30" over any other offshore area. Exceptions to these requirements are specified for burial and cover in bottom rock excavations.

For all segments of the pipeline associated with the LOOP, Inc. deepwater port, the MTB burial and cover requirements are exceeded. The safety zone pipelines have a five foot cover, the segment from the 12 foot depth contour to and across the shoreline has a cover of ten feet, and the remaining offshore segment from the 12 foot depth contour to the safety zone has a cover of three feet. The cover is measured from the top of the buried pipe to the natural sea bottom.

The pipeline coverage at LOOP will provide a sufficient level of protection from the general risk of accidental damage by anchors. In addition to the burial requirements, the LOOP pipelines are generally protected with a heavy concrete coating. Further, the Coast Guard is arranging with domestic and international charting agencies to mark the location of the LOOP pipelines on appropriate nautical charts, and on the domestic charts, include a precautionary note regarding anchoring over those pipelines. This seems to be a better course of action than extending the safety zone to cover the entire length of the pipeline.

Specific Comments

Two comments were directed at the radar surveillance requirements proposed in § 150.307. The API suggested the wording of this section be expanded to require surveillance of the safety zone and approaches. The other comment pointed out that radar surveillance of the safety zone by the port Vessel Traffic Supervisor (VTS) is triggered by the notification of arrival to that person as required by other sections of the proposed rules. If the notification is not given, radar surveillance of the safety zone may not be maintained.

The API suggestion to extend mandatory radar coverage by regulation beyond the safety zone has not been adopted because the rule as drafted provides an appropriate level of protection as explained in the preamble to the proposed rules. As a practical consideration, it is expected that deepwater ports will have radar equipment of sufficient range capability to provide coverage beyond safety zone boundaries. Planned operation of radar equipment at the LOOP port includes voluntary radar coverage to a range of approximately 27 nautical miles from the PPC. For these reasons, the final rule has not been changed because of the latter comment regarding radar surveillance in cases where there is a failure on the part of a vessel operator to notify the port of intentions with respect to entering the safety zone.

The API also commented on the proposed requirement in § 150.309 regarding advisories to tankers. That rule currently requires that the VTS at a port keep the master of each tanker underway in a safety zone apprised of the tanker's position and track at intervals not to exceed 10 minutes. The API considers this requirement too specific and suggests a more relaxed substitute that essentially allows the VTS to receive and disseminate vessel traffic information as appropriate under prevailing circumstances. The API's suggestion is not adopted in the final rule, § 150.309. The rule as drafted ensures continuity of communications between vessels in the safety zone and the port VTS, and the continuous presence of the VTS at that person's post of duty. These are important safety considerations that should not be relaxed. However, for clarification, the term "track" has been changed in paragraph (a) of the final rule by substituting language that refers to a tanker's position by range and bearing from the PPC. In paragraph (b) of the final rule, the term "track" has been clarified by substituting "course" therefor.

Several comments were received concerning the requirements in proposed § 150.313 regarding clearances for tankers. The API stated that, as drafted, the 5 mile separation requirement between tankers (paragraph (a)(1)) and the two mile visibility requirement (paragraphs (b)(2) and (c)) are unnecessarily restrictive. The API suggested that these requirements be revised to allow knowledgeable individuals on location to use their own experience and judgment. Another comment suggested that the 2 mile visibility requirement be clarified as to whether visibility must be in the entirety of the safety zone or measured from specific references, such as from a SPM, or the bridge of a tanker. Related to this visibility comment was a question of safety, that is, if the visibility closes to less than 2 miles in a portion of the safety zone a tanker has already transited, must that tanker continue on to a SPM berth or anchor?

Although the 5 mile tanker separation and the 2 mile visibility requirements may be conservative, they are not unreasonable, due to the stopping distances, even at slow speeds, needed

for the very large crude carrier tankers that will be using the port, and the poor maneuvering characteristics of those tankers. Further, estimates of volume of tanker traffic at the LOOP port are presently in the range of only one tanker a day. Thus, the 5 mile and 2 mile requirements are reasonable and effective means for minimizing the potential for collisions at a deepwater port.

