10-1-81
Vol. 46—No. 190
BOOK 1:
Pages
48097-48414

BOOK 2:
Pages
48415-48616

federal register

Book 1 of 2 Books
Thursday, October 1, 1981

Highlights

48105 United Nations Day, 1981 Presidential proclamation

48103 White Cane Safety Day Presidential proclamation

48101 Child Health Day Presidential proclamation

48099 National Diabetes Week Presidential proclamation

48097 Fire Prevention Week Presidential proclamation

48107 High seas interdiction of illegal aliens Presidential proclamation

48109 Interdiction of illegal aliens Executive order

48524-48556 Medical Services HHS/HCFA implements regulations on State administration of Medicare and Medicaid programs. (5 documents)

48564 Block Grants HHS issues rules on implementation of seven grant programs, changes requirements for programs replaced by block grants and removes certain categorical health grant regulations. (3 documents) (Part XI of this issue)

48120 Banks, Banking FRS adjusts discount rates for extended credit to depository institutions.

CONTINUED INSIDE

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

The Federal Register provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by Act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The Federal Register will be furnished by mail to subscribers, free of postage, for $75.00 per year, or $45.00 for six months, payable in advance. The charge for individual copies is $1.00 for each issue, or $1.00 for each group of pages as actually bound. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

There are no restrictions on the republication of material appearing in the Federal Register.

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.

Highlights

48323 **Grant Programs—Health** HHS/PHS lowers first-year student enrollment requirements for health professions schools receiving construction grants.

48606 **Aid to Families With Dependent Children** Labor/ETA and HHS/HDSO jointly revise regulations on the Work Incentive Program. (Part XIII of this issue)

48195 **Veterans** VA extends eligibility period for educational benefits.

48243 **Water Pollution Control** EPA proposes to amend Consolidated Permit regulations and technical criteria and standards for State Underground Injection Control Programs.

48120 **Equal Access to Justice** NCUA proposes procedures for application for award of fees in court actions.

48206 NTSB provides procedures for fee award in administrative proceedings.

48178 **Securities** SEC permits International Bank for Reconstruction and Development, Inter-American Development Bank, and Asian Development Bank to sell securities immediately upon filing certain information with the Commission.

48147 SEC publishes interpretation on insider reporting and trading.

48136 SEC revises property, plant and equipment disclosure requirements.

48261 **Motor Vehicle Safety** DOT/NHTSA grants petition for rulemaking for power-operated window systems.

48260, 48262 DOT/NHTSA proposes amendments to bumper and impact protection for driver from steering control system standards. (2 documents)

Regulatory Agendas

48217 FRS
48222 DOT (Part III of this issue)

Privacy Act Documents

48273 ACTION
48366 PBGC

48392 **Sunshine Act Meetings**

Separate Parts of This Issue

48416 **Part II, USDA/FGIS**
48422 **Part III, DOT**
48524–48572 **Part IV–IX, HHS/HCFA**
48574 **Part X, Justice/PB**
48582 **Part XI, HHS**
48600 **Part XII, DOT/FAA**
48606 **Part XIII, Labor/ETA and HHS/HDSO**

Contents

Federal Register
Vol. 46, No. 190
Thursday, October 1, 1981

The President
EXECUTIVE ORDERS:
48109 Illegal aliens, interdiction (EO 12324)
PROCLAMATIONS
48101 Child Health Day (Proc. 4862)
48099 Diabetes Week, National (Proc. 4861)
48097 Fire Prevention Week (Proc. 4860)
48107 Illegal aliens, high seas interdiction (Proc. 4865)
48105 United Nations Day, 1981 (Proc. 4864)
48103 White Cane Safety Day (Proc. 4863)

Executive Agencies

ACTION
NOTICES
48273 Privacy Act; systems of records

Agricultural Marketing Service
RULES
Cotton:
48113 Classification service to producers; user fees
48111 Cotton and cottonseed; fee revisions
48115 Pears, plums, and peaches grown in California
Potato research and promotion plan:
48116 Expenses and rate of assessment

Agriculture Department
See also Agricultural Marketing Service; Commodity Credit Corporation; Federal Crop Insurance Corporation; Federal Grain Inspection Service; Soil Conservation Service.
NOTICES
Import quotas and fees:
48274 Sugar; quarterly determinations
Meat import limitations:
48275 Fourth quarterly estimates

Antitrust Division
NOTICES
Competitive impact statements and proposed consent judgments:
48344 New York County Lawyers' Association

Civil Aeronautics Board
NOTICES
48276 Certificates of public convenience and necessity and foreign air carrier permits
48392 Meetings; Sunshine Act

Civil Rights Commission
NOTICES
Meetings; State advisory committees:
48277 Maine (2 documents)

Coast Guard
RULES
Anchorage regulations:
48193 Connecticut
48194 Michigan
48193 New York
Drawbridge operations:
48195 Louisiana
Incorporations by reference, approval (Editorial note: This document appeared in the Federal Register for September 30, 1981)
PROPOSED RULES
Drawbridge operations:
48239 North Carolina
Regulatory agenda. See entry under Transportation Department.
NOTICES
48376 Port access routes; study results

Commerce Department
See International Trade Administration; Maritime Administration (DOT); National Oceanic and Atmospheric Administration.

Commodity Credit Corporation
RULES
Loan and purchase programs:
48117 Peanuts; interim

Commodity Futures Trading Commission
NOTICES
Contract marketing proposals:
48284 Chicago Board of Trade; gasoline
48284 Chicago Board of Trade; gold coins
48285 Chicago Board of Trade; intermediate-term U.S. Treasury notes—CDR
48392 Meetings; Sunshine Act

Customs Service
RULES
Vessels in foreign and domestic trades:
48180 Greece; reciprocal privileges to transport articles coastwise
PROPOSED RULES
48235 Carnets; conforming amendments
48238 Metal, dutiable; imported smelted or refined products

Defense Department
RULES
48189 Civil defense; military support
NOTICES
Meetings:
48285 DIA Advisory Committee

Drug Enforcement Administration
NOTICES
Registration applications, etc.; controlled substances:
48345 Fields, Alan D., D.O.

Economic Regulatory Administration
RULES
Powerplant and industrial fuel use:
48118 Electric powerplants, owners and operators; continued coverage of prohibition orders; interim
NOTICES
Powerplant and industrial fuel use; prohibition orders, exemption requests, etc.:
48286 Jones & Laughlin Steel Corp.

Education Department
NOTICES
Meetings:
48285 Women's Educational Programs National Advisory Council

Employment and Training Administration
RULES
Work incentive program:
48606 Aid to families with dependent children; interim rule and request for comments

Energy Department
See Economic Regulatory Administration; Federal Energy Regulatory Commission.

Environmental Protection Agency
RULES
Hazardous waste:
48197 Treatment, storage, and disposal facilities, interim status standards for owners and operators; closure and post-closure care and financial responsibility; interim rule and request for comments; effective date deferred
Pesticide chemicals in or on raw agricultural commodities; tolerances and exemptions, etc..
48196 Chlorpyrifos
PROPOSED RULES
Air quality implementation plans; approval and promulgation; various States, etc..
48240 Maryland
Water pollution control:
48243 Permit programs, consolidated; State underground injection control program criteria and standards
48254 Permit programs, consolidated; State underground injection control program criteria and standards; hearings
NOTICES
Air pollution; standards of performance for new stationary sources:
48317 Pennsylvania; authority delegation
Meetings:
48318 State FIFRA Issues Research and Evaluation Group
Toxic and hazardous substances control:
48318 Premanufacture notices receipts
48316 Premanufacture notification requirements; test marketing exemption approvals
Water pollution control; safe drinking water; public water systems designations:
48314 Washington

Equal Employment Opportunity Commission
RULES
Procedural regulations:
48189 Deferral jurisdictions, timely filings of charges; final rule; correction

Federal Aviation Administration
RULES
Aircraft identification and registration marking:
48600 Size of marks
Airworthiness directives:
48128 Boeing
48126 Piper
48131 Control zones
48130 Control zones and transition areas
48133 Jet routes
48132 Restricted areas
48134 Standard instrument approach procedures
48129, 48130 Transition areas (2 documents)
48128 VOR Federal airways (2 documents)
PROPOSED RULES
Airworthiness directives:
48223, 48224 Lockheed-California (2 documents)
48225 McDonnell Douglas
Regulatory agenda. See entry under Transportation Department.
48226 VOR Federal airways
NOTICES
Organization and functions:
48379 Detroit, Mich., Airports District Office, address change

Federal Communications Commission
RULES
Radio stations; table of assignments:
48200 California
48205 Hawaii
48202 Idaho
48206 Louisiana
48205 Missouri
48202 Oklahoma
48204 Texas
PROPOSED RULES
Radio stations; table of assignments:
48258 Florida
NOTICES
48319, 48320 Canadian standard broadcast stations; (2 documents) notification list

Federal Crop Insurance Corporation
NOTICES
48392 Meetings; Sunshine Act

Federal Deposit Insurance Corporation
NOTICES
48393 Meetings; Sunshine Act (3 documents)

Federal Election Commission
NOTICES
48393 Meetings; Sunshine Act

Federal Emergency Management Agency
PROPOSED RULES
Flood elevation determinations:
48255 Massachusetts; correction (2 documents)
48256 Michigan; correction
48257 Pennsylvania; correction
48257 Vermont; correction
48257 Wisconsin
NOTICES
Disaster and emergency areas:
48321 Texas
Radiological emergency; State plans:
48321 Connecticut

Federal Energy Regulatory Commission
RULES
Natural Gas Policy Act of 1978:
48179 Jurisdictional agency identification

PROPOSED RULES
Natural Gas Policy Act of 1978; ceiling prices for high cost natural gas produced from tight formations; various States:
48235 New Mexico; correction
48234 Utah
NOTICES
Hearings, etc..
48288 ANR Storage Co.
48289 Arkansas Louisiana Gas Co. et al.
48290 Central Maine Power Co.
48290 Cities Service Gas Co.
48291 Detroit Edison Co.
48291 Equitable Gas Co.
48292 Illinois Power Co.
48292 Kennecott Minerals Co.
48292 McCormick Operating Co.
48293 Minnesota Power & Light Co.
48294 Southern Natural Gas Co.
48294 Tennessee Gas Pipeline Co.
48295 TOPICO
48296 United Gas Pipe Line Co. et al.
48394 Meetings; Sunshine Act
Natural gas companies:
48288, 48293 Certificates of public convenience and necessity; applications, abandonment of service and petitions to amend (2 documents)
Natural Gas Policy Act of 1978:
48298-48309 Jurisdictional agency determinations (3 documents)

Federal Grain Inspection Service
PROPOSED RULES
Grain standards:
48217 Inspection of insect infected shiplot grain in single lots; treatment options; withdrawn
NOTICES
Grain standards; inspection points:
48418 Arizona, Illinois, and South Carolina
48419 California and Washington
48418 Illinois, Indiana, and Wyoming

Federal Highway Administration
RULES
Incorporations by reference, approval (Editorial note: This document appeared in the Federal Register for September 30, 1981).
PROPOSED RULES
Regulatory agenda. See entry under Transportation Department.

Federal Maritime Commission
RULES
48199 Independent ocean freight forwarders, licensing; clarification
48199 Ocean carriers; common carriers by water; agreements on administrative or housekeeping matters; exemption from filing and approval requirements
NOTICES
Freight forwarder licenses:
48323 George Stern Co., Inc.
48322 MDR Enterprises, Inc., et al.
48394 Meetings; Sunshine Act

Federal Mine Safety and Health Review Commission
NOTICES
48394 Meetings; Sunshine Act

Federal Railroad Administration
RULES
Incorporations by reference, approval (Editorial note: This document appeared in the Federal Register for September 30, 1981).
PROPOSED RULES
Regulatory agenda. See entry under Transportation Department.
NOTICES
Petitions for exemptions, etc.:
48379 Central New York Railroad Co.
48379 Cooperstown & Charlotte Valley Railroad Co.
48380 Fonda, Johnstoron & Gloversville Railroad Co.
48380 Lackawaxen & Stourbridge Railroad Co.
48381 New York, Susquehana & Western Railroad Co.
48381 Wolfeboro Railroad Co.

Federal Reserve System
RULES
Credit extension by Federal Reserve Banks (Regulation A):
48120 Discount rate changes
PROPOSED RULES
48217 Regulatory agenda

Federal Trade Commission
PROPOSED RULES
Prohibited trade practices:
48226 Times Mirror Co.

Fish and Wildlife Service
NOTICES
48324 Endangered and threatened species permit applications (2 documents)
48324 Marine mammal permit applications

Health and Human Services Department
See also Health Care Financing Administration; Health Resources Administration; Human Development Services Office; Public Health Service.
RULES
48582 Block grant programs; interim rule and request for comments
48593 Block grant programs; requirements for replaced programs; interim rule and request for comments
48592 Block grant programs; revocation of categorical health grant regulations
Work incentive program:
48606 Aid to families with dependent children; interim rule and request for comments

Health Care Financing Administration
RULES
Medicaid:
48532 Home and community-based services; interim rule and request for comments
48556 State flexibility, increased; miscellaneous provisions; interim rule and request for comments
48524 State plan requirements, waivers and exceptions; freedom of choice; interim rule and request for comments
Medicaid and medicare:
48550 Drugs, less than effective, and inpatient hospital tests; interim rule and request for comments

Medicare:
48544 Inpatient routine nursing salary cost differential; interim rule and request for comments
48564 Professional standards review; membership and advisory group requirements; technical amendments; interim rule and request for comments

Health Resources Administration
NOTICES
Grants; availability, etc..
48323 Health professions schools; first-year student enrollment decreases authorization

Historic Preservation Advisory Council
NOTICES
Historic and cultural properties:
48274 California; programmatic agreement regarding in-lieu exchange of Federal lands

Housing and Urban Development Department
NOTICES
Authority delegations:
48323 Chicago Regional Office, Regional Administrator et al., transfer of Federally-owned surplus land to Detroit, Mich.
48323 Fort Worth Regional Office; Regional Administrator et al., transfer of Federally-owned surplus land to San Antonio, Tex.

Human Development Services Office
RULES
48593 Block grant programs; requirements for replaced programs; interim rule and request for comments
Work incentive program:
48606 Aid to families with dependent children; interim rule and request for comments

Interior Department
See also Fish and Wildlife Service; Land Management Bureau; National Park Service; Reclamation Bureau.
NOTICES
Meetings:
48330 Fiscal Accountability of Nation's Energy Resources Commission

International Development Cooperation Agency
See Agency for International Development.

International Trade Administration
NOTICES
Antidumping:
48280 Carbon steel plate from Taiwan
48282 Cheese, quota; foreign government subsidies list; quarterly update
Countervailing duties:
48281 Lamb meat from Australia
Scientific articles; duty free entry:
48278 Northwestern University Medical School et al.
48277 University of Florida et al.

International Trade Commission
NOTICES
48394 Meetings; Sunshine Act

Interstate Commerce Commission
RULES
48216 General procedures, etc.; corrections
Railcarriers:
48215 Transportation contracts; interim rule removed
Railroad car service orders; various companies:
48212 Burlington Northern Railroad Co. et al.
48213 Chicago, Rock Island & Pacific Railroad Co.; track use by various railroads
NOTICES
Motor carriers:
48331, 48334 Finance applications (2 documents)
48344 Lease of equipment and drivers to private carriers; policy statement; oral argument
48336, 48337 Permanent authority applications (2 documents)
48340 Permanent authority applications; restriction removals
Petitions filed:
48338 Used pallet, container, and shipping devices exemption; interpretation
Rail carriers:
48339 Cost recovery procedures; rail cost index
48339 Southern Railway Co.; contract tariff exemption

Justice Department
See also Antitrust Division; Drug Enforcement Administration; Parole Commission; Prisons Bureau.
RULES
48181 Inmate grievance procedures; standards

Labor Department
See also Employment and Training Administration.
RULES
Work incentive program:
48606 Aid to families with dependent children; interim rule and request for comments

Land Management Bureau
NOTICES
Alaska native claims selections; applications, etc.:
48325 Cook Inlet Region, Inc.
Environmental statements; availability, etc..
48326 El Malpais Area, Cibola County, Socorro District, N. Mex., proposed wilderness area designation; hearings; extension of comment period
Mineral exploration projects:
48326 Alabama

Management and Budget Office
NOTICES
48355 Agency forms under review

Maritime Administration
RULES
Subsidized vessels and operators:
48198 Non-subsidized voyage with full load cargoes

National Aeronautics and Space Administration
NOTICES
Meetings:
48346 Aeonautics Advisory Committee

National Credit Union Administration
RULES
48120 Equal Access to Justice Act; implementation; interim rule and request for comment

National Highway Traffic Safety Administration
RULES
Incorporations by reference, approval (Editorial note: This document appeared in the Federal Register for September 30, 1981).
PROPOSED RULES
Motor vehicle safety standards:
48262 Bumper standard alternatives
48261 Power-operated window systems; petition granted
48260 Steering control system, impact protection for driver
Regulatory agenda. See entry under Transportation Department.
NOTICES
Fuel economy standards, average:
48383 Light trucks and passenger automobiles; petition denied
Motor vehicle safety standards; exemption petitions, etc..
48383 Firestone Tire & Rubber Co., new pneumatic tires for passenger cars.
48381 Suzuki Motor Co., Ltd., tire selection and rims for vehicles other than passenger cars; petition granted
48382 Vintage Reproductions, Inc., windshield systems, theft protection, identification number, etc., petition granted

National Oceanic and Atmospheric Administration
NOTICES
Meetings:
48283 New England Fishery Management Council
48283 South Atlantic Fishery Management Council

National Park Service
NOTICES
Boundary establishment, descriptions, etc..
48327 Biscayne National Park, Fla.
Environmental statements; availability, etc..
48330 San Antonio Missions National Historical Park, Tex., general management and development concept plan; meetings
Historic Places National Register; pending nominations:
48326 Massachusetts et al.
Meetings:
48326 Gateway National Recreation Area Advisory Commission
Oil and gas plans of operation; availability, etc..
48327 Big Cypress National Preserve, Fla.
48330 Padre Island National Seashore, Tex.

National Science Foundation
NOTICES
Meetings:
48348 Advisory Council (2 documents)
48346 Atmospheric Sciences Advisory Committee
48347 Behavioral and Neural Sciences Advisory Committee
48347 Materials Research Advisory Committee
48347 Physics Advisory Committee
48347 Physiology, Cellular, and Molecular Biology Advisory Committee

National Transportation Safety Board
RULES
48208 Equal Access to Justice Act; implementation
48206 Freedom of Information Act; implementation; fee schedule
NOTICES
48348 Accident reports, safety recommendations and responses, etc.; availability

Nuclear Regulatory Commission
NOTICES
Applications, etc.:
48349 Union Electric Co.
Meetings:
48349 Reactor Safeguards Advisory Committee
Regulatory authority; relinquishment to States, etc.:
48351 Washington, byproduct material; staff assessment of proposed amended agreement; republication

Parole Commission
NOTICES
48394 Meetings; Sunshine Act

Pension Benefit Guaranty Corporation
NOTICES
48366 Privacy Act; systems of records; annual publication

Postal Rate Commission
NOTICES
Mail classification schedules:
48372 1976 schedule; conference
48372 Electronic; conference

Postal Service
RULES
Procurement of property and services:
48196 Postal Contracting Manual, amendments

Prisons Bureau
RULES
Inmate control, custody, care, treatment, and instruction:
48574 Research projects; protection of subjects

Public Health Service
RULES
Grants:
48582 Block grant programs; requirements for replaced programs; interim rule and request for comments
48592 Block grant programs; revocation of categorical health grant regulations

Reclamation Bureau
NOTICES
Contract negotiations:
48330 Wellton-Mohawk Irrigation and Drainage District, Wellton, Ariz.

Research and Special Programs Administration, Transportation Department
RULES
Incorporations by reference, approval (Editorial note: This document appeared in the Federal Register for September 30, 1981).
PROPOSED RULES
Regulatory agenda. See entry under Transportation Department.

NOTICES
Hazardous materials:
48383, 48387 Applications; exemptions, renewals, etc. (2 documents;)

Saint Lawrence Seaway Development Corporation
PROPOSED RULES
Regulatory agenda. See entry under Transportation Department.

Securities and Exchange Commission
RULES
Financial statements;
48136 Property, plant and equipment disclosure requirements; revision
Securities:
48147 Insider reporting and trading; interpretations
48178 Primary offerings by multinational banks
48137 Report of sales and use of proceeds
PROPOSED RULES
Practice rules:
48233 Standards of conduct; unethical or improper professional practice before the Commission
NOTICES
Hearings, etc.:
48372 American Electric Power Co., Inc.
48374 Biotech Capital Corp.
48374 Fluid Power Pump Corp. et al.
48372 Royal Bank of Canada
48395 Meetings; Sunshine Act
Self-regulatory organizations; unlisted trading privileges:
48374 Cincinnati Stock Exchange
48375 Midwest Stock Exchange, Inc.

Small Business Administration
NOTICES
Applications, etc.:
48375 Hamco Capital Corp.
48376 San Marino Capital Corp.
Disaster areas:
48376 Texas

Soil Conservation Service
NOTICES
Environmental statements; availability, etc.:
48275 Camp Grafton Recreation Area RC&D Measure, N. Dak.
48275 Eminence School Land Drainage RC&D Measure, Ind.
48276 Jennings County Fairgrounds Land Drainage RC&D Measure, Ind.
48276 South Branch of Cattaraugus Creek RC&D Measure, N.Y.

Textile Agreements Implementation Committee
NOTICES
Cotton textiles:
48283 Malaysia

Trade Representative, Office of United States
NOTICES
Import quotas and exclusions, etc.:
48390 High-carbon ferrochromium
48391 International trade agreements (Tokyo Round); determinations

Transportation Department
See also Coast Guard; Federal Aviation Administration; Federal Highway Administration; Federal Railroad Administration; Maritime Administration; National Highway Traffic Safety Administration; Research and Special Programs Administration, Transportation Department; Saint Lawrence Seaway Development Corporation; Urban Mass Transportation Administration.
RULES
Incorporations by reference, approval (Editorial note: This document appeared in the Federal Register for September 30, 1981).
PROPOSED RULES
48422 Regulatory agenda

Treasury Department
See Customs Service.

Urban Mass Transportation Administration
PROPOSED RULES
Regulatory agenda. See entry under Transportation Department.