In addition, the visibility referred to in the comments on proposed § 150.313 is a general visibility requirement for anywhere in the safety zone. The final rule at § 150.313(c) has been clarified in this regard.

For those situations of reduced visibility that may arise after a tanker is committed in the safety zone, the Coast Guard has concluded that it cannot attempt to regulate for every contingency or exigency that may arise at deepwater ports. We recognize that circumstances may arise in which there will be conflicts of compliance with these rules. In those situations, where safety is concerned, emergency deviations from any requirements of the deepwater port regulations are permitted under § 150.115.

One comment pointed out that the advance notice of arrival requirements proposed in § 150.333 failed to include the estimated time of arrival of tankers at a deepwater port safety zone. This was a drafting oversight and has been added to the final rule at § 150.333(a)(5).

API and a Coast Guard comment, in responding to the proposed requirement in § 150.337(c), questioned the 5 mile separation of tankers in the safety zone. For the reasons previously stated, the 5 mile requirement remains unchanged in the final rule.

Other comments that were directed at the tanker navigation requirements proposed in § 150.337 questioned whether there should be a prohibition against meeting situations and whether speed limits should be placed on tankers. The NOAA also requested clarification on where a tanker must enter the designated port safety fairway leading to the safety zone and whether a tanker is precluded from entering the safety zone at some point ahead of another tanker already in the safety zone.

With regard to the issues of tankers meeting situations and speed limits, these matters are expected to be addressed in port Operation Manuals that will be reviewed by the Coast Guard under § 150.105.

There is no requirement in these final rules on where a tanker must enter a safety fairway leading to a deepwater port nor did the Coast Guard ever intend to impose such a requirement. The matter is left to the judgment of the masters of the tankers. The fairways are established to provide an obstruction free route of ingress and egress to the ports. It is expected that as the proliferation of offshore structures on the Outer Continental Shelf continues, tankers will progressively enter the fairways at points further away from the ports. The final rule at § 150.337(a) effectively precludes a tanker from entering the safety zone at some point ahead of another tanker already in the safety zone.

NOAA and a Coast Guard comment recommended that the term "call at", used in proposed § 150.339 regarding the navigation of vessels other than tankers in the safety zone, be defined. In the context of that rule, the term was intended to mean entry into the safety zone of a deepwater port. The final rule has been clarified in this regard.

One comment asked whether the Mooring Master's duties included conning or piloting of a tanker underway in the safety zone as this was not clear in the context of proposed §§ 150.341 and 150.342. The comment further suggested that the final rules should include a section detailing the Mooring Master's duties. The Coast Guard rejected this suggestion.

The Mooring Master acts in an advisory capacity to the master of the tanker. The Mooring Master's role is clearly indicated in the note to the final rule at § 150.341. The Mooring Master advises the tanker master on operational and ship control matters that are peculiar to the specific port, such as navigational aids, depth and current characteristics of the maneuvering area, mooring equipment and procedures, and the vessel traffic control procedures of the port. The final rule, § 150.341, does not relieve the tanker master or person in charge of the deck watch from that person's ultimate responsibilities, duties, and obligations for the safety of the vessel.

Several comments were received concerning the requirements proposed in § 150.345 and the table therein relative to regulated vessel activities at deepwater ports. Most of the comments primarily indicated a need for clarification of terminology in this section. Substantively, NOAA recommended that fishing in saftey zones should be prohibited. NOAA also commented upon the apparent differing applicability of the section to all vessels as opposed to foreign vessels. Further, LOOP, Inc. requested that the note to the table of activities under the key code "P", regarding foreign flag vessels, be changed to clearly show that the foreign flag vessels referred to are not foreign flag vessels using the port for purposes of loading or unloading oil. The API recommended that for operational safety considerations, vessels other than tankers or port support vessels should be prohibited from anchoring in safety zone anchorage areas except under force majeure conditions. Finally, a Coast Guard comment recommended that proposed § 150.345 specifically prohibit the VTS from authorizing entry of a vessel into a specific area of the safety zone that is to be avoided as indicated in the table of regulated activities.

As suggested, a number of clarifying changes have been made to terminology used in the table at § 150.345. Also, paragraph (b) has been revised, as suggested, to make it clear that it is the deepwater port licensee who must obtain the COTP's permission before allowing any vessel activity at the port which is not listed in the Table 150.345(a), or otherwise provided for in the requirements for vessel navigation at deepwater ports.

The Coast Guard rejected NOAA's recommendation to prohibit fishing in deepwater port safety zones. During the deepwater port license application review experiences to date, it was determined that deepwater ports could be sited in areas where there are valuable commercial fish resources. Thus this activity is being permitted within specified portions of safety zones, when the VTS of the port determines it can be done without interfering with the operations of the port.

NOAA's and LOOP's comments on proposed § 150.345 regarding applicability to foreign flag vessels are somewhat related. The underlying question these comments raise is why the apparent differing treatment regarding clearance requirements for domestic versus foreign flag vessels other than tankers calling at a deepwater port for the purpose of unloading oil. NOAA strongly recommended, in the interest of safety, that the requirement to obtain clearance from a port VTS to enter a safety zone, by communicating with that person before entry via radiotelephone, apply to all vessels, regardless of country of registration.

The purpose of proposed § 150.345, as explained in the preamble to the proposed rule, is to comply with the requirements in section 10(d)(1) of the Act (33 U.S.C. 1509 (d)(1)) to define, by regulation, activities permitted or prohibited in deepwater port safety zones, for the purpose of navigational safety. This includes the statutory

charge that no installations, structures, or uses will be permitted that are incompatable with the operation of the deepwater port.

The regulations are structured to require a port VTS, in the interest of safety, to monitor and supervise vessel movements in the vicinity of a deepwater port on a 24-hour basis. There is a need to also provide a means to ascertain when any vessel desires to enter the safety zone to determine whether the entry would interfere with port operations or be in conflict with the rules concerning regulated vessel activities. A mandatory clearence requirement for all vessels would accomplish this and is desirable; however, exercise of regulatory authority under section 10 (d)(1) of the Act is subject to recognized principles of international law. Imposing mandatory clearance and communication requirements on foreign flag vessels on the high seas, not calling at or dealing with the port, is not in accord with accepted principles of international law.

Before foreign flag vessels call at the port, section 19(c) of the Act (33 U.S.C. 1518(c)) requires that their government has recognized the jurisdiction of the United States in regard to safety measures for deepwater ports, thus these vessels are subject to the mandatory reporting and clearance requirements. In the case of foreign vessels other than tankers calling at the port, that wish to enter the safety zone for purposes other than loading or unloading oil (transiting, etc.), the clearance requirement is voluntary because of the high seas location of deepwater ports. Accordingly, in the final rule, Table 150.345(a) has been modified to reflect the foregoing distinction being made regarding clearance to enter a safety zone by domestic versus foreign flag vessels.

API's recommendation that vessels other than tankers or port support vessels be prohibited, except under force majeure circumstances, from anchoring in safety zone anchorage areas was rejected. Prudent control over this activity by the port VTS can ensure port operational safety.

Finally, Table 150.345(a) applies to both vessels desiring to enter deepwater port safety zones and to the VTS of deepwater ports who is the person who must exercise the level of control over the regulated activities at deepwater ports denoted by the key contained in the table. Therefore, the Coast Guard has rejected as unnecessary the recommendation to include in the final rule at § 150.345 additional language prohibiting the VTS from authorizing entry of vessels into specific areas of the safety zone that are to be avoided.

Environmental Consequences

The Coast Guard has reviewed and analyzed the probable environmental impacts of promulgating the U.S. deepwater port safety zone regulations proposed in this notice. A discussion of the impacts and various regulatory alternatives as regards LOOP, was included in the Final Environmental Impact Statement (FEIS) prepared by the Coast Guard during the license application review process for that specific project. For the federal action now under consideration, issuance of these proposed regulations, the environmental consequences remain essentially as addressed in the FEIS for the LOOP license application.