Veterans Administration
RULES
Vocational rehabilitation and education:
48195 Educational benefits; extension to eligible persons

MEETINGS ANNOUNCED IN THIS ISSUE

CIVIL RIGHTS COMMISSION
48277 Maine Advisory Committee, Augusta, Maine (open), 10-29-81 and Portland, Maine (open), 10-17-81 (2 documents)

COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration—
48283 New England Fishery Management Council, Danvers, Mass. (open), 10-20 and 10-21-81
48283 South Atlantic Fishery Management Council, Duck Key, Fla. (open), 10-27 through 10-29-81

DEFENSE DEPARTMENT
Office of the Secretary—
48285 Defense Intelligence Agency Advisory Committee, Panel (Soviet naval trends), Rosslyn, Va. (closed), 11-18 and 11-19-81

EDUCATION DEPARTMENT
48285 Women's Educational Programs National Advisory Council, Washington, D.C. (open), 10-15 and 10-16-81

ENVIRONMENTAL PROTECTION AGENCY
48318 State FIFRA Issues Research and Evaluation Group, Working Group on Enforcement and Certification, Denver, Colo. (open), 10-20 and 10-21-81

INTERIOR DEPARTMENT
National Park Service—
48326 Gateway National Recreation Area Advisory Commission, Brooklyn, N.Y. (open). 10-6-81
48326 San Antonio Missions National Historical Park, San Antonio, Tex. (open), week of 10-19-81
Office of the Secretary—
48330 Fiscal Accountability of Nation's Energy Resources Commission, New York, N.Y. (open), 10-19 and 10-20-81

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION
48346 NASA Advisory Council, Aeronautics Advisory Committee, Informal Advisory Subcommittee on Rotorcraft Technology, Moffett Field, Calif. (open), 10-26 through 10-28-81

NATIONAL SCIENCE FOUNDATION
48346 Atmospheric Sciences Advisory Committee, Washington, D.C. (partially open), 10-19 through 10-21-81
48347 Behavioral and Neural Sciences Advisory Committee, Psychobiology Subcommittee, Washington, D.C. (partially open), 10-29 and 10-30-81
48348 NSF Advisory Council, Task Group No. 17, Washington, D.C. (open), 10-19-81
48348 NSF Advisory Council, Task Group No. 18, Rosemont, Ill. (open), 10-26-81
48347 Materials Research Advisory Committee, Ceramics Programs Ad Hoc Oversight Subcommittee, Washington, D.C. (closed), 10-22 and 10-23-81
48347 Physics Advisory Committee, Washington, D.C. (open), 10-22 through 10-24-81
48347 Physiology, Cellular, and Molecular Biology Advisory Committee, Molecular Biology, Group A Subcommittee, Washington, D.C. (closed), 10-22 and 10-23-81

NUCLEAR REGULATORY COMMISSION
48349 Reactor Safeguards Advisory Committee, Washington, D.C. (partially open), 10-15 through 10-17-81

HEARINGS

ENVIRONMENTAL PROTECTION AGENCY
48254 Underground Injection and Control Program Criteria and Standards, Washington, D.C., 11-2-81 and Denver, Colo., 11-5-81

INTERSTATE COMMERCE COMMISSION
48344 Lease of equipment and drivers to private carriers, Washington, D.C. (open), 10-14-81

POSTAL RATE COMMISSION
48372 Mail classification schedule, Washington, D.C., 10-21-81

CHANGED HEARING

POSTAL RATE COMMISSION
48372 Electronic Mail Classification, Washington, D.C., rescheduled from 10-1-81 to 10-6-81

CFR PARTS AFFECTED IN THIS ISSUE

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

3 CFR
Proclamations:
4860 48097
4861 48099
4862 48101
4863 48103
4864 48105
4865 48107
Executive orders:
12324 48109

7 CFR
27 48111
28 (2 documents) 48111, 48113
61 48111
917 48115
1207 48116
1446 48117
Proposed Rules:
800 48217

10 CFR
Ch. II 48118

12 CFR
201 48120
747 48120
Proposed Rules:
Ch. II 48217

14 CFR
39 (2 documents) 48126, 48127
45 48600
71 (7 documents) 48128, 48132
73 48132
75 48133
97 48134
Proposed Rules:
Ch. I 48422
39 (3 documents) 48223-48225
71 48226

16 CFR
Proposed Rules:
13 48226

17 CFR
210 48136
230 48137
239 48137
241 48147
285 48178
286 48178
287 48178
Proposed Rules:
201 48233

18 CFR
274 48179
Proposed Rules:
271 (2 documents) 48234, 48235

19 CFR
4 48180
Proposed Rules:
10 48235
18 48235
19 48238
114 48235
143 48235

23 CFR
Proposed Rules:
Ch. I 48422
Ch. II 48422

28 CFR
40 48181
512 48574

29 CFR
56 48606
1601 48189

32 CFR
185 48189

33 CFR
110 (3 documents) 48193, 48194
117 48195
Proposed Rules:
Ch. I 48422
Ch. IV 48422
117 48239

38 CFR
21 48195

39 CFR
601 48196

40 CFR
180 48196
264 48197
265 48197
Proposed Rules:
52 48240
122 (2 documents) 48243, 48254
146 (2 documents) 48243, 48254

41 CFR
Proposed Rules:
Ch. 12 48422

42 CFR
50 (2 documents) 48592, 48593
51 (2 documents) 48592, 48593
51a (2 documents) 48592, 48593
51b (2 documents) 48592, 48593
51e 48593
51g 48592
54 (2 documents) 48592, 48593
54a (2 documents) 48592, 48593
54b (2 documents) 48592, 48593
56a 48592, 48593
59 (2 documents) 48592, 48593
91 (2 documents) 48592, 48593
405 (2 documents) 48544, 48550
430 48556
431 (3 documents) 48524, 48532, 48564
432 48564
433 ..... 48556, 48564
435 ..... 48532, 49556
440 (2 documents) 48524, 48532
441 (3 documents) 48532, 48550, 48556
447 48556
456 (2 documents) 48556, 48564
462 48564
463 48564
466 48564
473 48564
478 48564
480 48564

44 CFR
Proposed Rules:
67 (6 documents) 48255-48257

45 CFR
16 48582
74 48582
96 48582
224 48600
260 48593
1391 48593
1393 48593
1395 48593
1396 48593

46 CFR
281 48198
510 48199
524 48199
Proposed Rules:
Ch. I 48422
Ch III 48422

47 CFR
73 (7 documents) 48200-48206
Proposed Rules:
73 48258

49 CFR
801 48206
826 48208
1033 (2 documents) 48215, 48216
1039 48215
1100 48216
1108 48216
1111 48216
1121 48216
1300 48215
Proposed Rules:
Subtitle A 48422
Ch. I-VI 48422
571 (2 documents) 48260, 48261
581 48262

Federal Register
Vol. 46, No. 190
Thursday, October 1, 1981

Presidential Documents

Title 3—

The President

Proclamation 4860 of September 28, 1981

Fire Prevention Week

By the President of the United States of America

A Proclamation

Every year this Nation experiences needless loss of life and property. America's fire losses are a great waste of our precious resources and must be minimized. Destruction of property and what we pay for fire protection totals over $21 billion each year. But even worse, 7,500 American deaths annually can be attributed to fire.

With a concerted effort by individual citizens, our Nation can curtail its needless fire losses.

Installing and properly maintaining smoke detectors and practicing fire escape plans can reduce loss of life and property. If each of us would take a few simple precautions, fewer Americans would suffer disfigurement, the agony of injury, or the mental anguish of the sudden loss of loved ones.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do designate the week of October 4 through October 10, 1981, as Fire Prevention Week.

Furthermore, I congratulate the fire service for their fire prevention efforts and support their continued work. The National Fire Protection Association; the Fire Marshals Association of North America, fire chiefs, and fire fighters deserve our thanks for their sponsorship of this year's fire safety observance.

I direct the Federal Emergency Management Agency to work with all levels of government, industry, service organizations and volunteers to encourage the broadest possible use of smoke detectors across the Nation.

IN WITNESS WHEREOF, I have hereunto set my hand this 28th day of Sept., in the year of our Lord nineteen hundred and eighty-one, and of the Independence of the United States of America the two hundred and sixth.

Ronald Reagan

[FR Doc. 81-28782
Filed 9-29-81; 4:02 pm]
Billing code 3195-01-M

Presidential Documents

Proclamation 4861 of September 28, 1981

National Diabetes Week

By the President of the United States of America

A Proclamation

Diabetes is a serious and widespread public health problem, resulting from the inability of the body to convert nutrients into energy. This debilitating and often fatal disease affects about 10 million Americans and is occurring among all age and socio-economic groups at an increasing rate. More than 35,000 people die from diabetes every year, and the disease contributes to deaths from heart attack, stroke, kidney failure and blood vessel disorders. It is the leading cause of new blindness. The cost of diabetes is measured in the billions of dollars, but by far the highest price is paid in the suffering and shortened life span of its victims.

Fortunately, there is hope. Through advances in medical research, we are learning more about diabetes, its cause, and improved methods for its control and management. Prospects for better prevention and treatment appear brighter than at any time since the discovery of insulin more than 50 years ago.

I am pleased that in cooperation with private, voluntary organizations, the Federal Government plays a valuable role in support of this research. It is my fervent hope that continued efforts will improve the quality of life for all our Nation's diabetics and eventually lead to the prevention and cure of this difficult and cruel disease.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week beginning October 4 through October 10, 1981, as National Diabetes Week, and I call upon the people of the United States to observe that week with appropriate ceremonies and activities.

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

Ronald Reagan

[FR Doc. 81-28783
Filed 9-29-81; 4:03 pm]
Billing code 3195-01-M

Presidential Documents

Proclamation 4862 of September 28, 1981

Child Health Day

By the President of the United States of America

A Proclamation

We have all heard the saying, "As the twig is bent the tree inclines." This maxim is especially true for the minds and bodies of our children. The physical and mental health of the child prepares the way for the physical and mental health of the adult.

Our future as a Nation lies in the healthy development of our children. That development must be fostered from the earliest stages so that our twigs and saplings will grow into straight and strong trees.

We must actively promote child health through the positive approach of preventive care, such as early prenatal care for mothers, assured immunization against dangerous childhood illnesses and early identification of handicapping conditions.

In this effort to improve the well-being and future of our children, I earnestly call for cooperative and voluntary action from all those who make maternal and child health their profession, from the States through their health care resources, from the organizations of private citizens who devote themselves to the health of mothers and children, and particularly from parents themselves, whose attention to their children's needs and personal examples of healthful behavior are vital factors in the protection of child health.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, pursuant to a joint resolution of May 18, 1928, as amended (36 U.S.C. 143), do hereby proclaim Monday, October 5, 1981, as Child Health Day.

IN WITNESS WHEREOF, I have hereunto set my hand this 28th day of Sept., in the year of our Lord nineteen hundred and eighty-one, and of the Independence of the United States of America the two hundred and sixth.

Ronald Reagan

[FR Doc. 81-28784
Filed 9-29-81; 4:04 pm]
Billing code 3195-01-M

Presidential Documents

Proclamation 4863 of September 28, 1981

White Cane Safety Day

By the President of the United States of America

A Proclamation

For blind Americans, the white cane is an important sign of independence, symbolizing their ability to travel in our Nation's cities and towns with great confidence and safety. For motorists, the white cane symbolizes caution, and reminds them that their courtesy and consideration insure the safety of the visually disabled.

We should always be aware of the significance of the white cane and extend every courtesy to those who carry it. By doing so, we will respect and ensure the right to independence of the visually disabled as they pursue a productive and fulfilling life.

In recognition of the significance of the white cane, the Congress, by a joint resolution of October 6, 1964 (78 Stat. 1003), authorized the President to proclaim October 15 of each year as White Cane Safety Day.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim October 15, 1981, as White Cane Safety Day.

I urge all Americans to mark this occasion by giving greater consideration to the special needs of the visually disabled, and, particularly, to observe White Cane Safety Day with activities that contribute to maximum independent use of our streets and public facilities by our visually handicapped population.

IN WITNESS WHEREOF, I have hereunto set my hand this 28th day of Sept., in the year of our Lord nineteen hundred and eighty-one, and of the Independence of the United States of America the two hundred and sixth.

Ronald Reagan

[FR Doc. 81-28785
Filed 9-29-81; 4:05 pm]
Billing code 3195-01-M

Presidential Documents

Proclamation 4864 of September 28, 1981

United Nations Day, 1981

By the President of the United States of America

A Proclamation

The United Nations rose from the ashes of the Second World War. As we observe another United Nations Day on October 24, 1981, we are thankful that the world has since been spared another major conflagration.

The United Nations has assisted in bringing stability to troubled areas and will surely do so again. United Nations peacekeeping forces are on duty in the volatile Middle East and have contributed to maintaining the peace in other places.

The problems addressed in this world forum are diverse, and the United Nations cannot resolve all matters it considers. But it has helped. This year it held a major conference for the purpose of pledging assistance to refugees in Africa. The United States made a substantial pledge, consistent with our historic support for United Nations refugee programs.

The United Nations is the world's meeting place. It brings together representatives of virtually all countries to discuss a multitude of subjects. These meetings afford opportunities for bilateral discussions, often at a high level, as an extra benefit. Today, much of the world's diplomacy takes place under the aegis of the United Nations.

The United States will continue to play a prominent role and champion the values and ideals that originally inspired the United Nations. We will further those activities that strengthen the capacity of the institution to serve the good of mankind.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby designate Saturday, October 24, 1981, as United Nations Day. I urge all Americans to use this day as an opportunity to better acquaint themselves with the activities and accomplishments of the United Nations.

I have appointed Mr. Robert Anderson to serve as 1981 United States National Chairman for United Nations Day, and welcome the role of the United Nations Association of the United States of America in working with him to celebrate this special day.

IN WITNESS WHEREOF, I have hereunto set my hand this 28th day of Sept., in the year of our Lord nineteen hundred and eighty-one, and of the Independence of the United States of America the two hundred and sixth.

Ronald Reagan

[FR Doc. 81-28786
Filed 9-29-81; 4:06 pm]
Billing code 3195-01-m

Presidential Documents

Proclamation 4865 of September 29, 1981

High Seas Interdiction of Illegal Aliens

By the President of the United States of America

A Proclamation

The ongoing migration of persons to the United States in violation of our laws is a serious national problem detrimental to the interests of the United States. A particularly difficult aspect of the problem is the continuing illegal migration by sea of large numbers of undocumented aliens into the southeastern United States. These arrivals have severely strained the law enforcement resources of the Immigration and Naturalization Service and have threatened the welfare and safety of communities in that region.

As a result of our discussions with the Governments of affected foreign countries and with agencies of the Executive Branch of our Government, I have determined that new and effective measures to curtail these unlawful arrivals are necessary. In this regard, I have determined that international cooperation to intercept vessels trafficking in illegal migrants is a necessary and proper means of insuring the effective enforcement of our laws.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, by the authority vested in me by the Constitution and the statutes of the United States, including Sections 212(f) and 215(a)(1) of the Immigration and Nationality Act, as amended (8 U.S.C. 1182(f) and 1185(a)(1)), in order to protect the sovereignty of the United States, and in accordance with cooperative arrangements with certain foreign governments, and having found that the entry of undocumented aliens, arriving at the borders of the United States from the high seas, is detrimental to the interests of the United States, do proclaim that:

The entry of undocumented aliens from the high seas is hereby suspended and shall be prevented by the interdiction of certain vessels carrying such aliens.

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

Ronald Reagan

[FR Doc. 81-28828
Filed 9-30-81; 11:37 am]
Billing code 3195-01-M

Presidential Documents

Executive Order 12324 of September 29, 1981

Interdiction of Illegal Aliens

By the authority vested in me as President by the Constitution and statutes of the United States of America, including Sections 212(f) and 215(a)(1) of the Immigration and Nationality Act, as amended (8 U.S.C. 1182(f) and 1185(a)(1)), in view of the continuing problem of migrants coming to the United States, by sea, without necessary entry documents, and in order to carry out the suspension and interdiction of such entry which have concurrently been proclaimed, it is hereby ordered as follows:

Section 1. The Secretary of State shall undertake to enter into, on behalf of the United States, cooperative arrangements with appropriate foreign governments for the purpose of preventing illegal migration to the United States by sea.

Sec. 2. (a) The Secretary of the Department in which the Coast Guard is operating shall issue appropriate instructions to the Coast Guard in order to enforce the suspension of the entry of undocumented aliens and the interdiction of any defined vessel carrying such aliens.

(b) Those instructions shall apply to any of the following defined vessels:

(1) Vessels of the United States, meaning any vessel documented under the laws of the United States, or numbered as provided by the Federal Boat Safety Act of 1971, as amended (46 U.S.C. 1451 *et seq.*), or owned in whole or in part by the United States, a citizen of the United States, or a corporation incorporated under the laws of the United States or any State, Territory, District, Commonwealth, or possession thereof, unless the vessel has been granted nationality by a foreign nation in accord with Article 5 of the Convention on the High Seas of 1958 (U.S. TIAS 5200; 13 UST 2312).

(2) Vessels without nationality or vessels assimilated to vessels without nationality in accordance with paragraph (2) of Article 6 of the Convention on the High Seas of 1958 (U.S. TIAS 5200; 13 UST 2312).

(3) Vessels of foreign nations with whom we have arrangements authorizing the United States to stop and board such vessels.

(c) Those instructions to the Coast Guard shall include appropriate directives providing for the Coast Guard:

(1) To stop and board defined vessels, when there is reason to believe that such vessels are engaged in the irregular transportation of persons or violations of United States law or the law of a country with which the United States has an arrangement authorizing such action.

(2) To make inquiries of those on board, examine documents and take such actions as are necessary to establish the registry, condition and destination of the vessel and the status of those on board the vessel.

(3) To return the vessel and its passengers to the country from which it came, when there is reason to believe that an offense is being committed against the United States immigration laws, or appropriate laws of a foreign country with which we have an arrangement to assist; provided, however, that no person who is a refugee will be returned without his consent.

(d) These actions, pursuant to this Section, are authorized to be undertaken only outside the territorial waters of the United States.

Sec. 3. The Attorney General shall, in consultation with the Secretary of State and the Secretary of the Department in which the Coast Guard is operating, take whatever steps are necessary to ensure the fair enforcement of our laws relating to immigration (including effective implementation of this Executive Order) and the strict observance of our international obligations concerning those who genuinely flee persecution in their homeland.

Ronald Reagan

THE WHITE HOUSE,
September 29, 1981.

[FR Doc. 81-28829
Filed 9-30-81; 11:38 am]
Billing code 3195-01-M

Rules and Regulations

Federal Register
Vol. 46, No. 190
Thursday, October 1, 1981

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

Agricultural Marketing Service

7 CFR Parts 27, 28, and 61

Cotton and Cottonseed; Revision in Fees

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action will revise fees charged for cotton classing and related services, and for supervision of cottonseed grading; the revisions are necessary due to the increased costs of providing these services. The cotton standards price increases included in this rule are due to the requirements of the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97-35).

EFFECTIVE DATE: October 1, 1981.

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

SUPPLEMENTARY INFORMATION: This rule has been reviewed under the USDA procedure established in accordance with Executive Order 12291 of February 17, 1981, and has been classified "nonmajor" as it does not meet the criteria contained therein for major regulatory actions. William T. Manley, Deputy Administrator for Marketing Program Operations, has determined that this action will not have a significant impact on a substantial number of small business entities because (i) use of the services is voluntary; and (ii) further, if there is any impact, the Secretary is required by statute to make the services available and to recover the costs of the services from the users of the services.

Due to the requirement contained in the Omnibus Budget Reconciliation Act of 1981 for implementation of its provisions concerning cotton standards, it is necessary to make this regulatory action comply with an effective date of October 1, 1981. Increases are also being made in the fees for classing of cotton linters and for cottonseed grading which are authorized by the Agricultural Marketing Act of 1946. Since these services are directly related to the marketing of cotton, it is necessary that all fee increases have a uniform effective date and good cause is found for making this rule effective on October 1, 1981.

A notice of proposed rulemaking was published on August 21, 1981 (46 FR 42490). Due to the nearness of the effective date required by the statute, the comment period was limited to 20 days. A total of two comments were received from the cotton industry. All of the comments received addressed objections to the amount of the increase in cotton standards prices. The substantial increase in cotton standards prices is mandated by the Omnibus Budget Reconciliation Act of 1981. The comments received contained no objections to any other part of the proposed regulatory changes.

The United States Cotton Standards Act (7 U.S.C. 51-65), United States Cotton Futures Act (7 U.S.C. 15b), and Agricultural Marketing Act of 1946 (7 U.S.C. 1621-1627) authorize the Secretary of Agriculture to provide cotton classing and related services and supervision of cottonseed grading to the public on a fee basis. The Secretary is further directed to set such fees for these services as will allow USDA to recover the costs of providing the services.

The services provided include cotton classing and cottonseed grading. Due to increases of USDA costs in providing these services since the last adjustment in fees on August 1, 1979 (44 FR 40481-40494), an average increase in fees of about 20 percent is required to recover the increased costs.

Many factors are considered in calculating the cost of providing services. Increases in personnel costs, rent, utilities and communications have the most significant impact on these costs. Federal salaries have increased 16 percent and expenditures for rent, utilities, and communications have gone up 25 percent since August 1979. A significant amount of travel is involved in performing these services also, and the standard daily per diem rate has increased over 40 percent since the last fee adjustment. These increases, along with increased costs for supplies and materials, are responsible for an overall increase in the costs of providing services of approximately 20 percent.

An amendment to the Cotton Standards Act (7 U.S.C. 55) contained in the Omnibus Budget Reconciliation Act of 1981 directs the Secretary of Agriculture to assess such prices for cotton standards that will cover, as nearly as practicable, the costs of providing standards. This requirement and the increases in costs of providing the services since the last adjustment in prices on August 1, 1979 (44 FR 40481-40494), result in a substantial increase in the prices charged for cotton standards.

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

PART 27—COTTON CLASSIFICATION UNDER COTTON FUTURES LEGISLATION

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

§ 27.80 Fees; classification, micronaire, and supervision.

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

(a) Initial classification and certification—90 cents per bale.

(b) Review classification and certification—$1.10 per bale.

(c) Micronaire determination and certification—20 cents per bale.