Regulatory Evaluation

This rulemaking proposal has also been revised for economic effects and a final regulatory evaluation has been prepared in accordance with Department of Transportation Regulatory Policies and Procedures (44 FR 11034–45) of February 26, 1979. The evaluation includes identification of resource availability loss to commercial and recreational fishing activities over the life of the LOOP project. The economic consequences prinicipally revolve around commercial fishing activities at the port. The Coast Guard has determined that there will not be a significant adverse economic effect on fishing activities caused by this regulatory action. A copy of the Final Regulatory Evaluation may be obtained from the Commandant (G–CMC/24), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, D.C. 20593.

In consideration of the foregoing, Title 33, Code of Federal Regulations, Subchapter NN, Deepwater Ports, is amended as follows:

PART 148—GENERAL

§ 148.3 [Amended].

1. In § 148.3, by removing the definition of the term "Traffic separation scheme (TSS)".

2. In § 148.3, by revising the definition of "Marine site" to read as follows:

§ 148.3 Definitions.

* * * * *

"Marine site" means the area in which the deepwater is located, and includes the safety zone, attendant ships' routing measures, anchorages and all areas seaward of the high water mark in which associated components and equipment of the deepwater port are located.

* * * * *

§ 148.109 [Amended].

3. In § 148.109, by revising paragraphs (j)(1)(iv) and (l)(4) to read as follows:

§ 148.109 Contents for application for issuance of a license.

* * * * *

(j) * * *

(l) * * *

(iv) Recommended ships' routing measures and proposed vessel traffic patterns in the port area;

* * * * *

(l) * * *

(4) The speed limits proposed for tankers in the safety zone.

* * * * *

PART 150—OPERATIONS

4. By revising Part 150, Subpart C—Vessel Navigation, to read as follows:

Subpart C—Vessel Navigation

Sec.
150.301 Applicability.
150.303 Definitions.
150.305 Ship's routing measures.
150.307 Radar surveillance.
150.309 Advisories to tankers.
150.311 Radio listening watch.
150.313 Clearances for tankers.
150.315 Clearances for support vessels.
150.317 Clearances for other vessels.
150.333 Advance notice of arrival.
150.335 Report before entering safety zone.
150.337 Navigation of tankers in the safety zone.
150.338 Navigation of support vessels in the safety zone.
150.339 Navigation of other vessels in the safety zone.
150.341 Mooring Master.
150.342 Assistant Mooring Master.
150.345 Regulated vessel activities.
Appendix A.

Authority: Sec. 10(a)(b)(d), 88 Stat. 2137–38 (33 U.S.C. 1509(a)(b)(d); Sec. 4, 92 Stat. 1473–74 (33 U.S.C 1223); 49 CFR 1.46.

Subpart C—Vessel Navigation

§ 150.301 Applicability.

This subpart prescribes rules that—

(a) Apply to the navigation of all vessels at or near a deepwater port; and

(b) Describe vessel activities permitted and prohibited in a deepwater port safety zone.

Note.—Appendix A to this part describes the designated boundaries of U.S. deepwater port safety zones and shipping safety fairways leading to those ports. Included within the safety zones are specific areas to be avoided, anchorages, and other ships' routing measures associated with particular safety zones.

§ 150.303 Definitions.

"Support vessel" means a tug, linehandling boat, crewboat, workboat, supply vessel, bunkering vessel, barger, or other similar vessel working for a licensee in connection with the operation of a deepwater port or cleared by a licensee to service a tanker calling at a deepwater port.

"Tanker" means a vessel that calls at a deepwater port to load or unload oil at a SPM.

§ 150.305 Ships' routing measures.

No licensee may operate a deepwater port unless the port has such ships' routing measures as prescribed or approved by the Coast Guard to provide for safe navigation at or near the deepwater port.

§ 150.307 Radar surveillance.

The Vessel Traffic Supervisor shall maintain radar surveillance of the safety zone whenever—

(a) A tanker is proceeding to the safety zone after submitting the report required in § 150.335; or

(b) A tanker or support vessel is underway in the safety zone; or

(C) A vessel other than a tanker or support vessel is about to enter or is underway in the safety zone.