(d) Combination service—$2 per bale. (initial classification, review classification, and Micronaire determination covered by the same request and only the review classification and Micronaire determination results certified on cotton class certificates.)

(e) Supervision, by a supervisor of cotton inspection, of the inspection, weighing, or sampling of cotton when any two or more of these operations are performed together—$1.10 per bale.

(f) Supervision, by a supervisor of cotton inspection, of the inspection, weighing, or sampling of cotton when

any one of these operations is performed individually—$1.10 per bale.

(g) Supervision, by a supervisor of cotton inspection, of transfers of cotton to a different delivery point, including issuance of new cotton class certificates in substitution for prior certificates—$2.10 per bale.

(h) Supervision, by a supervisor of cotton inspection, of transfers of cotton to a different warehouse at the same delivery point, including issuance of new cotton class certificates in substitution for prior certificates—$1.45 per bale.

§ 27.81 Fees; certificates.

For each new certificate issued in substitution for a prior certificate at the request of the holder thereof, for his business convenience, or when made necessary by the transfer of the cotton under the supervision of an exchange inspection agency as provided in § 27.73, the person making the request shall pay a fee of 45 cents for each certificate issued.

(90 Stat. 1841–1846; (7 U.S.C. 15b))

PART 28—COTTON CLASSING, TESTING, AND STANDARDS

2. Sections 28.116, 28.117, 28.120, 28.122, 28.123, 28.148, 28.149, and 28.151 are revised to read as follows:

§ 28.116 Amounts of fees for classification; exemption.

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

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

(2) Grade and staple only—85 cents per sample.

(3) Grade only or staple only—60 cents per sample.

(4) Micronaire reading only—20 cents per sample.

(b) When a comparison is requested of any samples with a type or with other samples, the fees prescribed in paragraph (a) of this section shall apply to every sample involved, including each of the samples of which the type is composed.

(c) An additional fee of 25 cents per sample shall be assessed for services described in paragraphs (a) (1), (2), and (3), and (b) of this section unless the request for service is so worded that the samples become Government property immediately after classification.

(d) For any review of classification or comparison of any cotton, the fees prescribed in paragraph (a) of this section shall apply. The additional fee prescribed in paragraph (c) of this section is not applicable to review of classification if made on the same sample as the original class or comparison.

§ 28.117 Fee for new memorandum or certificate.

For each new memorandum or certificate issued in substitution for a prior memorandum or certificate at the request of the holder, thereof, on account of the breaking or splitting of the lot of cotton covered thereby or otherwise for his business convenience, the person requesting such substitution shall pay a fee of $1.80 per sheet.

§ 28.120 Expenses to be borne by party requesting classification.

For any samples submitted for Form A or Form D determinations, the expenses of inspection and sampling, the preparation of the samples, and the delivery of such samples to the classification room of the board or other place specifically designated for the purpose by the Director or by the chairman of such board, shall be borne by the party requesting the classification. For samples submitted for Form C determinations, the party requesting the classification shall pay the fees prescribed in this subpart and, in addition, a fee of $14 per hour, or each portion thereof, plus the necessary traveling expenses and subsistence, or per diem in lieu of subsistence, incurred on account of such request, in accordance with the fiscal regulations of the Department applicable to the Division employee supervising the sampling.

§ 28.122 Fee for practical classing examination.

The fee for the complete practical classing examination for cotton or cotton linters shall be $90. Any applicant who passes both parts of the examination may be issued a certificate indicating this accomplishment. Any person who passes one part of the examination, either grade or staple, and fails to pass the other part, may be reexamined for that part that was failed. The fee for this partial reexamination is $50.

§ 28.123 Costs of practical forms of cotton standards.

The cost of practical forms of the cotton standards of the United States shall be as follows:

	Dollars each box	
	Domestic shipments f.o.b. Memphis, Tenn.	Foreign shipments surface delivery
GRADE STANDARDS		
American Upland:		
12-sample official boxes (Universal Standards)	150.00	170.00
6-sample guide boxes	80.00	95.00
American Pima: 6-sample guide boxes	110.00	125.00
STANDARDS FOR LENGTH OF STAPLE		
American upland (prepared in one pound rolls for each length)	11.00	13.00
American Pima (prepared in one pound rolls for each length)	12.00	14.00

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

The fee for the classification, comparison, or review of linters with respect to grade, staple, and character or any of these qualities shall be at the rate of 90 cents for each bale or sample involved. The provisions of §§ 28.115 through 28.126 relating to other fees and costs shall, so far as applicable, apply to services performed with respect to linters.

§ 28.149 Fees and costs; Form C determination.

For samples submitted for Form C determination, the party requesting the classification shall pay the fees prescribed in this subpart and, in addition, a fee of $14 per hour, or each portion thereof, plus the necessary traveling expenses and subsistence, or per diem in lieu of subsistence, incurred on account of such request, in accordance with the fiscal regulations of the Department applicable to the Division employee supervising the sampling.

§ 28.151 Cost of practical forms for linters; period effective.

Practical forms of the official cotton linters standards of the United States will be furnished to any person subject to the applicable terms and conditions specified in § 28.05; Provided, that no practical form of any of the official cotton linters standards of the United States for grade shall be considered as representing any of said standards after the date of its cancellation in accordance with this subpart, or, in any event, after the expiration of 12 months following the date of its certification. The cost of the official standards for grade shall be at the rate of $80 each, f.o.b. Memphis, Tennessee, for shipments within the continental United States, and $95 each, delivered to destination, for shipments outside the

United States. The cost of the official standards for staple shall be at the rate of $15 each, f.o.b. Memphis, Tennessee, for shipments within the continental United States, and $17 each, delivered to destination, for shipments outside the continental United States.

(Sec. 10, 42 Stat. 1519; 7 U.S.C. 61; and The Omnibus Reconciliation Act of 1981)

3. Section 28.184 is revised to read as follows:

§ 28.184 Cotton linters; general.

Requests for the classification or comparison of cotton linters pursuant to this subpart and the samples involved shall be submitted to the Board of Cotton Linters Examiners. All samples classed shall be on the basis of the official cotton linters standards of the United States. The fee for classification or comparison and the issuance of a memorandum showing the results of such classification or comparison shall be 90 cents per sample.

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

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

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

§ 61.43 Fee for sampler's license.

In the examination of an applicant for a license to sample and certificate official samples of cottonseed the fee shall be $14, but no additional charge shall be made for the issuance of a license. For each renewal of a sampler's license the fee shall be $12.

§ 61.44 Fee for chemist's license.

For the examination of an applicant for a license as a chemist to analyze and certificate the grade of cottonseed the fee shall be $290, but no additional charge shall be made for the issuance of a license. For each renewal of a chemist's license the fee shall be $95.

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

To cover in part the cost of administering the regulations in this part each licensed cottonseed chemist shall pay to the Service $1.10 for each certificate of the grade of cottonseed issued by him. Upon receipt of a statement from the Service each month showing the number of certificates issued by the licensee, such licensee will forward the appropriate remittance in the form of a check, draft, or money order payable to the "Agricultural Marketing Service, USDA."

§ 61.46 Fees for the review of grading of cottonseed.

For the review of the grading of any lot of cottonseed, the fee shall be $36. Remittance to cover such fee, in the form of a check, draft, or money order payable to the "Agricultural Marketing Service, USDA" shall accompany each application for review. Of each such fee collected, $12 shall be covered into the Treasury and $12 disbursed to each of the two licensed chemists designated to make reanalysis of such seed.

* * * * *

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

Dated: September 25, 1981.

William T. Manley,

Deputy Administrator, Marketing Program Operations.

[FR Doc. 81-28478 Filed 9-28-81; 10:50 am]

BILLING CODE 3410-02-M

---

7 CFR Part 28

Implementation of User Fees for Cotton Classification Service to Producers

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action will implement a user fee for cotton classfication services to producers as required by the Omnibus Budget Reconciliation Act of 1981. The Omnibus Budget Reconciliation Act (Pub. L. 97–35) contains amendments to the Cotton Statistics and Estimates Act of 1927 (7 U.S.C. 471–476) which direct the Secretary of Agriculture to provide cotton classification services to producers and recover, as nearly as practicable, the costs of providing such service including administrative and supervisory costs through the imposition of a user fee.

EFFECTIVE DATE: October 1, 1981.

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

SUPPLEMENTARY INFORMATION: This rule has been reviewed under the USDA procedure established in accordance with Executive Order 12291 of February 17, 1981, and has been classified "nonmajor" as it does not meet the criteria contained therein for major regulatory actions. William T. Manley, Deputy Administrator for Marketing Program Operations, Agricultural Marketing Service (AMS), has determined that this action will not have a significant impact on a substantial number of small business entities as (i) cotton classification services will continue to be provided to producers; (ii) the fee will be imposed upon the producers who receive the service; and (iii) cotton classification is not mandatory.

The Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97–35, August 31, 1981) amended section 3a of the Cotton Statistics and Estimates Act ("Act"), 7 U.S.C. 473a, to require that user fees shall be charged for the classification of producer cotton under section 3a of the Act, effective October 1, 1981. Accordingly, it has been determined that by reason of the effective date of the amendments to the Act good cause is found for making this final rule effective October 1, 1981.

The 1937 Smith-Doxey Amendment to the Cotton Statistics and Estimates Act of 1927 ("Act") (7 U.S.C. 471–476) directed the Secretary of Agriculture to provide free cotton classification to producers organized to promote the improvement of cotton. Actually, the classing service has not been entirely free because of samples submitted by producers become Government property after classing and are sold as baled loose cotton. The free services began in 1937 primarily as an incentive to producers to improve the quality of cotton and to place them in a better bargaining position in the marketplace by furnishing quality information on each bale produced. The Omnibus Budget Reconciliation Act of 1981 includes amendments, effective for fiscal years 1982, 1983 and 1984, to the Act which direct the Secretary to provide cotton classification services to producers on a user fee basis. The Secretary is further authorized to set the user fee at a level that when combined with the proceeds from the sale of samples submitted for classification will recover, as nearly as practicable, the cost of the service provided, including the administrative and supervisory costs. The Secretary is also directed to take necessary action to insure that the universal cotton standards system is preserved and that the Government cotton classification system continues to operate to provide an official quality description for the United States cotton crop.

A notice of proposed rulemaking was published on August 21, 1981 (46 FR 42492). Due to the nearness of the October 1, 1981 effective date of the amendment, the comment period was limited to 20 days. A total of 57 comments were received from interested parties. One comment was in favor of the proposed regulations. The other 56

comments were against the statutory mandate for a user fee to recover the costs of cotton classification. No specific objections to the regulations implementing the user fee were received.

The fee for classification will be 60 cents per sample. Due to the lack of experience in charging fees under this type of service, the fee of 60 cents may be adjusted, downward or upward, based on experience gained in operating the program.

Under the regulations, receipt of a properly drawn and identified sample of the producer's cotton by the USDA classing facility serving the area where it is ginned will constitute a request for classification service from the producer. Classing facilities will maintain accounts for participating producers and billings to producers will be scheduled to coincide as closely as possible with a monthly statement cycle. If a producer has designated a billing agent, such agent will be billed. No action is required of producers who do not wish to participate in the classification program since only those producers from whom samples are received by USDA will receive classification services.

Cotton samples for official USDA classification must be drawn by licensed cotton gins or warehouses. Requirements for licensing and approved procedures for the drawing and handling of cotton samples are not altered under this rule. Since only cotton which is owned by the producer is eligible for the service under this subpart, the sampling instructions issued to licensed samplers by the Cotton Division, AMS, will be amended to state that the licensed sampler will certify that all samples submitted for classification under this subpart were drawn from producer-owned cotton.

Accordingly, 7 CFR Part 28 is amended as follows:

PART 28—COTTON CLASSING, TESTING, AND STANDARDS

1. Subpart D is amended by revising the subpart title and authority to read as follows:

Subpart D—Cotton Classification and Market News Service for Producers.

Authority: Sec. 10, 42 Stat. 1519, sec. 3c, 50 Stat. 62; 7 U.S.C. 61, 473c, and Sec. 156, Pub. L. 97–35 (Omnibus Budget Reconciliation Act of 1981), unless otherwise noted.

2. Section 28.901 is amended by revising paragraphs (a), (c), and (e), and adding (f) to read as follows:

Definitions

§ 28.901 Definitions.

When used in the regulations in this subpart:

(a) "Act" means the applicable provisions of the Act of Congress of March 3, 1927 (44 Stat. 1372), as amended by the Act of Congress of April 13, 1937 (50 Stat. 62) (7 U.S.C. 471–476), the United States Cotton Standards Act, as amended (42 Stat. 1517; 7 U.S.C. 51 et seq.) and the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97–35), unless otherwise noted.

* * * * *

(c) "Administrator" means the Administrator of the Agricultural Marketing Service, or any officer or employee of the Service to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated to act for the Administrator.

* * * * *

(e) "Director" means the Director of the Cotton Division, or any officer or employee of the Division to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act for the Director.

(f) "Producer" means any individual, partnership, corporation, association, trust, estate, or other legal entity, a state or political subdivision thereof, or any agency of such state or political subdivision producing American Upland or American Pima cotton in the capacity of landowner, landlord, tenant, or sharecropper.

* * * * *

3. Sections 28.903 and 28.904 are revised to read as follows:

Classification and Market News Services

§ 28.903 Classification of samples.

The Director, or an authorized representative, upon the receipt of a producer's cotton sample which complies with the regulations in this subpart shall, as hereinafter provided, furnish to such producer or to an agent designated by the producer the classification in accordance with the official cotton standards of the United States.

§ 28.904 Market news.

The Director shall cause to be distributed to producers of cotton and to others on request, timely information on prices for various qualities of cotton.

§ 28.905 [Removed]

4. Section 28.905 is removed.

5. Sections 28.906 and 28.907 are revised to read as follows:

Sampling

§ 28.906 Sampling arrangements.

(a) Cotton must be sampled by a gin or warehouse that holds a valid license to sample cotton issued pursuant to §§ 28.20–28.22.

(b) The Director, or an authorized representative may direct that sampling be performed by employees of the Department of Agriculture for the purpose of appraising the sampling procedures at cotton gins or warehouses, or for the purpose of providing service to producers in special cases where a licensed gin or warehouse is not available.

(Sec. 2, Pub. Res. 72–73, 47 Stat. 1621 (7 U.S.C. 51b))

§ 28.907 Responsibilities of licensed gins or warehouses.

Each licensee shall be primarily responsible for drawing, identifying, handling, and shipping samples of cotton in accordance with this subpart and with instructions furnished by the Director or an authorized representative from time to time.

(Sec. 2, Pub. Res. 72–73, 47 Stat. 1621 (7 U.S.C. 51b))

6. Section 28.908 is amended by revising paragraphs (a), (c), and (e), and adding (g) to read as follows:

§ 28.908 Samples.

(a) *Only one sample to be submitted.* Only one sample from each bale of eligible cotton shall be submitted for classification under this subpart. This does not prohibit the submission of an additional sample from a bale for review classification if the producer so desires.

* * * * *

(c) *Mechanical sampling.* Samples may be drawn in gins equipped with mechanical samplers approved by the Division and operated according to sampling instructions furnished by the Director or an authorized representative. Such samples shall not be less than 6 ounces in weight.

* * * * *

(e) *Handling samples.* Samples shall not be dressed or trimmed and shall be carefully handled in such manner as not to cause loss of leaf, sand, or other material, or otherwise change their representative character. Samples shall be handled only by employees of the licensee prior to shipment or delivery to the cotton classing office of the Division.

* * * * *

(g) *Request for classification.* Samples received from a licensed gin or warehouse with the identification tag required in sec. 28.908(f) shall constitute

a request for classification service by the producer.

7 Sections 28.909, 28.910, and 28.911 are revised to read as follows:

§ 28.909 Costs

(a) Costs incident to sampling, tagging, and identification of samples and transporting samples to points of shipment shall be assumed by the producer, but tags and containers for the shipment of samples and shipping charges via U.S. Postal Service or duly authorized common carrier will be furnished by the Service. After classification the samples shall become the property of the Government. The proceeds of the sale of cotton samples shall be used to defray the costs of providing the services under this subpart.

(b) The Division will periodically bill producers or the agents designated by the producers for the cost of classification. The cost for cotton classification service to producers is 60 cents per sample.

Classification

§ 28.910 Classification of samples and issuance of memoranda.

(a) The samples submitted as provided in this subpart shall be classified by employees of the Division and classification memoranda showing the official quality determinations of each sample according to the official cotton standards of the United States will be mailed or made available to the producer whose name appears on the tag accompanying the samples, or to an agent designated by the producer to receive the classification memoranda.

(b) Upon the request of an owner of cotton for which classification memoranda have been issued under this subpart, a new memorandum shall be issued for the business convenience of such owner without the reclassification of the cotton. Such rewritten memorandum shall bear the date of its issuance and the date or inclusive dates of the original classification. The fee for a new memorandum shall be $1.80 per sheet.

§ 28.911 Review classification.

A producer may request one review classification for each bale of eligible cotton. The fee for review classification is $1.00 per sample. Samples for review classification must be drawn by gins or warehouses licensed pursuant to §§ 28.20–28.22, or by employees of the United States Department of Agriculture. Each sample for review classification shall be taken, handled, and submitted according to § 28.908 and to supplemental instructions issued by the Director or an authorized representative of the Director. Costs incident to sampling, tagging, identification, containers, and shipment for samples for review classification shall be assumed by the producer. After classification the samples shall become the property of the Government. The proceeds of the sale of such samples shall be used to defray the costs of providing the services under this subpart.

§§ 28.912, 28.913, 28.914, 28.915, 28.916 [Removed]

8. Sections 28.912, 28.913, 28.914, 28.915, and 28.916 and the center heading "Applications" are removed.

9. Section 28.917 is revised to read as follows:

Limitation of Services

§ 28.917 Limitation of services.

The Director, or an authorized representative, may suspend, terminate, or withhold cotton classing and market news services to any producer upon any failure of the producer to comply with the act or these regulations. Failure to remit fees for classification services shall result in loss of service.

Dated: September 25, 1981.

William T. Manley,

Deputy Administrator, Marketing Program Operations.

[FR Doc. 81-28477 Filed 9-28-81; 10:48 am]

BILLING CODE 3410-02-M

---

7 CFR Part 917

[Pear Regulation 12]

Fresh Pears, Plums, and Peaches Grown in California; Grade, Size, and Container Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation sets minimum grade, size, and container requirements for shipments of fresh California Bartlett, Max-Red Bartlett, and Red Bartlett varieties of pears. Such action is designed to promote orderly marketing of suitable quality and sizes of fresh California pears in the interest of producers and consumers.

DATES: Effective on and after October 16, 1981.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, Acting Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone 202-447-5975.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under Secretary's Memorandum 1512-1 and Executive Order 12291 and has been designated a "non-major" rule. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has determined that this action will not have a significant economic impact on a substantial number of small entities because it would not measurably affect costs for the directly regulated handlers.

An interim rule was published in the Federal Register (46 FR 38492) on July 28, 1981, which specified grade, size, and container requirements applicable to shipments of specified varieties of fresh California pears through October 15, 1981. That rule provided an opportunity to file comments through August 27, 1981. No comments were received. This final rule contains the same requirements as specified in the interim rule. This rule is effective on and after October 16, 1981, except that the provision pertaining to organically grown pears expires July 31, 1982.

This regulation is issued under the marketing agreement, as amended, and Order No. 917, as amended (7 CFR Part 917), regulating the handling of fresh pears, plums, and peaches grown in California. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). This action is based upon the recommendations and information submitted by the Pear Commodity Committee, established under the order, and upon other information. It is hereby found that this action will tend to effectuate the declared policy of the act.

Grade and size requirements are designed to ensure the shipment of ample supplies of better grades and more desirable sizes of fresh Bartlett pears in the interests of consumers and producers. The industry believes that should shipments of fresh pears include immature, poor quality, and excessively small fruit, the marketability of the entire crop would be adversely affected. This type of fruit arriving on the fresh market creates consumer resistance to pears, resulting in a decline of repeat purchases. The container requirements are designed to prevent deceptive packaging practices and to promote buyer confidence.

Under the terms of the regulation the grade, size, and container requirements would be effective on and after October 16, 1981. Although the regulation would be effective for an indefinite period, the committee would continue to meet prior to and during each season to consider recommendations for modification, suspension, or termination of the regulation. Prior to making any such recommendations, the committee would

submit to the Secretary a marketing policy for the season including an analysis of supply and demand factors having a bearing on the marketing of the crop. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department will evaluate committee recommendations and information submitted by the committee, and other available information, and determine whether modification, suspension, or termination of regulation of shipments of California pears would tend to effectuate the declared policy of the act.

It is further found that it is impracticable and contrary to the public interest to postpone the effective date of this regulation until 30 days after publication in the Federal Register (5 U.S.C. 553), and good cause exists for making these regulatory provisions effective as specified in that (1) an interim rule was published in the Federal Register (46 FR 38492) and no comments were received during the period provided; (2) the requirements contained in this final rule are the same as those currently in effect; and (3) the requirements will not require any additional preparation by handlers which cannot be completed by the effective date hereof.

Information collection requirements (reporting or recordkeeping) under this part are subject to clearance by the Office of Management and Budget and are in the process of review. These information requirements shall not become effective until such time as clearance by the OMB has been obtained.

PART 917—FRESH PEARS, PLUMS, AND PEACHES GROWN IN CALIFORNIA

Therefore, a new § 917.461 is added under the subpart heading *Grade and Size Regulation* to read as follows:

§ 917.461 Pear Regulation 12.

(a) On and after October 16, 1981, no handler shall ship:

(1) Bartlett or Max Red (Max Red Bartlett, Red Bartlett) varieties of pears which do not grade at least U.S. Combination with not less than 80 percent, by count, of the pears grading at least U.S. No. 1: *Provided,* That during the period October 16, 1981, through July 31, 1982, organically grown pears may be damaged by russeting, but must be free from serious damage caused by russeting, as defined in the U.S. Standards for Summer and Fall Pears, if the following conditions and safeguards are met:

(i) The handler of such pears has registered and certified to the committee on a date prior to harvest the location of the orchard, the acreage and varieties of pears, and that sales of organically grown pears will be made only to natural food stores or handlers of organically grown food.

(ii) The handler of such pears files with the committee a report showing the names and address of all buyers of the pears, the dates on which shipments were made, and the number of packages in each shipment.