§ 150.309 Advisories to tankers.

(a) The Vessel Traffic Supervisor shall advise the master of each tanker underway in the safety zone of the tanker's position by range and bearing from the PPC at intervals not to exceed 10 minutes.

(b) Whenever the Vessel Traffic Supervisor determines that a vessel may potentially interfere with the movement of a tanker in the safety zone, the Vessel Traffic Supervisor shall keep the master of the tanker informed of the position and estimated course and speed of the vessel as necessary to assist the tanker in navigation within the safety zone.

(c) Whenever a tanker enters the safety zone, the Vessel Traffic Supervisor shall advise the tanker of the position of each other vessel moored, anchored, or underway in the safety zone.

§ 150.311 Radio listening watch.

Whenever a tanker is in the safety zone, the Vessel Traffic Supervisor and the master of the tanker shall each continuously monitor the radio frequency designated in the Operation Manuals for use by tankers and support vessels underway at the port, except when transmitting on that frequency.

§ 150.313 Clearances for tankers.

(a) The Vessel Traffic Supervisor may not clear a tanker to enter the safety zone unless—

(1) Each other tanker underway in the safety zone is at least 5 miles from the tanker requesting clearance to enter the safety zone; and

(2) A Mooring Master is on board or ready to board at a position in the designated safety fairway that will permit completion of boarding before the tanker enters the safety zone.

(b) The Vessel Traffic Supervisor may not clear a tanker to moor at a SPM unless—

(1) There is a SPM berth available and the Vessel Traffic Supervisor has assigned that berth to the tanker;

(2) The visibility in the safety zone is at least two miles;

(3) All operating conditions prescribed in the Operation Manuals for mooring to a SPM have been met; and

(4) A Mooring Master and an Assistant Mooring Master are on board.

(c) The Vessel Traffic Supervisor may not clear a tanker to depart from a SPM unless the visibility in the safety zone is at least two miles and a Mooring Master is on board.

(d) No tanker may enter the safety zone or moor at or depart from a SPM, unless the master of the tanker has obtained clearance from the Vessel Traffic Supervisor, except as permitted by paragraph (e) of this section.

(e) A tanker may, in an emergency, for the protection of life or property, depart from a SPM without clearance from the Vessel Traffic Supervisor if the master advises the Vessel Traffic Supervisor of the circumstances, by radio, at the earliest possible moment.

§ 150.315 Clearances for support vessels.

(a) The Vessel Traffic Supervisor shall direct support vessel movements within the safety zone.

(b) The Vessel Traffic Supervisor may clear support vessels to enter or depart the safety zone at any point.

§ 150.317 Clearances for other vessels.

(a) When requested by the master of a vessel other than a tanker or support vessel, the Vessel Traffic Supervisor shall furnish information concerning other vessels underway or moored in the safety zone.

(b) If the Vessel Traffic Supervisor determines that a vessel other than a tanker or support vessel may be standing into danger with respect to any vessel or part of the deepwater port installation in the safety zone, the Vessel Traffic Supervisor shall attempt to inform the master of that vessel by radio or other means.

(c) Except in situations involving force majeure, the Vessel Traffic Supervisor shall not clear a vessel other than a tanker or support vessel to enter the safety zone of a deepwater port for any purpose that would interfere with the purpose of the deepwater port; endanger the safety of life, property, or the environment; or otherwise be prohibited by regulation.

§ 150.333 Advance notice of arrival.

(a) The master of a tanker bound for a deepwater port shall report the following information to the Captain of the Port and the Vessel Traffic Supervisor of the port at least 24 hours before entering the safety zone at the port:

(1) The name, gross tonnage, and draft of the tanker.

(2) The type and amount of cargo on board.

(3) Any conditions on the vessel that may impair the navigation of the vessel, such as fire, malfunctioning propulsion machinery or steering equipment, or limitations on navigational or radiotelephone capabilities because of equipment or material malfunctions.