(iii) Each container of organically grown pears bears the words "organically grown" on one outside end of the container in plain letters.

(2) Any box or container of Bartlett or Max-Red (Max-Red Bartlett, Red Bartlett) varieties of pears unless such pears are of a size not smaller than the size known commercially as size 165;

(3) Any box or container of Bartlett or Max-Red (Max-Red Bartlett, Red Bartlett) varieties of pears unless such box or container is stamped or otherwise marked, in plain sight and in plain letters, on one outside end with the name of the variety;

(4) Bartlett or Max-Red (Max-Red Bartlett, Red Bartlett) varieties of pears, when packed in closed containers, unless such box or container conforms to the requirement of standard pack, except that such pears may be fairly tightly packed;

(5) Bartlett or Max-Red (Max-Red Bartlett, Red Bartlett) varieties of pears, when packed in other than a closed container, unless such pears do not vary more than ⅜ inch in their transverse diameter for counts 120 or less, and ¼ inch for counts 135 to 165, inclusive: *Provided,* That 10 percent of the containers in any lot may fail to meet the requirements of this paragraph; and

(6) Any box or container of Bartlett or Max-Red (Max-Red Bartlett, Red Bartlett) varieties of pears in volume fill cartons (not packed in rows and not wrap packed) unless (i) such cartons are well filled with pears fairly uniform in size; (ii) such pears are packed fairly tight; (iii) there is an approved top pad in each carton that will cover the fruit with no more than ¼ inch between the pad and any side or end of the carton; and (iv) the top of the carton shall be securely fastened to the bottom: *Provided,* That 10 percent of the cartons in any lot may fail to meet the requirements of this paragraph.

(b) *Definitions.* (1) "Size known commercially as size 165" means a size of pear that will pack a standard pear box, packed in accordance with the specifications of standard pack, with 165 pears and that one-half of the count size designated, representative of the size of the pears in the box or container, shall weigh at least 22 pounds.

(2) "Standard pear box" means the container so designated in § 1380.19 of the regulations of the California Department of Food and Agriculture.

(3) "U.S. No. 1", "U.S. Combination", and "standard pack" shall have the same meaning as when used in the U.S. Standards for Pears (summer and fall) 7 CFR 2851.1260–2851.1280.

(4) "Approved top pad" shall mean a pad of wood-type excelsior construction, fairly uniform in thickness, weighing at least 160 pounds per 1,000 square feet (e.g., an 11 inch by 17 inch pad will weigh at least 21 pounds per 100 pads) or an equivalent made of material other than wood excelsior approved by the committee.

(5) "Organically grown" pears means those pears which have been grown for market in accordance with Section 2659.11 of the California Health and Safety Code.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated September 28, 1981, to become effective October 16, 1981.

D. S. Kuryloski,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 81-28612 Filed 9-30-81; 8:45 am]

BILLING CODE 3410-02-M

---

7 CFR Part 1207

Potato Research and Promotion Plan; Expenses and Rate of Assessment

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation authorizes expenses for the functioning of the National Potato Promotion Board for the 1981–82 fiscal period. It enables the Board to collect assessments from designated handlers on assessable potatoes and to use the resulting funds for its expenses.

EFFECTIVE DATE: July 1, 1981.

FOR FURTHER INFORMATION CONTACT: Charles W Porter, Chief, Vegetable Branch, F&V, AMS, USDA, Washington, D.C. 20250 (202) 447–2615.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under USDA procedures and Executive Order 12291 and has been classified "not significant" and not a major rule.

William T. Manley, Deputy Administrator, Agricultural Marketing Service, has determined that this action will not have a significant economic

impact on a substantial number of small entities because it would not measurably affect costs for the directly regulated handlers.

The Potato Board is the administrative agency established under the Potato Research and Promotion Plan (7 CFR Part 1207). This program is effective under the Potato Research and Promotion Act (7 U.S.C. 2611–2627).

Notice was published in the August 12 Federal Register (46 FR 40773) regarding the proposals. It afforded interested persons an opportunity to submit written comments not later than August 26, 1981. None was received within this period. On August 28, however, the Hearing Clerk received a statement from the National Potato Council, a national industry organization. The National Potato Council supported the proposals and commented on benefits of funds previously expended under the program.

After consideration of all relevant matters, including the proposal in the notice, it is found that the following expenses and rate of assessment should be approved.

It is further found that good cause exists for not postponing the effective date of this section until 30 days after publication in the Federal Register (7 U.S.C. 553) because this part requires that the rate of assessment for a particular period apply to all assessable potatoes from the beginning of such period.

PART 1207—POTATO RESEARCH AND PROMOTION PLAN

§ 1207.409 [Removed]

Section 1207.409 (45 FR 41391, June 19, 1980) is hereby removed and § 1207.410 is added as follows:

§ 1207.410 Expenses and rate of assessment.

(a) The reasonable expenses that are likely to be incurred during the fiscal period beginning July 1, 1981, and ending June 30, 1982, by the National Potato Promotion Board for its maintenance and functioning and for such purposes as the Secretary determines to be appropriate will amount to $2,187,000.

(b) The rate of assessment to be paid by each designated handler in accordance with the provisions of the Plan shall be one cent ($0.01) per hundredweight of assessable potatoes handled by such person during said fiscal period.

(c) Unexpended income in excess of expenses for the fiscal period may be carried over as an operating monetary reserve.

(d) Terms used in this section have the same meaning as when used in the Potato Research and Promotion Plan.

(Title III of Pub. L. 91–670; 84 Stat. 2041 (7 U.S.C. 2611–2627))

Dated: September 25, 1981.

William T. Manley,

Deputy Administrator, Marketing Program Operations.

[FR Doc. 81-28491 Filed 9-30-81; 8:45 am]

BILLING CODE 3410-02-M

Commodity Credit Corporation

7 CFR Part 1446

[Amdt. No. 4]

General Regulations Governing 1979 and Subsequent Crops Peanut Warehouse Storage Loans and Handler Operations

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Interim rule.

SUMMARY: This rule amends the regulations at 7 CFR 1446.9(j)(4), the General Regulations Governing 1979 and Subsequent Crops Peanut Warehouse Storage Loans and Handler Operations, to authorize the Executive Vice President of the Commodity Credit Corporation (CCC) to reduce or waive the liquidated damages specified in subparagraph (j)(4)(ii) if the Executive Vice President determines that such reduction or waiver will not impair the effective operation of the price support program.

The 1980 crop peanut supply situation caused domestic buyers to seek supplies of peanuts in the world market. As a result, contract additional peanuts which had been exported were sold back to U.S. manufacturers for reentry into the United States. Under present regulations, such peanuts are subject to 10 cents per pound liquidated damages. The liquidated damages are intended to prevent contract additional peanuts from reentering the domestic market and thereby causing CCC to lose money on quota peanuts which were supported by CCC under the price support program at prices above the world market price.

DATES: Effective October 1, 1981.

ADDRESS: Producer Associations Division, Agricultural Stabilization and Conservation Service, P.O. Box 2415, U.S. Department of Agriculture, Washington, D.C. 20013.

FOR FURTHER INFORMATION CONTACT: Dallas R. Smith, ASCS, (202) 447–5988. The Final Impact Statement describing the options considered in developing this final rule and the impact of implementing each option is available on request from the above-named individual.

SUPPLEMENTARY INFORMATION: This action has been reviewed under criteria of Executive Order 12291 and Secretary's Memorandum No. 1512–1 and has been classified as not a "major rule."

It has been determined that these program provisions will not result in (1) An annual effect on the economy of $100 million or more; (2) major increases in costs or prices for consumers, individual industries, Federal, State or local government agencies of geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The title and number of the Federal Assistance Program that this notice of determination applies to are: Commodity Loans and Purchases: 10.051, as found in the Catalog of Federal Domestic Assistance.

This action will not have a significant impact specifically on area and community development. Therefore, a review as established by Office of Management and Budget Circular A–95, was not used to assure that units of local government are informed to this action.

It has been determined that the Regulatory Flexibility Act is not applicable to this interim rule since Commodity Credit Corporation (CCC) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

I have also determined that an emergency situation exists which warrants publication of this interim rule without prior opportunity for a public comment period because without this amendment it will be necessary to take action immediately to assess and collect liquidated damages on approximately 7 million pounds of U.S. grown peanuts that were exported and returned to the U.S.

Accordingly, I have determined that compliance with the public rulemaking requirements of Secretary's Memorandum No. 1512–1 and 5 U.S.C. 553 is impracticable and contrary to the public interest. Comments are requested for 60 days after publication of this document and this interim rule will be scheduled for review so that a final document discussing comments received and any amendment of this interim rule

which may be required can be published in the Federal Register as soon as possible.

Section 359(i) of the Agricultural Adjustment Act of 1938, as amended, authorizes handlers to contract with producers for the purchase of additional peanuts for crushing, export, or both. Such peanuts, once exported, are required to remain outside the United States, in accordance with the regulations at 7 CFR 1446.9(j)(4), in order to prevent damage to the domestic price support program for peanuts. If contract additional peanuts which have been exported are later reentered into the United States, the handler originally responsible for their exportation is subject to liquidated damages at a rate of 10 cents per pound.

However, because of the short crop, only small quantities of edible quality peanuts were placed under the CCC price support loan program and they have all been resold at prices substantially above the support level. Therefore, it is not likely that CCC will incur program damage as a result of the entry into the United States of contract additional peanuts.

PART 1446—PEANUTS

Interim Rule

Accordingly, the regulations, at 7 CFR 1446.9(j)(4) are amended by adding a new paragraph (iii) to read as follows:

§ 1446.9 Supervision and handling of additional contract peanuts.

(j) * * *

(4) * * *

(iii) *Waiver or Reduction of Liquidated Damages.* The liquidated damages specified in paragraph (j)(4)(ii) above may be reduced or waived if the Executive Vice President determines that such waiver or reduction will not impair the effective operation of the peanut price support program. Such reduction or waiver may contain such terms and conditions as the Executive Vice President determines to be appropriate and necessary for effectuating the purposes of the peanut price support program.

Signed at Washington, D.C. on September 25, 1981.

C. Hoke Leggett,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 81-28532 Filed 9-30-81; 8:45 am]

BILLING CODE 3410-05-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

10 CFR Ch. II

[Docket No. ERA-R-81-07]

Electric Powerplants; Establish Procedures for Owners and Operators

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Interim and final rules.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) is issuing a final rule to establish procedures for the owners and operators of electric powerplants which have received proposed prohibition orders under former section 301 (b) or (c) of the Powerplant and Industrial Fuel Use Act of 1978, Pub. L. 95-620, ("FUA"), to elect continued coverage under those sections in lieu of coverage under section 1021 of the Omnibus Budget Reconciliation Act of 1981 ("OBRA"). OBRA amended the former section 301 of FUA limiting the authority of the Secretary of Energy to prohibit oil or natural gas use, only where the owner or operator of an existing powerplant voluntarily certifies to the unit's technical and financial capability to use an alternate fuel.

Additionally, ERA is issuing an interim rule establishing procedures for the owners and operators of electric powerplants which, as of the date of enactment of OBRA, have orders pending against them under the Energy Supply and Environmental Coordination Act of 1974 (ESECA), as amended, 15 U.S.C. 791 *et seq.*, to elect continued coverage under that Act in lieu of coverage under section 1021 of OBRA.

Because only a short period of time is provided in which to make such elections, the procedures set forth herein will neither be assigned section numbers, nor codified in the Code of Federal Regulations.

DATES: Effective dates: These final rules shall be effective from October 1, 1981, to November 30, 1981, and the interim rules from October 1, 1981, to January 14, 1982. Comments concerning the interim rule must be submitted on or before November 2, 1981.

ADDRESS: Comments should be submitted to Public Hearing Management, Docket No. ERA-R-81-07, Department of Energy, Room B-210, 2000 M Street, NW., Washington, D.C. 20461.

FOR FURTHER INFORMATION CONTACT:

Jack Vandenberg, Office of Public Information, Economic Regulatory Administration, Department of Energy, Room B-110, 2000 M Street, NW., Washington, D.C. 20461, (202) 653-4055

Robert L. Davies, Office of Fuels Conversion, Economic Regulatory Administration, Department of Energy, Room 3002, 2000 M Street, NW., Washington, D.C. 20461, (202) 653-3649

Henry Garson, Office of the General Counsel, Department of Energy, Room 6B-178, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-2967

SUPPLEMENTARY INFORMATION:

I. Background

Section 1022(b) of OBRA provides that any powerplant issued a proposed prohibition order under former section 301 (b) or (c) of FUA which has not been made final as of August 13, 1981, the date of enactment of OBRA, may elect continued coverage under former sections 301 (b) or (c) of FUA rather than coverage under the provisions of section 1021 of OBRA. OBRA amended the former section 301 of FUA to limit the authority of the Secretary of Energy to prohibit oil or natural gas use only where the owner or operator of an existing powerplant has certified to the unit's technical and financial capability to use an alternate fuel. On September 3, 1981, ERA issued a Notice of Proposed Rulemaking (46 FR 44192) and invited comments to be submitted by September 21, 1981. The following section summarizes the comments which were received and actions taken on them.

II. Comments

One comment was that the proposed procedures failed to include existing powerplants with ESECA orders pending on the date of OBRA's enactment in the new voluntary prohibition order process authorized by OBRA. The commenter argued that while OBRA does not directly address the status of plants with pending ESECA orders, the Congressional purpose of OBRA can be affected only by permitting plants with pending ESECA orders the same election provided for plants with proposed FUA orders. ERA has considered these arguments. While the statutory language is less than perfect in enacting the legislative intent as revealed by the Conference Report, ERA believes that at least a portion of the argument is persuasive. The Conference Report clearly indicates that OBRA section 1021 applies to all powerplants which do not have final orders issued against them under either ESECA or FUA. Accordingly, ERA

agrees that amended section 301 must be read as applying to all such powerplants.

Concerning plants with pending ESECA orders, section 1022 of OBRA provides no right to elect continued ESECA coverage, instead granting the right to elect continued coverage of prior law only to holders of proposed orders under the prior section 301 (b) or (c). The authority to continue the pending ESECA proceedings remains intact. Thus, holders of prohibition orders under ESECA which have not become final could be subject to continued coverage under ESECA as well as being eligible to participate in the voluntary certification prohibition order process authorized by OBRA. In order to avoid this anomalous result, and because ERA believes that involuntary conversions are inconsistent with the Administration's regulatory relief program, ERA has determined to continue processing ESECA orders only where the recipient of that order requests us to do so. A failure to elect treatment under ESECA would result in termination of the ESECA proceeding. Such plant thereafter would only be eligible to receive a prohibition order under the amended section 301 (b) or (c). ERA is, therefore, issuing an interim rule establishing election procedures for owners and operators of electric powerplants with pending ESECA orders similar to those proposed for powerplants with proposed FUA orders.

Because the statutory language is less than clear and because ERA failed to address this issue in the proposed rulemaking, holders of prohibition orders under ESECA may have been unaware of the possibility they would be required to consider whether or not to elect continued applicability of ESECA to their prohibition order proceedings. Therefore, to give these persons the same notice and opportunity to consider carefully whether or not they should file an election, 45 additional days (a total of 105 days) are provided for these persons to file elections.

Another comment was that ERA's proposed procedures failed to address the issue of the continued validity of proposed FUA orders or pending ESECA orders against plants that wish to proceed under the amended section 301. The comment further stated that plants with proposed FUA orders or pending ESECA orders may wish to proceed under OBRA without unnecessarily disrupting the continuity of their prohibition proceedings. This may be of particular concern for powerplants which have obtained Delayed Compliance Orders (DCO) under section 113(d)(5)(A) of the Clean Air Act in reliance on such prohibition orders. It is ERA's view that a proposed prohibition order recipient under OBRA would be eligible for a DCO under section 113(d)(5)(A) of the Clean Air Act. However, the validity or continuity of a DCO issued to a FUA or ESECA order recipient which desires to proceed under OBRA is a matter which will be addressed by the EPA regional office which has issued the DCO. Should a plant wish to preserve the continuity of the prohibition order proceeding, ERA suggests that it submit the certification required by § 1021 of OBRA at least five days prior to the expiration of the applicable election period in order that ERA can issue a proposed prohibition order under § 1021 of OBRA and prevent any lapse in the prohibition order process.

Several procedural matters were also raised by the comments. One comment requested that the 60-day period for elections should be computed from the date of Federal Register publication of election procedures. ERA has accepted this comment.

Another comment was that ERA should deem an election to be filed upon mailing by first class mail. ERA will deem an election to be filed upon mailing by certified mail.

Finally, a comment was received which stated that the procedures should include a provision that if an election is held invalid on judicial review or by other legal process, either the election may be cured within a reasonable time or the plant shall revert to its status as of August 13, 1981. ERA has determined that such a provision is not appropriate.

Because of the short period of time in which the election may be made, these procedures will not be codified in the Code of Federal Regulations.

III. Procedural Matters

(a) *Section 102 of the National Environmental Policy Act (NEPA).* The Acting Assistant Secretary for Environmental Protection, Safety, and Emergency Preparedness has determined that this regulation would not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of section 102(2)(C) of NEPA. Therefore, the preparation of an Environmental Impact Statement for this rule is not required.

(b) *Regulatory Flexibility Act.* ERA has determined that these procedures will primarily impact large public utilities. ERA certifies that, for the reason discussed above, the promulgation of this rule will not have a significant economic impact on a substantial number of "small entities" within the meaning of the Regulatory Flexibility Act. Therefore, a regulatory flexibility analysis has not been prepared.

(c) *Executive Order No. 12291.* ERA has determined that this is not a major rule as defined in Executive Order No. 12291 (46 FR 13193 (February 19, 1981)). Due to the requirement contained in section 1022 of OBRA to promulgate this regulation within 45 days of enactment, DOE cannot comply with Executive Order No. 12291 procedures. In accordance with section 8(a)(2), this rule has been reported to the Office of Management and Budget (OMB).

(d) *Paperwork Reduction Act of 1980.* This rule must be submitted to OMB for clearance under the provisions of the Paperwork Reduction Act of 1980, Pub. L. 96-511. Any data submitted in compliance with provisions of the final rule may require revision or additions as a result of OMB's action.

(e) This rule is final for powerplants with prohibition orders under former Section 301 (b) and (c) of FUA and interim for powerplants with prohibition orders under Section 2(a) of the ESECA.

In consideration of the foregoing, these procedures are adopted.

IV. Procedures

(a) *What to file.* The owner or operator of any facility subject to a proposed prohibition order under former section 301 (b) or (c) of FUA or subject to a pending ESECA prohibition order may elect continued coverage under former law rather than to be covered under section 1021 of OBRA, by filing with ERA a written "FUA Election" signed by a duly authorized representative. Any such election must be clearly labeled as such both on the election and on the outside of the envelope in which it is sent, and should identify the name, docket number, owner, unit and location of the facility as it appeared in the related prohibition order. Each election may include either a single unit or multiple units at a common site.

(b) *Where to file.* Any election under this notice shall be filed with the Office of Fuels Conversion, Case Control Unit, Room 3214, 2000 M Street, N.W., Washington, D.C. 20461.

(c) *When to file.* (1) Election for continued coverage under former section 301 (b) or (c) of FUA shall be filed at the above address no later than November 30, 1981. Any eligible facility not filing an election pursuant to this rule prior to this date, will, by operation of law, be covered under the provisions of section 1021 of OBRA, rather than

former section 301 (b) or (c) of FUA. Any election made under this rule is irrevocable.

(2) Election for continued coverage under section 2 of ESECA shall be filed at the above address no later than January 14, 1982. Any eligible facility not filing an election pursuant to this rule prior to this date will not receive a notice of effectiveness under ESEGA and will, by operation of law, be covered under the provisions of 1021 of OBRA. Any election made under this rule is irrevocable.

(d) *How to file.* An election shall be deemed to be filed upon mailing by certified mail or when actually received.

(e) *Notice.* ERA will notify persons filing elections under the final rule, in writing, that such elections are recognized not later than 30 days after receipt of the election.

(f) *Status of FUA orders.* (1) The validity of any proposed prohibition order issued under former section 301 (b) or (c) of FUA shall not be affected in the case of eligible powerplants filing elections under this rule.

(2) The validity of any prohibition order issued under section 2 of ESECA shall not be affected in the case of eligible powerplants filing elections under this rule.

(Department of Energy Organization Act, Pub. L. 95-91, 42 U.S.C. 7101 *et seq.*, Energy Supply and Environmental Coordination Act of 1974, as amended, 15 U.S.C. 791 *et seq.*, Powerplant and Industrial Fuel Use Act of 1978, Pub. L. 95-620, 42 U.S.C. 8301 *et seq.*, Omnibus Budget Reconciliation Act of 1981, Pub. L. 97-35)

Issued in Washington, D.C., September 28, 1981.

Barton R. House,

Acting Administrator, Economic Regulatory Administration.

[FR Doc. 81-28681 Filed 9-30-81; 8:45 am]

BILLING CODE 6450-01-M

FEDERAL RESERVE SYSTEM

12 CFR Part 201

Extensions of Credit by Federal Reserve Banks; Changes in Discount Rates

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board of Governors has amended its Regulation A, "Extensions of Credit by Federal Reserve Banks," for the purpose of adjusting discount rates with a view to accommodating commerce and business in accordance with other related rates and the general credit situation of the country.

EFFECTIVE DATE: The changes were effective on the dates specified below.

FOR FURTHER INFORMATION CONTACT: James McAfee, Assistant Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 (202/452-3259).

SUPPLEMENTARY INFORMATION: Pursuant to the authority of 5 U.S.C. 553 (b)(3)(B) and (d)(3), these amendments are being published without prior general notice of proposed rulemaking, public participation, or deferred effective date. The Board has for good cause found that current economic and financial considerations required that these amendments must be adopted immediately.

PART 201—EXTENSIONS OF CREDIT BY FEDERAL RESERVE BANKS

Pursuant to section 14(d) of the Federal Reserve Act (12 U.S.C. 357) Part 201 is amended as set forth below:

1. Section 201.52(b) is revised to read as follows:

§ 201.52 Extended credit to depository institutions.

* * * * *

(b) The rates for other extended credit provided to depository institutions under sustained liquidity pressures or where there are exceptional circumstances or practices involving a particular institution under § 201.3(b)(2) of Regulation A are:

	Rate	Effective
Federal Reserve Bank of:		
Boston	14	Sept. 4, 1981.
New York	14	Aug. 21, 1981.
Philadelphia	14	Aug. 20, 1981.
Cleveland	14	Aug. 25, 1981.
Richmond	14	Aug. 21, 1981.
Atlanta	14	Aug. 21, 1981.
Chicago	14	Aug. 27, 1981.
St. Louis	14	Aug. 25, 1981.
Minneapolis	14	Aug. 21, 1981.
Kansas City	14	Aug. 28, 1981.
Dallas	14	Aug. 20, 1981.[1]
San Francisco	14	Aug. 24, 1981.

[1] August 28, 1981 for extended credit to depository institutions where there are special circumstances.

NOTE.—These rates apply for the first 60 days of borrowing. A 1 percent surcharge applies for borrowing during the next 90 days, and a 2 percent surcharge applies for borrowing thereafter.

(12 U.S.C. 248(i), Interprets or applies 12 U.S.C. 357)

By order of the Board of Governors, September 25, 1981.

James McAfee,

Assistant Secretary of the Board.

[FR Doc. 81-28846 Filed 9-30-81; 8:45 am]

BILLING CODE 6210-01-M

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 747

Administrative Actions, Adjudicative Hearings, and Rules of Practice and Procedure; Equal Access to Justice Regulation

AGENCY: National Credit Union Administration.

ACTION: Interim rule with request for comments.

SUMMARY: The National Credit Union Administration (NCUA) proposes to add a new subpart to its Rules of Practice and Procedure to implement the Equal Access to Justice Act. The Act provides for the award of attorneys fees and expenses to certain small entities when they prevail against NCUA in administrative and court actions if the position of NCUA in the proceeding was not substantially justified. It directs all agencies conducting these proceedings to adopt regulations establishing procedures for making fee awards. In response to this requirement, the proposed new subpart would establish the procedures to be used by prevailing parties in applying for fee awards and by NCUA in determining whether the conditions requisite to an award have been met.

DATES: This interim rule is effective October 1, 1981. Comments must be received by November 30, 1981.

ADDRESS: Interested persons are invited to submit written comments to Robert S. Monheit, Regulatory Development Coordinator, National Credit Union Administration, 1776 G Street, NW, Washington, D.C. 20456.

FOR FURTHER INFORMATION CONTACT: Robert S. Monheit, Senior Attorney, or Anne K. Scully, Attorney-Advisor, at the above address. Telephone: (202) 357-1030.

SUPPLEMENTARY INFORMATION:

I. Background

The Equal Access to Justice Act ("Act"), Pub. L. 96-481, which will go into effect on October 1, 1981, provides for the award of reasonable fees and expenses to certain eligible parties that prevail over NCUA and other agencies of the Federal government in certain administrative and court adjudications. The Act is based on the premise that small businesses and individuals may be deterred from seeking review of, or defending against, unreasonable governmental action because of the expense involved in challenging unwarranted agency action through

litigation. In enacting the Act, Congress intended to diminish this deterrent effect by providing, in specified situations, for an award of attorneys fees and expenses against the United States unless the government action was substantially justified. In addition, the Act makes the United States subject to the common law and statutory exceptions to the "American Rule" respecting the award of attorneys fees. (The American Rule generally provides that each part is responsible for the payment of his own attorneys fees and other expenses incurred during litigation.)

The Act directs Federal agencies to establish uniform procedures for the submission and consideration of applications for fees in their own covered proceedings after consultation with the Administrative Conference of the United States. In order to facilitate this process, the Administrative Conference has developed model regulations to provide a workable guideline and to encourage uniform procedures. NCUA's interim rules have been based on the model drafted by the Administrative Conference.

II. Summary

General Provisions

The procedures of proposed subpart I will apply to formal administrative adjudications conducted by NCUA pursuant to section 554 of the Administrative Procedures Act. (5 U.S.C. 554) These are proceedings pertaining to issuance of cease-and-desist orders; assessment of civil money penalties, removal or suspension from office, and/or prohibition from participation in the affairs of a credit union, of directors, officers and other persons, suspension or revocation of the charter of a Federal credit union (involuntary liquidation), involuntary termination of the insured status of an insured credit union, termination of the membership in the Central Liquidity Facility. After an eligible party has prevailed in one of these proceedings, it may file an application for certain of its fees and expenses if it believes that the position of NCUA in the proceeding was not substantially justified. The NCUA Board will issue a Final Decision and Order, based upon the criteria set forth in the Act and subpart I, either to approve or deny the fee award sought in the application. If the Board approves an application for a fee award, NCUA will pay the award unless judicial review of the award or the underlying action has been sought.

Eligible Parties

Section 747.902 sets forth those categories of applicants who are eligible to recover their fees and expenses. Prevailing parties eligible for such awards are limited to individuals with net worths of less than $1 million, business and other entities that are not individuals with net worths of less than $5 million and fewer than 500 employees, and tax exempt organizations under 26 U.S.C. 501(c)(3) and agricultural cooperatives regardless of net worth.

As noted previously, Congress intended that only small entities and individuals benefit from the Act. Therefore, where an applicant is affiliated with other entities (whose net worths may be available to underwrite the cost of litigation), the Board may aggregate the net worths and employees of an applicant with that of its affiliates, where the relationship between the two entities is such to make aggregation compatible with the intent of the Act. § 747.902(g) sets forth this view.

In addition, § 747.902 states that the net worth of sole owners of unincorporated business must include both their personal and business assets. However, for the purpose of determining eligibility, an applicant's status as an individual or a sole owner of an unincorporated business shall be determined based upon the personal or business nature of the issues on which the applicant prevails.

The Act and the model rules also provide that eligibility shall be determined as of the date the proceedings begin. The interim rule provides that the NCUA Board will disregard transactions made by applicants prior to initiation of the proceeding that were made solely for the purpose of meeting the net worth standard. This would include instances where the applicant has apparently disposed of assets or incurred financial obligations for this purpose.

The Act limits the eligibility of businesses to those with less than 500 employees. The interim rule defines "employees" for this purpose to include those persons who regularly perform compensated services under the applicant's direction and control. Part-time employees are to be included on a proportional basis.

Finally, § 747.902 provides that applicants will not be eligible when they are participating only on behalf of other persons or entities that are ineligible. This is designed to prevent ineligible parties planning litigation with NCUA from using other eligible parties to conduct their litigation in order to qualify for fee awards.

Prevailing Party

Under the Act, a "prevailing party," is not merely an applicant who receives a favorable final decision in any litigation. A party may prevail on a significant and separate substantive issue which has become final in the proceeding.

Standards for Awards

Section 747.903 sets forth the Act's standards for making fee awards. The Board may award allowable fees and expenses to a prevailing eligible party if NCUA's position in the proceeding, or on a significant, separate issue, was not substantially justified as being reasonable in law and in fact. Where a party prevails on a portion of the entire proceeding, his award shall be prorated accordingly. The burden of proof is on NCUA to demonstrate that its position was justified. This subsection also authorizes the Board to reduce or deny an award when it determines that special circumstances make the award unjust.

Allowable Fees and Expenses

Section 747.904 would establish guidelines for the amount of an award. Under the provisions of the Act and the model rules, recoverable fees and expenses include reasonable attorneys fees, expenses for expert witnesses, reasonable costs of any study, analysis, report, test, or project found necessary for the preparation of the party's case. The Act specifically provides for awards at "prevailing market rates" customarily charged by attorneys and experts subject to the statutory ceilings imposed, i.e., attorney fees cannot exceed $75 per hour (unless NCUA determines, by regulation, that special factors justify a higher fee). Expert witness compensation cannot exceed the maximum rate of compensation for expert witneses that may be paid by NCUA, computed from the current government-wide ceiling on employee salaries. NCUA adopts the model rules on allowable fees.

Awards Against Other Agencies

NCUA also adopts the provision in the model rules which allows for the award of fees and expenses against other agencies which have participated with NCUA and have taken unreasonable positions in proceedings before the NCUA Board. While the likelihood of another agency participating in a proceeding before the NCUA Board is minimal, such

involvement may occur. Section 747.905 sets forth this position.

Application Procedures

(a) Contents of Application. Section 747.906 identifies the information to be included in an application made by an eligible prevailing party for an award of fees and expenses. The Act and the model rules provide that the application must identify the applicant, the proceeding, indicate that the applicant has "prevailed" against NCUA, identify NCUA's allegedly unjustified position in the proceeding, provide information that is eligible to receive an award, and document the fees and expenses sought. No special form is required. Information submitted under this section may be submitted in the form of a legal pleading, with supporting exhibits and material, where appropriate. NCUA adopts the model rules provided by the Administrative Conference.

(b) Statement of Net Worth. Section 747.907 states the requirements regarding the contents of the statements of net worth to be submitted by eligible prevailing applicants. To avoid burdensome paperwork requirements, this section allows applicants to submit information on their net worth in a format of their own choice, provided that full disclosure of all facts necessary to determine the applicant's eligibility under the applicable net worth criteria is made. Where the information submitted is incomplete, the Board may require additional information and/or data from the applicant. The section provides that a Federal credit union or qualified state credit union shall submit, as a statement of its net worth, its last Statement of Financial Condition dated prior to the initiation of the underlying proceeding.

NCUA is not adopting the model rules' special procedures for guaranteeing confidential treatment of net worth information. Since such information may be traditionally exempt under FOIA and is to be used in proceedings not open to the public only, such a section is unnecessary in light of NCUA's present regulations under FOIA, 12 CFR Part 720.

(c) Documentation of Fees and Expenses. Section 747.908 describes the documentation of fees and expenses to be submitted. Generally, the provision would requre itemized statements of work performed, and fees and expenses claimed, for each attorney, expert, or witness for whose services an award is claimed, to be verified by the individual or entity who performed the services. Records of expenses are required to be kept in accordance with the Internal Revenue Service's requirements for documentation of business expenses.

Filing and Service of Applications

Applications for an award of fees and expenses must be filed by an eligible prevailing party within 30 days after the Board's final decision on the proceeding. However, a prevailing party may apply at any earlier time that it believes it has prevailed with respect to a significant and separate substantive issue which has become "final." This would include settlements between the party and the NCUA Board, or when a party wins an intermediate appeal of a sufficiently significant issue and still loses the principal case. This should not be interpreted to mean, however, that a party has "prevailed" in all cases when the Board administers fewer sanctions or less severe sanctions than called for in the Notice of Charges.

If a party seeks judicial review either of an issue for which it seeks an award or of the underlying proceeding, award proceedings will be stayed pending final disposition. The model rules provide that an agency's decision does not become "final" until after the last date on which a petition for reconsideration could be filed. With the exception of Part 747, Subpart F regarding suspension and prohibitions where a felony is charged, NCUA's rules and regulations do not provide any procedures or time limits, per se, for reconsideration of its orders. Therefore, applications must be filed within 30 days after the Board issues its final decision and order.

Answer, Reply, and Comments to Application

Section 747.909 sets forth the procedures to be followed by NCUA and the applicant following the latter's submission of an application for an award. This section is intended to keep the procedures used simple and streamlined and to promote prompt disposition of the fee-award request. NCUA's Office of General Counsel (OGC) is required to file an answer to an application for an award against the NCUA Board within 30 calendar days after service of the application, unless OGC seeks an extension of time or the parties manifest an intent to settle. Failure to answer will be treated as consent to the application unless an extension of time has been granted. Applicants will have 15 days to reply to the OGC answer. However, replies are permitted only in response to answers that raise affirmative defenses.

Section 747.910 limits participation in award proceedings by non-applicant parties to the original administrative actions. It permits these parties a 30-day comment period concerning the application and a 15-day comment period on NCUA's answer. This time period provides non-applicants who have a stake in the outcome with a reasonable opportunity to comment upon the application.

Settlement

Section 747.911 permits a settlement of an award, either in connection with a settlement or the underlying issues or after the underlying proceeding has been concluded. In addition, the rules provide that a proposed settlement of an award that is agreed upon before an application has been filed must be accompanied by an application because: (1) the Act appears to require the filing of an application; (2) the information in the application will permit the Board, which is authorized to approve settlements, to review the reasonableness of the terms contained therein; and (3) the information in the application will provide a data base for the Administrative Conference's annual report to Congress.

Decision

Section 747.913 states that after all applications, answers, and replies have been filed, the Administrative Law Judge or the Board may order further proceedings, when necessary, to develop a complete record on the application including, but not limited to, informal conferences, oral argument, additional written submissions, or an evidentiary hearing. After the close of all proceedings, the Administrative Law Judge will make a recommended decision on the application to the NCUA Board. The Board will review it and issue its final decision within 60 days thereafter.

Interim Rule

The NCUA Board determines that, due to the severe statutory time constraints requiring implementation by October 1, 1981, good cause exists for finding that public procedure on these interim regulations is impracticable, 5 U.S.C. 553(b)(B). For the same reason, good cause exists for making these interim rules effective in less than 30 days, 5 U.S.C. 553(d)(3). However, NCUA is soliciting comments on the interim rule and will issue a final rule after public procedure has been completed.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act, in particular 44 U.S.C. 3506(c)(5), the application and documentation requirements of the

interim rule were not submitted to the Office of Management and Budget. While these documents are required by law to obtain a benefit, the NCUA Board believes, based upon past records in civil and administrative adjudications, that less than 10 persons will, each year, be considered to be "prevailing parties" required to submit applications for benefits under the Act and these rules. Thus, 44 U.S.C. 3506(c)(5) exempts these requirements from review by the Office of Management and Budget. Further, those applications and documents submitted during the conduct of a civil action or and administrative action are exempt from all the requirements of the Paperwork Reduction Act pursuant to 44 U.S.C. 3518(c)(1)(B).

Certification Under the Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), the NCUA Board certifies that the interim rule will not have a significant economic impact on a substantial number of small entities. While these rules would impact upon those small entities with net worths of less than $5 million, it would affect only those entities that prevail in one of the proceedings referred to in § 747.901. In such proceedings since 1978, only two eligible businesses or individuals, as defined by the Act, have prevailed within the meaning of the proposed subpart. In any event, any impact created would be beneficial in nature. Based on this history, the proposed new subpart cannot be expected to affect a substantial number of small entities.

Accordingly, the National Credit Union Administration Board hereby issues an interim amendment to 12 CFR Part 747, as set forth below.

Rosemary Brady,

Secretary, National Credit Union Administration Board.

September 25, 1981.

(Sec. 120, 73 Stat. 635 (12 U.S.C. 1766); Sec. 209, 84 Stat. 1104 (12 U.S.C. 1789); Sec. 203, 94 Stat. 2325 (5 U.S.C. 504))

PART 747—ADMINISTRATIVE ACTIONS, ADJUDICATION HEARINGS, AND RULES OF PRACTICE AND PROCEDURE

A new Subpart I is added to 12 CFR Part 747, to read as follows:

Subpart I—Rules and Procedures Applicable to Recovery of Attorneys Fees and Other Expenses Under the Equal Access to Justice Act in Board Adjudications.

Sec.
747.901 Purpose and scope.
747.902 Eligibility of applicants.
747.903 Prevailing party.
747.904 Standards for awards.
747.905 Allowable fees and expenses.
747.906 Awards against other agencies.
747.907 Contents of application.
747.908 Statement of net worth.
747.909 Documentation of fees and expenses.
747.910 Filing and service of applications.
747.911 Answer to application.
747.912 Comments by other parties.
747.913 Settlement.
747.914 Further proceedings.
747.915 Recommended decision.
747.916 Decision of the Board.
747.917 Payment of award.

Authority: Sec. 120, 73 Stat. 635 (12 U.S.C. 1766); Sec. 209, 84 Stat. 1104 (12 U.S.C. 1789); Sec. 203, 94 Stat. 2325 (5 U.S.C. 504).

Subpart I—Rules and Procedures Applicable to Recovery of Attorneys Fees and Other Expenses Under the Equal Access to Justice Act in Board Adjudications

§ 747.901 Purpose and scope.

(a) This subpart contains the regulations of the National Credit Union Administration implementing the Equal Access to Justice Act of 1980, Pub. L. 96-481 (5 U.S.C. 504). The Act provides for the award of attorneys fees and other expenses to eligible individuals and entities who are parties to adjudicative proceedings conducted under Part 747 of this Chapter. An eligible party may receive an award when it prevails over NCUA in a proceeding, or in a significant and discrete substantive portion of the proceeding, unless the position of the NCUA was substantially justified or special circumstances make an award unjust. The rules in this part describe the parties eligible for fee awards, explain how to apply for awards and the procedures and standards that NCUA will use to make them.

(b) The rules and procedures set forth in this section apply to adversary adjudications that are pending before the NCUA Board at any time between October 1, 1981 and September 30, 1984. Pending proceedings would include those actions begun prior to October 1, 1981, if no final action has been taken before that date and those pending as of September 30, 1984, regardless of when they were initiated or when final action occurs.

§ 747.902 Eligibility of applicants.

(a) To be eligible for an award of attorneys fees and expenses, an applicant must be a prevailing party in the proceeding for which it seeks an award and must be:

(1) an individual with a net worth of not more than $1 million;

(2) the sole owner of an unincorporated business who has a net worth of not more than $5 million, including both personal and business interests, and not more than 500 employees at the time the proceeding was commenced (an applicant who owns an unincorporated business will be considered as an "individual" rather than a "sole owner of an unincorporated business" if the issues on which the applicant prevails are related primarily to personal interests rather than to business interests);

(3) a charitable or other tax-exempt organization described in section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)) with fewer than 500 employees;

(4) A cooperative association as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a)) with fewer than 500 employees; or

(5) any other partnership, corporation, association, or public or private organization with a net worth of not more than $5 million and not more than 500 employees.

(b) For the purpose of determining eligibility, the net worth of an applicant shall be its net worth as of the date the proceeding was initiated.

(c) The applicant's net worth includes the value of any assets disposed of for the purpose of meeting an eligibility standard and excludes any obligations incurred for this purpose. Transfers of assets or obligations incurred for less than reasonably equivalent value will be presumed to have been made for this purpose.

(d) The employees of an applicant include all persons who regularly perform services for remuneration for the applicant, under the applicant's direction and control. Part-time employees shall be included on a proportional basis.

(e) The net worth and number of employees of the applicant and all of its affiliates shall be aggregated to determine eligibility. Any individual, corporation or other entity that directly or indirectly controls or owns a majority of the voting shares or other interest of the applicant, or any corporation or other entity of which the applicant directly or indirectly owns or controls a majority of the voting shares or other interest, will be considered an affiliate for purposes of this Subpart, unless the Board determines that such treatment would be unjust and contrary to the purposes of the Act in light of the actual relationship between the affiliated entities. In addition, the Board may determine that financial relationships of

the applicant other than those described in this paragraph constitute special circumstances that would make an award unjust.

(f) An applicant that participates in a proceeding primarily on behalf of one or more other persons or entities that would be ineligible is not itself eligible for an award.

§ 747.903 Prevailing party.

An eligible applicant may be a "prevailing party" if it wins an action after a full hearing or trial on the merits, if a settlement of the proceeding was effected on terms favorable to it, or if the proceeding against it has been dismissed. In appropriate situations an applicant may also have prevailed if the outcome of the proceeding has substantially vindicated the applicant's position on the significant substantive matters at issue, even though the applicant has not totally avoided adverse final action.

§ 747.904 Standards for awards.

(a) A prevailing party may receive an award for fees and expenses incurred in connection with a proceeding, or in a significant and discrete substantive portion of the proceeding, by or against NCUA unless the position of NCUA during the proceeding was substantially justified. The burden of proving that an award should not be made is on counsel for NCUA. To avoid an award, counsel for NCUA must show that its position was reasonable in law and in fact.

(b) An award will be reduced or denied if the applicant has unduly or unreasonably protracted the proceeding or if special circumstances make the award sought unjust.

(c) Where an applicant has prevailed on one or more discrete substantive issues in a proceeding, even though all the issues were not resolved in its favor, any award shall be based on the fees and expenses incurred in connection with the discrete significant substantive issue or issues on which the applicant's position has been upheld. If such segregation of costs is not practicable, the award may be based on a fair proration of those fees and expenses incurred in the entire proceeding which would be recoverable under this section if proration were not performed.

(d) Whether separate or prorated treatment under the preceding paragraph, including the applicable proration percentage, is appropriate shall be determined on the facts of the particular case. Attention shall be given to the significance and nature of the respective issues and their separability and interrelationship.

§ 747.905 Allowable fees and expenses.

(a) Except as provided by § 747.904(b), awards will be based on rates customarily charged by persons engaged in the business of acting as attorneys, agents and expert witnesses, even if the sevices were made available without charge or at a reduced rate.

(b) No award under this subpart for the fee of an attorney or agent may exceed $75.00 per hour. No award to compensate an expert witness may exceed the highest rate at which NCUA is permitted to pay expert witnesses. However, an award may also include the reasonable expenses of the attorney, agent or witness as a separate item, if the attorney, agent or witness ordinarily charges clients separately for such expenses.

(c) In determining the reasonableness of the fee sought for an attorney, agent, or expert witness, the NCUA Board shall consider the following:

(1) If the attorney, agent, or expert witness is in private practice, his or her customary fee for like services, or, if he or she is an employee of the applicant, the fully allocated cost of the services;

(2) The prevailing rate for similar services in the community in which the attorney, agent, or expert witness ordinarily performs services;

(3) The time actually spent in the representation of the applicant;

(4) Such other factors as may bear on the value of the services provided.

(d) The reasonable cost of any study, analysis, report, test, project, or similar matter prepared on behalf of the party may be awarded to the extent that the charge for the service does not exceed the prevailing rate for similar services, and the study or other matter was necessary for preparation of the applicant's case.

§ 747.906 Awards against other agencies.

If an applicant is entitled to an award because it prevails over another agency of the United States that participates with NCUA in a proceeding before the NCUA Board and takes a position that is not substantially justified, the award or an appropriate portion of the award shall be made against that agency.

§ 747.907 Contents of application.