(4) Any leaks, structural damage, or machinery malfunctions that may impair cargo transfer operations or cause a discharge of oil.

(5) The estimated time of arrival at the deepwater port safety zone.

(b) If the information reported in paragraph (a)(3), (a)(4), or (a)(5) of this section changes at any time before entering the safety zone, or while the tanker is in the safety zone, the master of the tanker shall report the changes to the Captain of the Port and Vessel Traffic Supervisor as soon as possible.

§ 150.335 Report before entering safety zone.

The master of a tanker bound for a deepwater port shall notify the Vessel Traffic Supervisor of the port when the tanker is 20 miles from the entrance to the safety zone.

§ 150.337 Navigation of tankers in the safety zone.

(a) A tanker must not enter or depart a safety zone except via a designated safety fairway, unless under force majeure.

(b) A tanker must not anchor in the safety zone except in a designated anchorage area unless under force majeure.

(c) A tanker underway in a safety zone must keep at least 5 miles behind any other tanker underway ahead of it in the safety zone.

(d) A tanker must not operate, anchor, or be moored in any area of the safety

zone in which the net underkeel clearance would be less than 5 feet.

§ 150.338 Navigation of support vessels in the safety zone.

(a) A support vessel must not enter or move within the safety zone unless the movement is cleared by the Vessel Traffic Supervisor.

(b) A support vessel must not anchor in the safety zone, except in an anchorage area or for support vessel maintenance operations cleared by the Vessel Traffic Supervisor.

§ 150.339 Navigation of other vessels in the safety zone.

Vessels other than tankers or support vessels should not entr the safety zone of a deepwater port unless clearance has been obtained from the Vessel Traffic Supervisor.

§ 150.341 Mooring Master.

A tanker must not be underway in the safety zone unless a Mooring Master is on board.

Note.—The Mooring Master advises the master of the tanker on operational and ship control matters that are peculiar to the specific deepwater port, such as navigational aids, depth and current characteristics of the manuevering area, mooring equipment and procedures, and the port's vessel traffic control procedures.

§ 150.342 Assistant Mooring Master.

A tanker must not moor at an SPM unless an Assistant Mooring Master is on board.

Note.—The Assistant Mooring Master is stationed on the forecastle of the tanker during mooring operations to assist the Mooring Master by reporting position approach data relative to the SPM and to advise the tanker personnel in handling of mooring equipment peculiar to the deepwater port.

§ 150.345 Regulated vessel activities.

(a) Vessel activities permitted and prohibited at deepwater ports, controls on those activities, and the specific safety zone areas in which the controls apply are listed in Table 150.345(a).

Table 150.345(a).—*Regulated Vessel Activities at Deepwater Ports*

Regulated vessel activities	Safety zone		
	Areas to be avoided around each PPC and SPM [1]	Anchorage area	Remaining portion of safety zone
Tankers calling at port	C	C	C
Support vessel movements	C	C	C
Transit by vessels other than tankers or support vessels	N	P	P
Mooring to SPM by vessels other than tankers or support vessels	F		
Anchoring by vessels other than tankers or support vessels	N	F or P	N
Fishing, including bottom trawl (shrimping)	N	P	P
Mobile drilling operations of erection of structures [2]	N	N	N
Lightering/transshipment [3]	N	N	N

[1] The radius of areas to be avoided around each PPC is 600 meters and around each SPM is 500 meters.
[2] Not part of Port Installation. [3] Exception, 33 CFR 150.423(e).

Note.—The person in charge of any vessel planning to enter a safety zone should contact the port Vessel Traffic Supervisor on Ch. 10 VHF-FM before entry and comply with that person's instructions.

Key to regulated activies: F—Force majeure. N—Not permitted. C—Tankers calling at port and support vessel movements: Permitted when cleared by vessel traffic supervisor. P—Vessels other than tankers or support vessels: Permitted when not in immediate area in tanker, clearance by vessel traffic supervisor required. Communications with vessel traffic supervisor required. For transiting foreign flag vessels, the requirement for clearance to enter the safety zone is advisory in nature.