(a) A prevailing eligible party, as defined in §§ 747.902, 747.903, and 747.904, seeking an award under this section, must file an application for an award of fees and expenses with the Secretary of the NCUA Board. The application shall include the following information:

(1) the identity of the applicant and the proceeding for which an award is sought;

(2) a showing that the applicant has prevailed and an identification of the issues in the proceeding on which the applicant believes that the position of NCUA was not substantially justified;

(3) a statement, with supporting documentation that the applicant is an eligible party, as defined by § 747.902. If the applicant is an individual, he must state that his net worth does not exceed $1 million. If the applicant is not an individual, it shall state the number of its employees and that its net worth does not exceed $5 million as of the date the proceeding was initiated. However, an applicant may omit a statement of net worth if:

(i) it attaches a copy of a ruling by the Internal Revenue Service that it qualifies as an organization described in section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)) or, in the case of a tax-exempt organization not required to obtain a ruling from the Internal Revenue Service on its exempt status, a statement that describes the basis for the applicant's belief that it qualifies under such section; or

(ii) it states that it is a cooperative association as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a));

(4) a statement of the amount of fees and expenses for which an award is sought; and

(5) any other matters that the applicant believes may assist or wishes the NCUA Board to consider in determining whether and in what amount an award should be made.

(b) The application shall be signed by the applicant or an authorized officer or attorney of the applicant. It shall also contain or be accompanied by a written verification under oath or under penalty or perjury that the information provided in the application is true and correct.

(c) The application and documentation requirements of this subpart are required by law to obtain a benefit under the Equal Access to Justice Act and this subpart. These requirements were not subject to submission to and review by the Director of the Office of Management and Budget under the Paperwork Reductions Act (44 U.S.C. 3507).

§ 747.908 Statement of net worth.

(a) Each applicant (other than a qualified tax-exempt organization or cooperative association) must provide a detailed statement showing the net worth of the applicant and any affiliates, as defined in § 947.902(a), when the proceeding was initiated. The exhibit may be in any form convenient to the applicant that provides full disclosure of

the applicant's and its affiliates' assets and liabilities and is sufficient to determine whether the applicant is an eligible party. The Administrative Law Judge or the Board may require additional information from the applicant to determine eligibility. Unless otherwise ordered by the Board or required by law, the statement shall be kept confidential and used by the Board only in making its determination of an award.

(b) If the applicant or any of its affiliates is a Federal credit union, the portion of the statement of net worth which relates to the Federal credit union shall consist of a copy of the Federal credit union's last Statement of Financial Condition filed before the initiation of the underlying proceeding.

(c) All statements of net worth shall describe any transfers of assets from or obligations incurred by the applicant or any affiliate, occurring in the six-month period prior to the date on which the proceeding was initiated, which reduced the net worth of the applicant and its affiliates below the applicable net-worth ceiling. If there were none, the applicant shall so state.

§ 947.909 Documentation of fees and expenses.

The application shall be accompanied by full documentation of the fees and expenses, including the cost of any study, analysis, audit, test, project or similar matter, for which an award is sought. A separate itemized statement shall be submitted for each professional firm or individual whose services are covered by the application, showing hours spent in connection with the proceeding by each individual, a description of the specific services performed, the rate at which each fee has been computed, any expenses for which reimbursement is sought, the total amount claimed, and the total amount paid or payable by the applicant or by any other person or entity for the services provided. The Administrative Law Judge or the Board may require the applicant to provide vouchers, receipts, or other substantiation for any expenses claimed.

§ 747.910 Filing and service of applications.

(a) An application may be filed whenever the applicant has prevailed in the proceeding or in a significant and discrete substantive portion of the proceeding, but in no case later than 30 days after the Board's final disposition of the proceeding.

(b) If review or reconsideration is sought or taken of a decision on which an applicant believes it has prevailed, proceedings for the award of fees shall be stayed pending final disposition of the underlying controversy.

(c) As used in this rule, final disposition means the issuance of a final order or any other final resolution of a proceeding, such as a settlement or voluntary dismissal, which is not subject to a petition for reconsideration.

(d) Any application for an award of fees and expenses shall be filed with the Secretary of the Board, National Credit Union Administration, 1776 G Street, NW, Washington, D.C. 20456. Any application for an award and any other pleading or document related to an application, shall be filed and served on all parties to the proceeding in the same manner as other pleadings in the proceeding, except as provided in § 747.908(a) for statements of net worth.

§ 747.911 Answer to application.

(a) Within 30 days after service of an application, counsel for NCUA may file an answer to the application. Unless counsel for NCUA requests and is granted an extension of time for filing or files a statement of intent to negotiate under paragraph (b) of this section, failure to file an answer within the 30-day period will be treated as a consent to the award requested.

(b) If counsel for NCUA and the applicant believe that the issues in the fee application can be settled, they may jointly file a statement of their intent to negotiate a settlement. The filing of this statement shall extend the time for filing an answer for an additional 30 days, and further extensions may be granted by the NCUA Board upon the joint request of counsel for NCUA and the applicant.

(c) The answer shall explain in detail any objections to the award requested and identify the facts relied on in support of counsel's position. If the answer is based on any alleged facts not already in the record of the proceeding, counsel shall include with the answer a request for further proceedings under § 747.914.

(d) The applicant may file a reply if counsel for NCUA has addressed in his or her answer any of the following issues: (1) that the position of NCUA in the proceeding was substantially justified; (2) that the applicant unduly protracted the proceedings; or (3) that special circumstances make an award unjust. The reply shall be filed within 15 days after service of the answer. If the reply is based on any alleged facts not already in the record of the proceeding, the applicant shall include with the reply a request for further proceedings under § 747.914 of this rule.

§ 747.912 Comments by other parties.

Any party to a proceeding other than the applicant and counsel for NCUA may file comments on an application within 30 days after service of the application or on an answer within 15 days after service of the answer. A commenting party may not participate further in proceedings on the application unless the Administrative Law Judge or the Board determines that the public interest requires such participation in order to permit full exploration of matters raised in the comments.

§ 747.913 Settlement.

The applicant and counsel for NCUA may agree on a proposed settlement of the award before final action on the application, either in connection with a settlement of the underlying proceeding, or after the underlying proceeding has been concluded, in accordance with NCUA's standard settlement procedure. If a prevailing party and counsel for NCUA agree on a proposed settlement of an award before an application has been filed, the application shall be filed with the proposed settlement.

§ 747.914 Further proceedings.

(a) After the expiration of the time allowed for the filing of all documents necessary for the determination of a recommended fee award, the Board shall transmit the entire record to the Administrative Law Judge who presided at the underlying proceeding. Ordinarily, the determination of an award will be made on the basis of the written record. However, on request of either the applicant or counsel for NCUA, or on its own initiative, the Administrative Law Judge or the Board may order further proceedings, such as an informal conference, oral argument, additional written submissions or an evidentiary hearing. Such further proceedings shall be held only when necessary for full and fair resolution of the issues arising from the application, and shall be conducted as promptly as possible.

(b) A request that the Administrative Law Judge or the Board order further proceedings under this section shall specifically identify the information sought or the disputed issues and shall explain why the additional proceedings are necessary to resolve the issues.

§ 747.915 Recommended decision.

The Administrative Law Judge shall file a recommended decision on the application with the Board within 60 days after completion of proceedings on the application. The recommended decision shall include written findings and conclusions on the applicant's

eligibility and status as a prevailing party, and an explanation of the reasons for any difference between the amount requested and the amount awarded. The recommended decision shall also include, if at issue, findings on whether NCUA's position was substantially justified, whether the applicant unduly protracted the proceedings, or whether special circumstances make an award unjust. If the applicant has sought an award against more than one agency, the recommended decision shall allocate responsibility for payment of any award made among the agencies, and shall explain the reasons for the allocation made. The Administrative Law Judge shall file with and certify to the Board the record of the proceeding on the fee application, the recommended decision and proposed order. Promptly upon such filing, the Board shall serve upon each party to the proceeding a copy of the Administrative Law Judge's recommended decision, findings, conclusions and proposed order. The provisions of this paragraph and § 747.914 shall not apply, however, in any case where the hearing was held before the Board.

§ 747.916 Decision of the board.

(a) Within 15 days after service of the recommended decision, findings, conclusions, and proposed order, the applicant or counsel for NCUA may file with the Board written exceptions thereto. A supporting brief may also be filed.

(b) The Board shall render its decision within 60 days after the matter is submitted to it. The Board shall furnish copies of its decision and order to the parties. Judicial review of the Board's final decision and order may be obtained as provided in 5 U.S.C. 504(c)(2).

§ 747.917 Payment of award.

An applicant seeking payment of an award granted by the NCUA Board against the agency shall submit to the Division of Financial Operations, Office of Administration, a copy of the Board's Final Decision and Order granting the award, accompanied by a statement that it will not seek review of the decision and order in the United States court. All submissions shall be addressed to Director, Division of Financial Operations, Office of Administration, National Credit Union Administration, 1776 G Street, NW, Washington, D.C. 20456. The NCUA will pay the amount awarded within 60 days after receiving the applicant's statement, unless judicial review of the award or of the underlying decision of the adversary adjudication has been sought by the applicant or any other party to the proceeding.

[FR Doc. 81-28568 Filed 9-30-81; 8:45 am]
BILLING CODE 7535-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 81-SO-26; Amdt. No. 39-4222]

Airworthiness Directives; Piper Aircraft Models PA-28R-200, PA-28R-201 and PA-28RT-201 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment amends an existing Airworthiness Directive (AD) applicable to Piper Aircraft Models PA-28R-200, PA-28R-201 and PA-28RT-201 airplanes by providing a sketch of the approved oil quick drain valve to assist in field identification of the correct part. The amendment is needed because the FAA has determined that the number stamped on the oil quick drain valve, and referenced in Paragraph (b)(1) of AD 81-11-02, may not be legible, resulting in some confusion as to whether the correct valve is installed.

DATES: Effective October 2, 1981. Compliance as prescribed in body of AD.

ADDRESSES: The applicable service letter may be obtained from Piper Aircraft Corporation, 820 East Bald Eagle Street, Lockhaven, Pennsylvania 17745. A copy of the service letter is contained in the Rules Docket, Room 275, Engineering and Manufacturing Branch, FAA, Southern Region, Norman Berry Drive, East Point, Georgia 30344.

FOR FURTHER INFORMATION CONTACT: R. C. Padgett, ASO-214, Engineering and Manufacturing Branch, FAA, Southern Region, P.O. Box 20636, Atlanta, Georgia 30320, telephone (404) 763-7435.

SUPPLEMENTARY INFORMATION: This amendment amends Amendment 39-4111, AD 81-11-02, which currently requires inspection of the oil quick drain valve to insure that Piper Part Number 492-172V is installed, replacement with the correct part, if necessary, and the installation of warning placards which caution that the use of incorrect parts may result in loss of oil on certain Piper Models PA-28R-200, PA-28R-201 and PA-28RT-201 airplane. After issuing Amendment 39-4111, the FAA has determined that some confusion has resulted in the field concerning the identification of some oil quick drain valves due to the identifying number, referenced in AD 81-11-02, either missing or found illegible. Therefore, the FAA is amending Amendment 39-4111 by providing a sketch of the approved oil quick drain valve to assist in field identification of the correct part on certain Piper Models PA-28R-200, PA-28R-201 and PA-28RT-201 airplanes. Since this amendment provides a clarification only, and imposes no additional burden on any person, notice and public procedure hereon are unnecessary and good cause exists for making this amendment effective in less than 30 days.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by amending Amendment 39-4111 (46 FR 26608), AD 81-11-02, as follows:

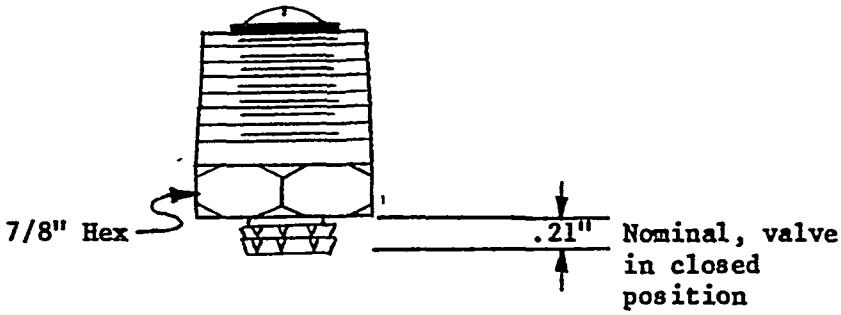
1. By revising Paragraph (b)(1) to read:

(b)(1) Inspect the oil quick drain valve and insure that Piper Part No. 492-172V is installed and correctly safety wired. The correct valve can be identified by comparison with Figure 2. Also, the Number 1H50-1 may be visible on the hex.

2. By adding the following Figure 2.

Correct Oil Quick Drain Valve

PA-28R-200; PA-28R-201; PA-28RT-201



Oil Quick Drain Valve

Piper Part Number 492 172V

FIGURE 2

This amendment becomes effective October 2, 1981.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 1423); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); 14 CFR 11.89.)

Note.—The FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 24, 1979) and will not have an impact on a substantial number of small entities under the Regulatory Flexibility Act, since it imposes no additional burden on any person.

Issued in East Point, Georgia, on September 16, 1981.

William J. McGill,

Acting Director, Southern Region.

[FR Doc. 81-28596 Filed 9-30-81; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Part 39

[Docket No. 81-NW-40-AD; Amdt. No. 39-4225]

Airworthiness Directive; Boeing Model 727 and 737 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This Amendment adds a new Airworthiness Directive (AD) which requires modification of a printed circuit card located in the Hamilton Standard (HS) Electronic Pressurization Controller. This action is necessary to prevent overheating of a resistor caused by a short-circuit, which may result in inflight fire in the pressurization controller and damage to adjacent electronic boxes and the aircraft lining in the forward electronics bay.

DATES: Effective date October 13, 1981.

ADDRESSES: The service bulletin specified in this Airworthiness Directive may be obtained upon request to Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124, or may be examined at FAA Northwest Region, 9010 East Marginal Way South, Seattle, Washington 98108.

FOR FURTHER INFORMATION CONTACT: Mr. Gary D. Lium, Systems and Equipment Branch, ANW-130S, Seattle Area Aircraft Certification Office, FAA Northwest Region, 9010 East Marginal Way South, Seattle, Washington 98108, Telephone (206) 767-2500.

SUPPLEMENTARY INFORMATION: On December 5, 1980, during a departure climbout, a B-727 crew noted a cabin pressure change and found they were unable to control pressurization in the automatic, standby, or manual modes. The crew noted smoke in the crew cab and returned the airplane to base. Ground emergency personnel opened the door to the Electronics/Electrical (E/E) bay and observed flames in the vicinity of the pressure controller. After the fire was extinguished, burnt residue was observed below the pressure controller rack, and damage to the avionics components immediately to the right and left of the pressure controller and to the drip shield above the controller was noted.

An investigation by the controller manufacturer revealed that a short circuit between a certain transistor metal case (collector) and electrical ground caused excessive current to flow through a resistor, which then became hot enough to ignite the printed circuit board.

Five previous occurrences of overheating have been reported, although none resulted in a fire. Mandatory modification of the pressurization controller is now required, since continued operation of an airplane with unmodified controllers could result in a inflight fire in the forward E/E bay.

Since this condition is likely to exist or develop on other airplanes of the same type design, an airworthiness directive is being issued which requires modification to the pressurization controller on certain Boeing Model 727-200 and 737 airplanes.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impractical and good cause exists for making this Amendment effective in less than 30 days.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new Airworthiness Directive:

Boeing: Applies to Boeing Model 727-200 series and 737 airplanes, certificated in all categories, using the following Hamilton Standard electronic pressurization controllers that have not been previously modified to HS reference number P57

HS Part Number—710204-7, 710204-8, 761260-7, 761260-8

Boeing Part Number—10-61209-13, 10-61209-14, 10-61209-19, 10-61209-18

To prevent inflight fires, within 30 days after the effective date of this AD, accomplish the following, unless already accomplished: Modify the Hamilton Standard pressurization controllers listed above in accordance with Boeing Service Bulletins 727-21 A96 and 737-21 A1064, published August 28, 1981, or later FAA approved revision, or in a manner approved by the Chief, Seattle Area Aircraft Certification Office.

The manufacturer's specifications and procedures identified and described in this directive are incorporated herein and made a part hereof pursuant to 5 U.S.C. 552(a)(1).

All persons affected by this directive who have not already received the above specified Alert Service Bulletin from the manufacturer may obtain copies upon request to Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124, or it may also be examined at FAA Northwest Region, 9010 East Marginal Way South, Seattle, Washington 98108.

This Amendment becomes effective October 13, 1981.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended, (49 U.S.C. 1354(a), 1421, and 1423); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.89)

Note.—The FAA has determined that this regulation is an emergency regulation that is not major under Executive Order 12291. It has been further determined that this document involves an emergency regulation under 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 order of the Administrator under the Federal Aviation Act of 1958, as amended. As such, it is subject to review only by the courts of appeals of the United States or the United States Court of Appeals of the District of Columbia.

Issued in Seattle, Washington, on September 23, 1981.

Leroy A. Keith,

Acting Director, Northwest Region.

[FR Doc. 81-28595 Filed 9-30-81; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Part 71

[Airspace Docket No. 81-AWE-21]

Alteration of VOR Federal Airway

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment changes the description of VOR Federal Airway V-8 in the vicinity of Seal Beach, CA, by relocating the intersection which is the starting point of V-8 eastward approximately 4 miles. There is no change to the current alignment of V-8. This action coincides with the new realignment of the Standard Instrument Departure Procedure (SID) Doyle 2, from Point Mugu, CA. This amendment also increases air safety and reduces chart clutter.

DATES: Effective date—November 26, 1981. Comments must be received on or before November 2, 1981.

ADDRESSES: Send comments on the rule in triplicate to:

Director, FAA Western Region, Attention: Chief, Air Traffic Division, Docket No. 81-AWE-21, Federal Aviation Administration, 15000 Aviation Boulevard, P.O. Box 92007, Worldway Postal Center, Los Angeles, CA 90009.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, D.C.

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

FOR FURTHER INFORMATION CONTACT: 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) 426-8783.

SUPPLEMENTARY INFORMATION:

Request for Comments on the Rule

Although this action is in the form of a final rule, which involves only a slight change to the description of VOR Federal Airway V-8 and, thus, was not preceded by notice and public procedure, comments are invited on the rule. When the comment period ends, the FAA will use the comments submitted, together with other available information, to review the regulation. After the review, if the FAA finds that changes are appropriate, it will initiate rulemaking proceedings to amend the regulation. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effects of the rule and determining whether additional rulemaking is needed. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the rule that might suggest the need to modify the rule.

The Rule

The purpose of this amendment to § 71.123 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is to alter the description of VOR Federal Airway V-8 by relocating the current starting point of V-8 (Doyle Intersection) eastward along the V-8 radial approximately 4 miles (Intersection V-8/V-27). This action coincides with the new Instrument Departure Procedure (SID) Doyle 2, from Point Mugu, CA. In addition, this amendment removes some chart clutter, simplifies air traffic control procedures, and reduces controller workload. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in the Federal Register on January 2, 1981 (46 FR 409).

Since this amendment merely relocates the Doyle Intersection eastward to a current intersection along an existing airway segment with no change in controlled airspace, I find that notice or public procedure under 5 U.S.C. 553(b) is unnecessary.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, § 71.123 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as republished (46 FR 409), is amended, effective 0901 GMT, November 26, 1981, as follows:

V-8 [Amended]

By deleting the words "From INT Seal Beach, CA, 266° and Los Angeles, CA, 230° radials; Seal Beach;" and substituting for them the words "From INT Seal Beach, CA, 266° and Ventura, CA, 144° radials; Seal Beach;"

(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)

Note.—The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal; and (4) will not have a significant effect on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Issued in Washington, D.C., on September 25, 1981.

B. Keith Potts,

Chief, Airspace and Air Traffic Rules Division.

[FR Doc. 81-28603 Filed 9-30-81; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Part 71

[Airspace Docket No. 81-ASW-21]

Alteration, Designation and Revocation of VOR Federal Airways

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment revokes several VOR Federal Airways and designates several new VOR Federal Airways in the vicinity of Oklahoma City, OK. This action reduces chart clutter and is consistent with our policy to eliminate all alternate route designations in accordance with an agreement with the International Civil Aviation Organization (ICAO).

EFFECTIVE DATE: November 26, 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) 426-8783.

SUPPLEMENTARY INFORMATION:

History

On July 13, 1981, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to revoke VOR Federal Airways V-14N, V-14S, V-15E, V-77E, V-81E, V-102S, V-114S and V-272N. Also, this amendment designates new VOR Federal Airway V-404 between Childress, TX, and Wichita, TX (46 FR 35934). In order to maintain the route structure, V-14S between Hobart, OK, and Tulsa, OK, has been renamed V-436, and V-272S between Sayre, OK, and Oklahoma City, OK, has been renamed V-440. This action reduces chart clutter and supports our commitment to ICAO to eliminate all alternate route designations. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.123 was republished on January 2, 1981 (46 FR 409).

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) removes VOR Federal Airways V-14N, V-14S, V-15E, V-77E, V-81E, V-102S, V-114S, and V-272N. Also, this amendment designates new VOR Federal Airway V-404.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, § 71.123 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as republished and amended (46 FR 409, 24167, and 24170) is further amended, effective 0901 GMT, November 26, 1981, as follows:

1. V-14 [Amended]

By deleting the words "Childress, TX, including a S alternate via INT Lubbock 086° and Childress 229° radials; Hobart, OK; Oklahoma City, OK, including a S alternate via INT Hobart 076° and Oklahoma City 202° radials; Tulsa, OK, including a N alternate via INT Oklahoma City 037° and Tulsa 261° radials, and also a S alternate via INT Oklahoma City 079° and Tulsa 228° radials; Neosho, MO," and substituting for them the words "Childress, TX; Hobart, OK; Oklahoma City, OK; Tulsa, OK; Neosho, MO."

2. V-15 [Amended]

By deleting the words "Ardmore, OK; Okmulgee, OK, including an E alternate; INT Okmulgee 048° and Neosho, MO, 223° radials; Neosho." and substituting for them the words "Ardmore, OK, Okmulgee, OK; INT Okmulgee 048° and Neosho, MO, 223° radials; Neosho."

3. V-77 [Amended]

By deleting the words "via Abilene, TX; Wichita Falls, TX, including an E alternate; INT Wichita Falls 028° and Oklahoma City, OK, 202° radials; Oklahoma City, including an E alternate from Wichita Falls to Oklahoma City via INT Wichita Falls 047° and Duncan, OK, 248° radials, Duncan, INT Duncan 011° and Oklahoma City 180° radials; Pioneer, OK;" and substituting for them the words "via Abilene, TX; Wichita Falls, TX; INT Wichita Falls 028° and Oklahoma City, OK, 202° radials; Oklahoma City, Pioneer, OK;"

4. V-81 [Amended]

By deleting the words "Plainview, TX; Amarillo, TX, including an east alternate via INT Plainview 025° and Amarillo 163° radials; Dalhart, TX," and substituting for them the words "Plainview, TX; Amarillo, TX; Dalhart, TX;"

5. V-102 [Amended]

By deleting the words "Guthrie, TX; Wichita Falls, TX, including an S alternate via INT Guthrie 103° and Wichita Falls 247° radials." and substituting for them the words "Guthrie, TX; Wichita Falls, TX."

6. V-114 [Amended]

By deleting the words "via Childress, TX, including an S alternate; Wichita Falls, TX, including an S alternate via INT Childress 120° and Wichita Falls 262° radials;" and substituting for them the words "via Childress, TX; Wichita Falls, TX."

7. V-272 [Amended]

By deleting the words "Sayre, OK; Oklahoma City, OK, including an N alternate via INT Sayre 070° and Oklahoma City 282° radials and also an S alternate via INT Sayre 101° and Oklahoma City 242° radials; to McAlester, OK." and substituting for them the words "Sayre, OK; Oklahoma City, OK; to McAlester, OK."

8. V-404 [New]

By adding a new airway V-404 to read as follows:

V-404 From Childress, TX, INT Childress 120° and Wichita Falls, TX, 262 radials; to Wichita Falls.

9. V-436 [New]

By adding a new airway V-436 to read as follows:

V-436 From Hobart, OK, via INT Hobart 076° and Oklahoma City, OK, 202° radials; Oklahoma City; INT Oklahoma City 079° and Tulsa, OK, 228° radials; to Tulsa.

10. V-440 [New]

By adding a new airway V-440 to read as follows:

V-440 From Sayre, OK, via INT Sayre 101° and Oklahoma City, OK, 242° radials; to Oklahoma City.

(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 regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal; and (4) will not have a significant effect on a substantial number of small entitites under the criteria of the Regulatory Flexibility Act.

Issued in Washington, D.C., on September 24, 1981.

B. Keith Potts,

Chief, Airspace and Air Traffic Rules Division.

[FR Doc. 81-28604 Filed 9-30-81; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Part 71

[Airspace Docket No. 81-SO-53]

Designation of Federal Airways, Area Low Routes, Controlled Airspace, and Reporting Points; Alteration of Transition Area, Starkville, Miss.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule alters the Starkville, Mississippi, transition area by correcting the description of an arrival area extension to coincide with a change to the NDB-C Standard Instrument Approach Procedure and corrects the location of the George M. Bryan Field Airport geographic position.

EFFECTIVE DATE: 0901 GMT, November 26, 1981.

FOR FURTHER INFORMATION CONTACT: James G. Walters, Airspace and Procedures Branch, Air Traffic Division,

Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: (404) 763-7646.

SUPPLEMENTARY INFORMATION:

History

In the Starkville, Mississippi, transition area described in § 71.181 (46 FR 540) an extension is designated on the BRYAN RBN 350° bearing to provide controlled airspace for aircraft executing instrument approaches to the George M. Bryan Field Airport. Since the final approach course is being changed from the 350° to the 340° bearing from the RBN, it is necessary to amend the transition area description accordingly. Also, the airport geographic position has changed, which requires a minor correction.

This amendment represents a change in the technical description of the transition area and imposes no greater constraints on the public than presently exist. Therefore, notice and public procedure hereon are not necessary.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations alters the description of a Starkville, Mississippi, transition area by realigning the arrival area extension for the NDB-C Standard instrument approach procedure to the George M. Bryan Field Airport and correcting the coordinate location of the airport geographic position.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, § 71.181, Subpart G, of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as republished (and amended) (46 FR 540) is further amended, effective 0901 GMT, November 26, 1981, as follows:

Starkville, Mississippi

By deleting the words, "* * * radius of George M. Bryan Field (lat. 33°26'00"N., long. 88°50'45"W.); within 3 miles each side of the 350° bearing BRYAN RBN * * *" and substituting for them the words, "* * * radius of George M. Bryan Field (lat. 33°26'02"N., long. 88°50'55"W.); within 3 miles each side of the 340° bearing from BRYAN RBN * * *"

(Sec. 307(a) of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1348(a)) and Sec. 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)))

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a major rule under Executive Order 12291; (2) is not a significant rule under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal; and (4) will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

This action involves only a small alteration of navigable airspace and air traffic control procedures over a limited area.

Issued in East Point, Georgia, on September 21, 1981.

Jonathan Howe,

Director, Southern Region.

[FR Doc. 81-28442 Filed 9-30-81; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Part 71

[Airspace Docket No. 81-ASW-34]

Designation of Federal Airways, Area Low Routes, Controlled Airspace, and Reporting Points; Designation of Transition Area: Hondo, Tex.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment will designate a transition area at Hondo, Texas. The intended effect of the amendment is to provide controlled airspace for aircraft executing a new instrument approach procedure to the Hondo Municipal Airport. This amendment is necessary to provide protection for aircraft executing an instrument approach procedure using a new nondirectional radio beacon (NDB) located on the airport.

EFFECTIVE DATE: November 26, 1981.

FOR FURTHER INFORMATION CONTACT: Kenneth L. Stephenson, Airspace and Procedures Branch (ASW-535), Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Texas 76101, telephone (817) 624-4911, extension 302.

SUPPLEMENTARY INFORMATION:

On July 20, 1981, a notice of proposed rulemaking was published in the Federal Register (46 FR 37279) stating that the Federal Aviation Administration proposed to designate the Hondo, Texas, transition area. Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the Federal Aviation Administration. Comments were received without objections. Except for editorial changes this amendment is that proposed in the notice.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, by the Administrator, Subpart G of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as republished (46 FR 540) is amended, effective 0901 GMT, November 26, 1981 as follows:

Hondo, Texas

That airspace extending upward from 700 feet above the surface within an 8.5-mile radius of the Hondo Municipal Airport (Latitude 29°21'28"N., Longitude 99°10'34"W.)

(Sec. 307(a), Federal Aviation Act of 1958, as amended (49 U.S.C. 1348(a)); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.61(c))

Note.—The FAA has determined that this regulation only involves as established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 1103; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal.

Issued in Fort Worth, Texas, on September 22, 1981.

F. E. Whitfield,

Acting Director, Southwest Region.

[FR Doc. 81-28444 Filed 9-30-81; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Part 71

[Airspace Docket No. 81-60-34]

Designation of Federal Airways, Area Low Routes, Controlled Airspace, and Reporting Points; Redesignation of Control Zones and Transition Areas, Fort Campbell, Ky.; and Redesignation of Transition Area, Hopkinsville, Ky.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This rule redesignates: (1) The transition area centered on Campbell AAF, Sabre Army Heliport and Outlaw Field, and lowers the base controlled airspace from 1200 to 700 feet AGL northeast of Campbell AAF; (2) the transition area centered on Hopkinsville Christian County Airport; (3) the control zones centered on Campbell AAF, Sabre Army Heliport and Outlaw Field.

Additional controlled airspace, 700-foot transition area, is necessary to protect aircraft executing a new instrument approach procedure at Campbell AAF. A change of weather reporting service necessitates

redesignation of the control zones. This action provides controlled airspace protection for aircraft instrument flight operations in the vicinity of Fort Campbell, Kentucky, and Clarksville, Tennessee.

DATES: Effective Date: 0901 GMT, November 26, 1981; comments on the rule must be received before November 21, 1981.

ADDRESSES: Send comments on the proposal to.

Federal Aviation Administration ATTN: Chief, Airspace and Procedures Branch, ASO-530 P.O. Box 20636 Atlanta, Georgia 30320

The official public docket will be available for examination in the Office of the Regional Counsel, Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, telephone: (404) 763-7646.

FOR FURTHER INFORMATION CONTACT: Harlen D. Phillips, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; Telephone: (404) 763-7646.

SUPPLEMENTARY INFORMATION:

History

On Thursday, July 30, 1981 (46 FR 38929), the FAA proposed to designate additional controlled airspace in the Hopkinsville, Kentucky, 700-foot Transition Area northeast of Campbell AAF for protection of aircraft executing the proposed TACAN RWY 22 instrument approach procedure and correct an air navigation facility's name and the Campbell AAF geographic location in the Transition Area and Control Zone descriptions. No objections were received from this notice.

On September 14, 1981, Air Kentucky Air Lines terminated weather reporting service which supported IFR operations in the part-time control zone at Outlaw Field, Clarksville, Tennessee. The Outlaw Field Airport Manager, Air Kentucky and military representatives at Fort Campbell, Kentucky, have requested that the Clarksville and Hopkinsville Control Zones be combined. Campbell Approach Control has two-way radio communication capabilities with aircraft on Outlaw Field and will provide weather reports and air traffic control service at the airport. The control zone centered on Outlaw Field is being redesignated from part-time to full-time to facilitate the consolidation and weather service. No additional airspace is being designated in this action.

Request for Comments on the Rule

Although this action is in the form of a Final Rule, which involves changing a control zone from part-time to full-time and, thus, was not preceded by notice and public procedure, comments are invited on the rule. The FAA will use the comments submitted, together with other available information, to review the regulation. After the review, if the FAA finds that changes are appropriate, rulemaking proceedings will be initiated to amend the regulation.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (1) lowers the base of controlled airspace from 1200 to 700 feet AGL northeast of Campbell AAF; (2) redesignates the control zones centered on Campbell AAF, Sabre Army Heliport and Outlaw Field; and (3) redesignates the transition areas centered on Campbell AAF, Sabre Army Heliport and Outlaw Field.

Under the circumstances presented, the FAA concludes that there is an immediate need for a regulation to provide controlled airspace for protection of instrument flight operations in the vicinity of Outlaw Field. Therefore, I find that notice or public procedure under 5 U.S.C. 533(b) is impractical.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration amends Subparts F and G of Part 71 of the Federal Aviation Regulations, as republished (46 FR 455 and 540, respectively), effective 0901 GMT, November 26, 1981, as follows:

In § 71.171, the present control zone descriptions of Hopkinsville, Kentucky, and Clarksville, Tennessee, are deleted and the following is substituted therefor:

Fort Campbell, Kentucky

Within a 5-mile radius of Campbell AAF (Lat. 36°40'25"N., Long. 87°29'30"W.); within 1.5 miles each side of the 224° bearing from Airbe LOM, extending from the 5-mile radius zone to 0.5 mile southwest of the LOM; within a 5-mile radius of Outlaw Field (Lat. 36°37'15"N., Long. 87°24'52"W.); within 3 miles each side of Clarksville VOR 171° radial, extending from the 5-mile radius zone to 8.5 miles south of the VOR; within a 3-mile radius of Sabre Army Heliport (Lat. 36°34'14"N., Long. 87°28'50"W.).

In § 71.181, the present transition area description of Hopkinsville, Kentucky, is deleted and the following is substituted therefor:

Fort Campbell, Kentucky

That airspace extending upward from 700 feet above the surface within an 8.5-mile radius of Campbell AAF (Lat. 36°40'25"N., Long. 87°29'30"W.); within 4.5 miles each side of the Screaming Eagle TACAN 054° radial, extending from the 8.5-mile radius area to 17.5 miles northeast of the TACAN; within an 8.5-mile radius of Outlaw Field (Lat. 36°37'15"N., Long. 87°24'52"W.); within a 5-mile radius of Sabre Army Heliport (Lat. 36°34'14"N., Long. 87°28'50"W.).

Hopkinsville, Kentucky

That airspace extending upward from 700 feet above the surface within an 8-mile radius of Hopkinsville-Christian County Airport (Lat. 36°51'25"N., Long 87°27'25"W.).

(Sec 307(a) of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1348(a)) and Sec. 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)))

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a major rule under Executive Order 12291; (2) is not a significant rule under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal; and (4) will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

This action involves only a small alteration of navigable airspace and air traffic control procedures over a limited area.

Issued in East Point, Georgia, on September 22, 1981.

Jonathan Howe,

Director, Southern Region.

[FR Doc. 81-23441 Filed 9-30-81; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Part 71

[Airspace Docket No. 81-ASW-50]

Designation of Federal Airways, Area Low Routes, Controlled Airspace, and Reporting Points; Revocation of Control Zone: Silver City, N. Mex.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment revokes the control zone at Silver City, New Mexico. This amendment will return to public use airspace no longer required for the protection of aircraft arriving/departing the Silver City-Grant County Airport. The amendment is necessary since weather reports both hourly and special are not available at the Silver City-

Grant County Airport. Weather reports must be reported by a federally certified weather observer at the primary airport in the control zone during the times and dates a control zone is designated. Since this service is not available at the Silver City-Grant County Airport, the airport does not meet the basic requirements for the retention of the control zone. Therefore, this action revokes the designated controlled airspace.

DATES: Effective date—November 26, 1981. Comments on the rule must be received before November 15, 1981.

ADDRESSES: Send comments on the action in triplicate to: Chief, Airspace and Procedures Branch, Air Traffic Division, Southwest Region: Docket No. 81-ASW-50, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Texas 76101.

FOR FURTHER INFORMATION CONTACT: Kenneth L. Stephenson, Airspace and Procedures Branch (ASW-535), Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Texas 76101, telephone (817) 624-4911, extension 302.

SUPPLEMENTARY INFORMATION:

History

Federal Aviation Regulation Part 71, Subpart F § 71.171 as republished in the Federal Register on January 2, 1981 (46 FR 455), contains the description of control zones designated to provide controlled airspace for the benefit of aircraft conducting instrument flight rules (IFR) activity. Revocation of the control zone at Silver City, New Mexico, will necessitate an amendment to this subpart. The basic requirements for a control zone are not available at Silver City, New Mexico; therefore, the revocation of the control zone is necessary.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) revokes the Silver City, New Mexico, control zone. Because this action reduces a burden on the public by releasing controlled airspace, I find that notice and public procedure and publication 30 days before the effective date are unnecessary; however, comments are invited on the rule. When the comment period ends, the FAA will use the comments and any other available information to review the regulation.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, § 71.171 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as republished (46 FR 455) is amended, effective 0901 GMT, November 26, 1981, by: deleting the description of the Silver City, New Mexico, control zone.

(Sec. 307(a), Federal Aviation Act of 1958, as amended (49 U.S.C. 1348(a)); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11/61(c))

Note.—The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 1103; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal.

Issued in Fort Worth, Texas, on September 22, 1981.

F. E. Whitfield,

Acting Director, Southwest Region.

[FR Doc. 81-28443 Filed 9-30-81; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Parts 71 and 73

[Airspace Docket No. 81-AEA-11]

Designation of Federal Airways, Area Low Routes, Controlled Airspace, and Reporting Points; Special Use Airspace; Amendment to Restricted Area R-6602 Fort Pickett, VA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule amends Restricted Area R-6602, Fort Pickett, VA, by subdividing the existing area, reducing the area's lateral size, changing the area's designated times of use, and modifying the designated altitude. The change is required to provide airspace for a terminal instrument approach procedure and accommodate a change to the military's training requirements within the affected airspace. No person may operate an aircraft within a restricted area during its designated time of use without the permission of the using or controlling agency.

EFFECTIVE DATE: November 26, 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) 426-8783.

SUPPLEMENTARY INFORMATION:

History

On August 6, 1981, the FAA proposed to amend Parts 71 and 73 of the Federal Aviation Regulations (14 CFR Parts 71 and 73) to: (1) Delete the Northwest corner of R-6602 to allow unrestricted use of the Non-Directional Beacon (NDB) instrument approach procedure to Blackstone Army Airfield/Allen C. Perkinson Municipal Airport for category A, B, and C aircraft; (2) vertically subdivide R-6602 for more efficient joint use of the airspace by permitting activation of only those altitudes needed for a particular training activity; (3) change the time of use and the ceiling of the Southeast corner of R-6602 to accommodate the increased utilization of Fort Pickett by all military services; and (4) make editorial changes to the Continental Control Area and Federal Airways V-155 and V-157 to reflect the vertical subdivision. The U.S. Army has certified to the FAA that the requirements of the National Environmental Protection Act (NEPA) have been met (46 FR 40034). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. Of the comments received, none were objections. Except for editorial changes, these amendments are the same as those proposed in the notice. Sections 71.123, 71.151, and 73.66 were republished on January 2, 1981 (46 FR 409, 446 and 826).

The Rule

These amendments to Parts 71 and 73 of the Federal Aviation Regulations: (1) Delete a portion of R-6602 from the Northwest corner; (2) vertically subdivide existing R-6602; (3) raise the ceiling of the Southeast corner of the existing area from 1,900 feet MSL to 4,000 feet MSL, (4) change the normal time of use to include the month of May; and (5) make appropriate editorial changes to the Continental Control Area and Federal Airways V-155 and V-157.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, §§ 71.123, 71.151, and 73.66 of Parts 71 and 73 of the Federal Aviation Regulations (14 CFR Parts 71 and 73), as republished (46 FR 409, 446, and 826) and amended (45 FR 71773, 77418 and 46 FR 23047) are further amended, effective 0901 GMT, November 26, 1981, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

§ 71.123 [Amended]

Under V-155 by deleting the word "R-6602" and substituting for it the word "R-6602A."

Under V-157 by removing the word "R-6602" and substituting for it the word "R-6602A."

§ 71.151 [Amended]

By deleting the words "R-6602 Camp Pickett, VA" and substituting for them the words "R-6602C fort Pickett, VA".

PART 73—SPECIAL USE AIRSPACE

§ 73.66 [Amended]

By deleting the title and text of R-6602 Fort Pickett, VA, and adding the following:

"R-6602A Fort Pickett, VA

Boundaries. Beginning at lat. 37°05'37"N., long. 77°51'54"W.,
to lat. 37°04'25"N., long. 77°51'45"W., along State Highway No. 40
to lat. 37°03'55"N., long. 77°51'05"W.;
to lat. 37°02'43"N., long. 77°50'38"W.,
to lat. 37°01'05"N., long. 77°50'43"W.,
to lat. 36°59'50"N., long. 77°50'34"W.,
to lat. 36°57'58"N., long. 77°52'14"W.,
to lat. 36°57'54"N., long. 77°53'19"W.,
to lat. 36°58'12"N., long. 77°57'42"W.,
to lat. 37°01'50"N., long. 77°58'40"W.,
to lat. 37°01'50"N., long. 77°55'58"W.,
to lat. 37°04'21"N., long. 77°55'58"W.,
to lat. 37°05'37"N., long. 77°54'42"W.,
to point of beginning.

Designated altitudes. Surface to but not including 4,000 feet MSL.

Time of designation. Continuous May 1 to Sept. 15. Other times by NOTAM 24 hours in advance.

Controlling agency. FAA Washington ARTCC.

Using agency. Commander, Fort Lee, VA.

R-6602B Fort Pickett, VA

Boundaries. Beginning at lat. 37°05'37"N., long. 77°51'54"W.,
to lat. 37°04'25"N., long. 77°51'45"W., along State Highway No. 40
to lat. 37°03'55"N., long. 77°51'05"W.,
to lat. 37°02'43"N., long. 77°50'38"W.,
to lat. 37°01'05"N., long. 77°50'43"W.,
to lat. 36°57'54"N., long. 77°53'19"W.,
to lat. 36°58'12"N., long. 77°57'42"W.,
to lat. 37°01'50"N., long. 77°58'40"W.,
to lat. 37°01'50"N., long. 77°55'58"W.,
to lat. 37°04'21"N., long. 77°55'58"W.,
to lat. 37°05'37"N., long. 77°54'42"W.,
to point of beginning.

Designated altitudes. 4,000 feet MSL to but not including 11,000 feet MSL.

Time of designation. By NOTAM 24 hours in advance.

Controlling agency. FAA Washington ARTCC.

Using agency. Commander, Fort Lee, VA.

R-6602C Fort Pickett, VA

Boundaries. Beginning at lat. 37°05'37"N., long. 77°51'54"W.,
to lat. 37°04'25"N., long. 77°51'45"W., along State Highway No. 40
to lat. 37°03'55"N., long. 77°51'05"W.,
to lat. 37°02'43"N., long. 77°50'38"W.,
to lat. 37°01'05"N., long. 77°50'43"W.,
to lat. 36°57'54"N., long. 77°53'19"W.,
to lat. 36°58'12"N., long. 77°57'42"W.,
to lat. 37°01'55"N., long. 77°58'40"W.,
to lat. 37°01'50"N., long. 77°55'58"W.,
to lat. 37°04'21"N., long. 77°55'58"W.,
to lat. 37°05'37"N., long. 77°54'42"W.,
to point of beginning.

Designated altitudes. 11,000 feet MSL to but not including 18,000 feet MSL.

Time of designation. By NOTAM 24 hours in advance.

Controlling agency. FAA Washington ARTCC.

Using agency. Commander, Fort Lee, VA."

(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 regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal; and (4) will not have a significant effect on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Issued in Washington, D.C., on September 23, 1981.

B. Keith Potts,

Chief, Airspace and Air Traffic Rules Division.

[FR Doc. 81-28439 Filed 9-30-81; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Part 75

[Airspace Docket No. 81-ASO-52]

Alteration of Jet Route J-79

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This action modifies the description of J-79 between Wilmington, NC, and Norfolk, VA. This action is required because the Haw, NC, VORTAC, now used in the description of J-79 does not appear to be usable for navigational purposes. The substitute routing, Wilmington direct Norfolk, is now being used. This action will make the substitute routing permanent, thereby cuttting down on pilot/controller verbiage and allowing better flight planning.

EFFECTIVE DATE: November 26, 1981. Comments must be received on or before November 2, 1981.

ADDRESSES: Send comments on the rule in triplicate to:

Director, FAA Southern Region, Attention: Chief, Air Traffic Division, Docket No. 81-ASO-52, Federal Aviation Administration, P.O. Box 20636, Atlanta, GA 30320.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, D.C.

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

FOR FURTHER INFORMATION CONTACT: Charles R. Horne, 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) 426-8783.

SUPPLEMENTARY INFORMATION:

Request for Comments on the Rule

Although this action is in the form of a final rule, which involves a minor alteration of Jet Route J-79 necessitated by failure of a navigational aid and, thus, was not preceded by notice and public procedure, comments are invited on the rule. When the comment period ends, the FAA will use the comments submitted, together with other available information, to review the regulation. After the review, if the FAA finds that changes are appropriate, it will initiate rulemaking proceedings to amend the regulation. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effects of the rule and determining whether additional rulemaking is needed.