(b) A deepwater port licensee shall obtain the permission of the Captain of the Port having jurisdiction over that licensee's port before allowing any vessel activity at the port which is not listed in Table 150.345(a) or otherwise provided for in this subpart.

5. By adding a new Appendix at the end of Part 150, to read as follows:

Appendix A—Deepwater Port Safety Zone and Shipping Safety Fairway Boundaries

I. *Purpose.* This appendix contains a general description of the deepwater port safety zone and shipping safety fairways designated and developed during the license application review process for each deepwater port that has been authorized for construction and operation off the United States' coastline. Annexes show, to the nearest second of latitude and longitude, the geographical boundaries of each resultant safety zone and shipping fairway.

The regulations in Subpart C of this part concerning vessel navigation and activities permitted and prohibited at U.S. deepwater ports apply only in the safety zone areas and adjacent waters, and supplement the International Regulations for Preventing Collisions at Sea.

II. *Authority.* Section 10(d) of the Deepwater Port Act of 1974 (88 Stat. 2138 (33 U.S.C. 1509(d))) and Section 4(c) of the Ports and Waterways Safety Act, as amended, (33 U.S.C. 1223(c)); 49 CFR 1.46.

III. *General.* Deepwater port safety zones are established to promote safety of life and property, marine environmental protection and navigational safety at any deepwater port and adjacent waters. In a deepwater port safety zone no installations, structures, or uses that are incompatible with port operations are permitted. The configuration of each designated safety zone is depicted on current editions of the navigational charts that cover the deepwater port area.

IV. *Modifications.* Safety zone and shipping safety fairway boundaries are subject to modification as experience is gained in U.S. deepwater port operations. Modifications will be made only after due notification and consideration of the views of interested persons.

Annex A—LOOP, Inc. Deepwater Port, Gulf of Mexico

(a) *Deepwater Port Safety Zone:*

(1) Starting at:

Latitude N.	*Longitude W.*
28°55'23"	90°00'37"

(2) A rhumb line to

28°53'50"	90°04'07"

(3) Then an arc with a 4,465 meter radius centered at the port pumping platform complex (PPC),

28°53'06"	90°01'30"

(4) To a point

28°51'03"	89°59'55"

(5) Then a rhumb line to

28°48'36"	89°55'00"

(6) Then a rhumb line to

28°52'04"	89°52'42"

(7) Then a rhumb line to

28°54'05"	89°56'38"

(8) Then a rhumb line to

28°52'21"	89°57'47"

(9) Then a rhumb line to

28°52'51"	89°58'46"

(10) Then an arc with a 4,465 meter radius centered again at the port, PPC,

28°53'06"	90°01'30"

(11) To the point of starting,

28°55'23"	90°00'37"

(b) *Areas to be Avoided.* The seven areas within the safety zone to be avoided are as follows:

(1) The area encompassed within a circle having a 600 meter radius around the port PPC and centered at:

Latitude N.	*Longitude W.*
28°53'06"	90°01'30"

(2) The six areas encompassed within a circle having a 500 meter radius around each single point mooring (SPM) at the port and centered at:

Latitude N.	*Longitude W.*
28°54'12"	90°00'37"
28°53'16"	89°59'59"
28°52'15"	90°00'19"
28°51'45"	90°01'25"
28°52'03"	90°02'33"
28°53'07"	90°03'02"

(c) *Anchorage Area.* The area within the safety zone enclosed by rhumb lines joining points at:

Latitude N.	*Longitude W.*
28°52'21"	89°57'47"
28°54'05"	89°56'38"

28°52'04"	89°52'42"
28°50'20"	89°53'51"
28°52'21"	89°57'47"

(d) *Shipping Safety Fairway to Safety Zone.* The two mile wide areas enclosed by rhumb lines joining points at:

(1) North of Gulf Safety Fairway.

Latitude N.	*Longitude W.*
28°48'36"	89°55'00"
28°48'14"	89°54'17"
28°45'47"	89°54'19"
28°36'06"	89°55'44"
28°18'30"	89°55'15"
28°20'58"	89°53'03"
28°36'09"	89°53'28"
28°49'07"	89°51'30"
28°50'20"	89°53'51"

(2) South of Gulf Safety Fairway.

Latitude N.	*Longitude W.*
28°15'20"	89°55'10"
27°46'29"	89°54'23"
27°46'32"	89°52'08"
28°17'48"	89°52'58"

(Sec. 10(a)(b)(d), 88 Stat. 2137–38 (33 U.S.C. 1509(a)(b)(d)); Sec. 4, 92 Stat. 1473–74 (33 U.S.C. 1223); 49 CFR 1.46)

Dated: December 18, 1980.

W. E. Caldwell,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Environment and Systems.

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AGENCY PUBLICATION ON ASSIGNED DAYS OF THE WEEK

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.)

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/FSQS		DOT/FAA	USDA/FSQS
DOT/FHWA	USDA/REA		DOT/FHWA	USDA/REA
DOT/FRA	MSPB/OPM		DOT/FRA	MSPB/OPM
DOT/NHTSA	LABOR		DOT/NHTSA	LABOR
DOT/RSPA	HHS/FDA		DOT/RSPA	HHS/FDA
DOT/SLSDC			DOT/SLSDC	
DOT/UMTA			DOT/UMTA	
CSA			CSA	

Documents normally scheduled for publication on a day that will be a Federal holiday will be published the next work day following the holiday. Comments on this program are still invited. Comments should be submitted to the Day-of-the-Week Program Coordinator, Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408

NOTE: As of September 2, 1980, documents from the Animal and Plant Health Inspection Service, Department of Agriculture, will no longer be assigned to the Tuesday/Friday publication schedule.

REMINDERS

The "reminders" below identify documents that appeared in issues of the Federal Register 15 days or more ago. Inclusion or exclusion from this list has no legal significance.

Rules Going Into Effect Today

ENVIRONMENTAL PROTECTION AGENCY

79052 11-28-80 / Approval and promulgation of Ohio implementation plan

79053 11-28-80 / Water quality standards; navigable waters of Ohio

FEDERAL COMMUNICATIONS COMMISSION

81204 12-10-80 / Radio services, special; Land mobile services; assignments of frequencies for slow growth systems of utilities and public safety agencies

HEALTH AND HUMAN SERVICES DEPARTMENT

Health Care Financing Administration—

44287 7-1-80 / Medicare program; criteria and procedures for payment for new and used durable medical equipment for beneficiaries

JUSTICE DEPARTMENT

Drug Enforcement Administration—

64570 9-30-80 / Pipradrol and SPA in Schedule, IV; schedules of controlled substances

64571 9-30-80 / Placement of sufentanil and Tilidine in Schedule I; schedules of controlled substances

LIBRARY OF CONGRESS

Copyright Office—

79038 11-28-80 / Compulsory license for making and distributing phonorecords

PERSONNEL MANAGEMENT OFFICE

78999 11-28-80 / Availability of official information

TRANSPORTATION DEPARTMENT

Coast Guard—

79031 11-2880 / Establishment of special anchorage area, Apollo Beach, Florida

Federal Highway Administration—

71968 10-30-80 / Environmental impact and related procedures

Urban Mass Transportation Administration—

71968 10-30-80 / Environment impact and related procedures

List of Public Laws

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's List of Public Laws.

Last Listing December 24, 1980

PRINCIPLES OF REGULATIONS WRITING SEMINAR

WHAT: The aim of the seminar is to improve the quality of Federal regulations by teaching how to design and draft clear regulations.

The Principles of Regulations Writing Seminar covers the following concepts:

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2. How to draft a regulation: organizing a regulation to make it easier for the reader, using consistent clear language, avoiding jargon and legalese, and reviewing and redrafting systematically.
3. How to prepare a regulation to comply with Federal Register publication requirements: writing an effective preamble and explaining how the regulation amends the Code of Federal Regulations.

WHO: Any Federal employee who drafts documents or who reviews for substance documents that are published in the Federal Register.

WHEN: January 21, 1981; February 25, 1981; May 13, 1981

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