The Rule

The purpose of this amendment to § 75.100 of Part 75 of the Federal Aviation Regulations (14 CFR Part 75) is to modify the description of J-79 between Wilmington, NC, and Norfolk VA. This action alters J-79 by removing a segment of the route between Wilmington, NC; Haw, NC; and Norfolk, VA, and redefining it via Wilmington direct Norfolk. The Haw VORTAC has

been unusable for navigation purposes for some time and efforts to improve its performance appear futile. The Wilmington direct Norfolk route is now a NOTAM substitute route. This action allows for charting of the substitute route, thereby reducing verbiage between the pilot and controller and allowing better flight planning. Section 75.100 of Part 75 of the Federal Aviation Regulations was republished in the Federal Register on January 2, 1981 (46 FR 834). Therefore, I find that notice or public procedure under 5 U.S.C. 553(b) is contrary to the public interest.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, § 75.100 of Part 75 of the Federal Aviation Regulations (14 CFR Part 75) as republished (46 FR 834), is amended, effective 0901 GMT, November 26, 1981, as follows:

Under J-79, after the words "Wilmington, NC" remove the words "; Haw, NC."

(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.)

Note.—The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal; and (4) will not have a significant effect on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Issued in Washington, D.C., on September 24, 1981.

B. Keith Potts,

Chief, Airspace and Air Traffic Rules Division.

[FR Doc. 81-28605 Filed 9-30-81; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Part 97

[Docket No. 22189; Amdt. No. 1200]

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 at 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 (APA-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 SIAPs, mailed once every 2 weeks, may be ordered from Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. The annual subscription price 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 Administration, 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 official 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 purchases 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 Fight 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, and 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, 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 procedures 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 SIASPs identified as follows:

Effective November 26, 1981

Galesburg, IL—Galesburg Muni, VOR Rwy 20, Amdt. 1
Macomb, IL—Macomb Muni, VOR/DME-A, Amdt. 2
Springfield, IL—Capital, VOR Rwy 222, Amdt. 17
Alexandria, IN—Alexandria, VOR Rwy 27, Amdt. 5
Anderson, IN—Anderson Muni, VOR-A, Amdt. 6
Brazil, IN—Arthur Muni, VOR Rwy 9, Amdt. 4
Greenwood, IN—Skyway, VOR-A, Original, cancelled
Indianapolis, IN—Skyway, VOR-A, Original
Muncie, IN—Delaware County Johnson Field, VOR Rwy 14, Amdt. 12
Muncie, IN—Delaware County Johnson Field, VOR Rwy 20, Amdt. 9
Muncie, IN—Delaware County Johnson Field, VOR Rwy 32, Amdt. 10
New Castle, IN—New Castle-Henry County Muni, VOR Rwy 27, Amdt. 6
Terre Haute, IN—Hulman Regional, VOR Rwy 5, Amdt. 12
Terre Haute, IN—Hulman Regional, VOR Rwy 23, Amdt. 15
Terre Haute, IN—Sky King, VOR-A, Amdt. 3
Winchester, IN—Randolph County, VOR-A, Amdt. 3
Hawesville, KY—Hancock Airfield, VOR Rwy 15, Amdt. 1
Hawesville, KY—Hancock Airfield, VOR Rwy 33, Amdt. 1
Dowagiac, MI—Cass County Meml, VOR-A, Amdt. 6
Plymouth, MI—Mettetal, VOR-A, Amdt. 6
Fergus Falls, MN—Fergus Falls Muni-Einar Mickelson Fld, VOR Rwy 17, Amdt. 2
Nashua, NH—Boire Field, VOR-A, Amdt. 9
Hazelton, PA—Hazelton Muni, VOR Rwy 10, Amdt. 9
Hazelton, PA—Hazelton Muni, VOR Rwy 28, Amdt. 8
Pineville, WV—Kee Field, VOR Rwy 25, Amdt. 1

Effective November 12, 1981

Mobile, AL—Brookley, VOR Rwy 14, Amdt. 3
Mobile, AL—Brookley, VOR Rwy 32, Amdt. 8
Selma, AL—Craig Field, VOR Rwy 32, Amdt. 1
Ramona, CA—Ramona, VOR/DME-A, Original
Chicago (West Chicago), IL—DuPage, VOR Rwy 10, Amdt. 8
Ionia, MI—Ionia County, VOR Rwy 27, Amdt. 4
Manistee, MI—Manistee County-Blacker, VOR Rwy 9, Amdt. 6
Manistee, MI—Manistee County-Blacker, VOR Rwy 27, Amdt. 6
Aberdeen-Amory, MS—Monroe County, VOR Rwy 18, Amdt. 6
Greenwood, MS—Greenwood-LeFlore, VOR Rwy 5, Amdt. 7
West Point, MS—McCharen Field, VOR-A, Amdt. 2
West Point, MS—McCharen Field, VOR/DME-B, Amdt. 2
Wilmington, NC—New Hanover County, VOR-A (TAC), Amdt. 1
Newark, OH—Newark-Heath, VOR-A, Amdt. 7

Effective September 17, 1981

Christiansted, St. Croix, VI—Alexander Hamilton, VOR Rwy 27, Amdt. 17

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

Effective November 26, 1981

Anderson, IN—Anderson Muni, LOC Rwy 12, Amdt. 3
Anderson, IN—Anderson Muni, LOC (BC) Rwy 30, Amdt. 3
Terre Haute, IN—Hulman Regional, LOC BC Rwy 23, Amdt. 15
Hazelton, PA—Hazelton Muni, LOC Rwy 28, Amdt. 3
Rutland, VT—Rutland State, LDA Rwy 19, Amdt. 2

Effective November 12, 1981

Newark, OH—Newark-Heath, SDF Rwy 9, Original

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

Effective November 26, 1981

Sand Point, AK—Sand Point, NDB/DME Rwy 33, Amdt. 1
Sand Point, AK—Sand Point, NDB/DME-A, Amdt. 2
Sand Point, AK—Sand Point, NDB-B, Amdt. 1
Macomb, IL—Macomb Muni, NDB Rwy 26, Amdt. 7
Anderson, IN—Anderson Muni, NDB Rwy 30, Amdt. 3
Michigan City, IN—Michigan City, NDB Rwy 20, Amdt. 11
Muncie, IN—Delaware County-Johnson Field, NDB Rwy 32, Amdt. 6
South Bend, IN—Michiana Regional, NDB Rwy 27, Amdt. 23
Terre Haute, IN—Hulman Regional, NDB Rwy 5, Amdt. 13
Madison, MN—Dawson-Madison-LAC QUI Parle County, NDB Rwy 31, Amdt. 1
Lexington, NE—Lexington Muni, NDB Rwy 14, Amdt. 3
Ord, NE—Evelyn Sharp Field, NDB Rwy 13, Amdt. 1
Nashua, NH—Boire Field, NDB Rwy 14, Amdt. 1
Seattle, WA—Boeing Field/King County Intl, NDB-A, Amdt. 6
Rice Lake, WI—Rice Lake Municipal, NDB Rwy 36, Original
Rice Lake, WI—Rice Lake Municipal, NDB Rwy 36, Amdt. 3, cancelled

Effective November 12, 1981

Selma, AL—Craig Field, NDB Rwy 32, Amdt. 1
Carmi, IL—Carmi Muni, NDB Rwy 36, Amdt. 3
Fairfield, IL—Fairfield Muni, NDB Rwy 9, Original
Fairfield, IL—Fairfield Muni, NDB Rwy 36, Amdt. 5, cancelled
Angola, IN—Tri-State Steuben County, NDB Rwy 5, Amdt. 5
Boyne Falls, MI—Boyne Mountain, NDB-A, Amdt. 2
Southport, NC—Brunswick County, NDB-A, Amdt. 2
Newark, OH—Newark-Heath, NDB Rwy 9, Amdt. 1
Greenville, SC—Donaldson Center Airport, NDB Rwy 4, Original
Pineville, WV—Kee Field, NDB Rwy 7, Original, cancelled

. . . Effective October 29, 1981

Mesa, AZ—Falcon Fld, NDB-C, Original
Phoenix, AZ-Phoenix-Deer Valley Muni, NDB Rwy 25L, Original
Scottsdale, AZ—Scottsdale Muni, NDB-B, Original
Durant, OK—Eaker Field, NDB Rwy 35, Amdt. 1

. Effective September 24, 1981

Cordova, AK—Cordova Mile 13, NDB-A, Amdt. 5

, , , Effective September 22, 1981

Hatteras, NC—Billy Mitchell, NDB Rwy 6, Amdt. 4

Effective September 17, 1981

Christiansted, St. Croix, VI—Alexander Hamilton, NDB Rwy 9, Amdt. 11

. . Effective September 10, 1981

Meriden, CT—Meriden Markham Muni, NDB Rwy 36, Amdt. 3

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

. . Effective November 26, 1981

Galesburg, IL—Galesburg Muni, ILS Rwy 2, Amdt. 4
Springfield, IL—Capital, ILS Rwy 22, Amdt. 2
Fort Wayne, IN—Fort Wayne Muni (Baer Fld), ILS Rwy 4, Amdt. 6
Muncie, IN—Delaware County-Johnson Field, ILS Rwy 32, Amdt. 3
South Bend, IN—Michiana Regional, ILS Rwy 27, Amdt. 29
Terre Haute, IN—Hulman Regional, ILS Rwy 5, Amdt. 17
Nashua, NH—Boire Field, ILS Rwy 14, Amdt. 1
Pittsburgh, PA—Greater Pittsburgh Intl, ILS Rwy 32, Amdt. 4
Seattle, WA—Boeing Field/King County Intl, ILS Rwy 13R, Amdt. 22

. . Effective November 12, 1981

Chicago (West Chicago), IL—DuPage, ILS Rwy 10, Amdt. 4
Kankakee, IL—Greater Kankakee, ILS Rwy 4, Amdt. 2
Tulsa, OK—Tulsa Intl, ILS Rwy 17R, Amdt. 1

. . Effective September 24, 1981

Cordova, AK—Cordova Mile 13, ILS/DME Rwy 27, Amdt. 5

. . . Effective September 17, 1981

Christiansted, St. Croix, VI—Alexander Hamilton, ILS Rwy 9, Amdt. 4

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

. . *Effective November 26, 1981*

South Bend, IN—Michiana Regional, RADAR-1, Amdt. 5
Terre Haute, IN—Hulman Regional, RADAR-1, Original

. *Effective November 12, 1981*

Lansing, MI—Capital City, RADAR-1, Amdt. 8

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

. . *Effective November 26, 1981*

Terre Haute, IN—Hulman Regional, RNAV Rwy 31, Amdt. 3
Dowagiac, MI—Cass County Meml, RNAV Rwy 9, Amdt. 3
Dowagiac, MI—Cass County Meml, RNAV Rwy 27, Amdt. 3
Nashua, NH—Boire Field, RNAV Rwy 32, Amdt. 2

. . *Effective November 12, 1981*

Jacksonville, IL—Jacksonville Muni, RNAV Rwy 31, Amdt. 3, cancelled
Peoria, IL—Greater Peoria, RNAV Rwy 12, Amdt. 1, cancelled
Greenwood, MS—Greenwood-LeFlore, RNAV Rwy 18, Amdt. 2
Greenwood, MS—Greenwood-LeFlore, RNAV Rwy 36, Amdt. 2
West Point, MS—McCharen Field, RNAV Rwy 36, Amdt. 2
Newark, OH—Newark-Heath, RNAV Rwy 9, Amdt. 1
Newark, OH—Newark-Heath, RNAV Rwy 27, Amdt. 1

(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(o)(3))

Note.—The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal; and (4) will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. Issued in Washington, D.C. on September 25, 1981.

John M. Howard,
Acting Chief, Aircraft Programs Divisions.

Note.—The incorporation by reference in the preceding document was approved by the Director of the Federal Register on December 31, 1980.

[FR Doc. 81-28614 Filed 9-30-81; 8:45 am]
BILLING CODE 4910-13-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 210

[Release Nos. 33-6348, 34-18117, 35-22203, and AS-298]

Revision of Property, Plant, and Equipment Disclosure Requirements

AGENCY: Securities and Exchange Commission.

ACTION: Final rules.

SUMMARY: The Commission announces the adoption of amendments to the disclosure requirements for the detailed property, plant and equipment schedule and the related schedule of accumulated depreciation, depletion and amortization [Schedules V and VI]. The amendments limit the presentation of these schedules to instances where property, plant and equipment is at a high level of significance, and clarify the existing rules to make it explicit that the schedules, when required, shall be included for each year for which an income statement is presented.

EFFECTIVE DATE: October 1, 1981.

FOR FURTHER INFORMATION CONTACT: Eugene W. Green (202-272-2130), M. Elizabeth Rader (202-272-2133), or LeGrand C. Kirby (202-272-2050), Office of the Chief Accountant, Securities and Exchange Commission, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: On February 25, 1981, the Commission published Securities Act Release No. 33-6293 [46 FR 15278] in which it proposed amendments to (1) liberalize the percentage tests for exemption from the requirement to file Schedules V (Property, Plant, and Equipment) and VI (Accumulated Depreciation, Depletion, and Amortization), and (2) modify and expand the information content of those schedules. The adopted amendments broaden the proposed exemption criteria requiring the presentation of Schedules V and VI only by those registrants that are relatively capital intensive. The proposed changes to the form and content of the schedules have not been adopted; thus the schedules retain their current form. This release discusses the background of the proposed amendments, the comments received, and the final rules adopted.

Background

As part of the overall project to consider general revisions to Regulation S-X, the Commission in January 1980 initially proposed amendments which would have revised the schedule requirements in Rules 5-04, 12-06, and 12-07 [17 CFR 210.5-04, 210.12-06 and 210.12-07] for property, plant and equipment ("PP&E") and accumulated depreciation, depletion and amortization. This proposal was later withdrawn for further study. A second proposal, published for comment in February 1981, would have required the PP&E information in Schedules V and VI to be organized by business segments and would have modified the exemption rules to reduce the number of registrants required to file the schedules. Disclosures of fully depreciated assets still in use and idle capacity were retained in the second proposal but were required only if significant to the business segment to which they related.

Views of Commentators and Final Rules

The revised proposal to expand and significantly modify the detail information reported in the schedules met with substantial criticism. A majority of the respondents strongly opposed expansion of the existing requirements and recommended that these sections of the proposed amendments be withdrawn. Opposition to the proposed disclosure requirements was generally based on the high cost and/or impracticability of accumulating the data as well as a lack of demonstrated need for the expanded disclosure. Commentators emphasized that they did not maintain property records in this detail on a segment basis, and that they would have to incur substantial additional costs to develop the necessary systems. Most of the commentators estimated that the accumulation of data on fully depreciated assets in use and idle capacity would be very costly since the information was not part of the basic property records. Further, the identification of fully amortized assets in use would often require a physical inventory and would be virtually impossible for companies that use a composite depreciation method. The commentators also stated that allocations of jointly used facilities often made it unrealistic to track assets and accumulated depreciation balances by segment. Based on these arguments, the Commission has concluded that the proposed expanded disclosures would not be a cost-beneficial addition to existing segment data. The Commission continues to believe that information about idle facilities may be important to an analysis of an enterprise. However, generally accepted accounting principles require disclosure of the existence of significant idle facilities; and Instruction 1 to Item 2(a) of Regulation S-K (Description of Property) calls for

information on the extent of utilization of facilities. In addition, where current year changes in idle facilities have a material impact on the results of operations, it would also be necessary to address such matters in Management's Discussion and Analysis of Financial Condition and Results of Operations.[1]

Most commentators expressed general support for the proposed liberalization of the exemption from the schedule requirements. Moreover, the Commission understands that the supplemental PP&E disclosures are primarily of benefit to investors and potential investors analyzing companies in capital intensive industries. Accordingly, the Commission has concluded that the PP&E schedules should be required only of relatively capital intensive registrants. The Commission is adopting amendments to Rule 5-04 of Regulation S-X which exempt from presentation of the schedules those registrants whose PP&E, net of accumulated depreciation, depletion and amortization, is less than 25 percent of total assets at both the beginning and end of the latest fiscal year. This 25-percent test represents a revision of the February 1981 proposal to allow exclusion if net PP&E is less than 10 percent and gross PP&E is less than 20 percent of total assets. Focusing only on net PP&E simplifies the test, and the increase in the percentage threshold to 25 percent limits the schedule requirements to those registrants that are relatively capital intensive.

The test is to be applied at both the beginning and end of the year in order to offset unusual fluctuations in total assets. Since the test focuses on the latest fiscal year, schedules will not be necessary for prior years if not required currently. However, the schedules will be required for previous years if the schedules are required for the current year.

The exemption of noncapital intensive entities from the schedule requirements is in furtherance of the Commission's goal to reduce reporting burdens while maintaining adequate disclosure for users. The Commission is also adopting minor technical amendments to Rule 5-04 to make it explicit that the PP&E schedules are required for each year for which an income statement is presented.

Regulatory Flexibility Certification

Section 604(a) of the Administrative Procedures Act, as amended by the Regulatory Flexibility Act ("Flexibility Act"), generally requires the Commission to prepare for final rules a final regulatory flexibility analysis which addresses the impact of such rulemaking on small entities as defined under the Flexibility Act. Section 605(b) of the Flexibility Act, however, specifically exempts from this requirement any final rule which will not "have a significant economic impact on a substantial number of small entities." The Commission believes that the final amendments announced in this release will not impose an additional regulatory burden on entities subject to the rules. Accordingly, the Chairman of the Commission has certified that the final amendments will not have a significant impact on a substantial number of small entities.

Effective Date

The amendments shall be effective October 1, 1981.

Text of Amended Rule

Part 210 of Title 17 CFR Chapter II is amended as follows:

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

1. By revising Schedules V and VI in § 210.5-04 to read as follows:

§ 210.5-04 What schedules are required to be filed.

* * * * *

Schedule V—Property, plant and equipment. The schedule prescribed by § 210.12-06 shall be filed for each period specified in paragraph (a)(2) of this section, provided that these schedules may be omitted if, at both the beginning and end of the latest fiscal year, the total of property, plant and equipment (caption 13 on the balance sheet) less accumulated depreciation, depletion and amortization (caption 14 on the balance sheet) is less than 25 percent of total assets as shown by the related balance sheet.

Schedule VI—Accumulated depreciation, depletion and amortization of property, plant and equipment. The schedule prescribed by § 210.12-07 shall be filed for each period specified in paragraph (a)(2) of this section. This schedule may be omitted if Schedule V is omitted.

* * * * * *

These amendments are adopted pursuant to authority in sections 6, 7, 8, 10 and 19(a) [15 U.S.C. 77f, 77g, 77h, 77j, 77s] of the Securities Act of 1933; sections 12, 13, 15(d) and 23(a) [15 U.S.C. 78*l*, 78m, 79o(d), 78w] of the Securities Exchange Act of 1934; and Sections 5(b), 14 and 20(a) [15 U.S.C. 79e, 79n, 79t] of the Public Utility Holding Company Act of 1935. Pursuant to section 23(a)(2) of the Securities Exchange Act of 1934, the Commission has considered the impact of these amendments on competition and is not aware of any burden that they would impose on competition. Inasmuch as the above described amendments do not impose any additional requirements under § 210.5-04, the Commission finds, for good cause, that the thirty-day notice provision specified in the Administrative Procedure Act [5 U.S.C. 553(d)] is unnecessary and, accordingly, the amendments shall be effective on October 1, 1981.

By the Commission.

September 24, 1981.

George A. Fitzsimmons,

Secretary.

Regulatory Flexibility Act Certification

I, John S. R. Shad, Chairman of the Securities and Exchange Commission, hereby certify, pursuant to 5 U.S.C. 605(b) that the adoption of amendments to the disclosure requirements for the detailed schedule of property, plant and equipment and the related schedule of accumulated depreciation, depletion and amortization contained in Securities Act Release No. 6348 (September 24, 1981), "Revision of Property, Plant and Equipment Disclosure Requirements," will not have a significant economic impact upon any reporting entity and, therefore, will not have a significant economic impact on a substantial number of small entities. The reasons for this certification are that the revisions should reduce the number of registrants required to file the detailed property, plant and equipment schedules and will have no effect on the compliance burden of registrants required to file the schedules.

Dated: September 24, 1981.

John S. R. Shad,

Chairman.

[FR Doc. 81-28598 Filed 9-30-81; 8:45 am]

BILLING CODE 8010-01-M

---

17 CFR Parts 230 and 239

[Release No. 33-6346; File No. S7-860]

Report of Sales of Securities and Use of Proceeds

AGENCY: Securities and Exchange Commission.

ACTION: Final rule and form.

SUMMARY: The Commission announces the amendment of Rule 463 and related Form SR which require filings by issuers with respect to their first effective registration statements disclosing information concerning their offerings and the use of proceeds therefrom. The amendments, which do not substantially change either the application of the rule

[1] Item 11 of Regulation S-K.

or the disclosures required by the form, include: a standardized short-answer format for Form SR; a materiality standard for disclosure of differences between actual uses of proceeds and the uses stated in the prospectus; clarified provisions for the time for filing the form and filings by successor issuers; and additional exemptions from the filing requirement. The amendments are intended to simplify and clarify the requirements relating to Form SR and to enhance the usefulness of reports on Form SR.

EFFECTIVE DATE: January 4, 1982.

FOR FURTHER INFORMATION CONTACT: Prior to the effective date of the amendments, Susan Davis, (202) 272-2604, Office of Disclosure Policy, Division of Corporation Finance; after the effective date of the amendments, David Martin, (202) 272-2573, Office of Chief Counsel, Division of Corporation Finance, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission today announced the adoption of amendments to Rule 463 (17 CFR 230.463) under the Securities Act of 1933 (the "Securities Act") [15 U.S.C. 77a et seq.] and to related Form SR (17 CFR 239.61) pursuant to section 19(a) of the Securities Act. The amendments are designed to maintain the applicability of Form SR to issuers with respect to their first effective registration statements ("first-time issuers"), to enhance the usefulness to investors and the Commission of the disclosures in reports on Form SR, to clarify and simplify reporting requirements and to reduce reporting burdens, to the extent practicable. The amendments do not represent a significant change in either the application of, or disclosures required by, the current rule or form. Among the amendments are the following:

(1) Amendments to Rule 463 to make clear that the Form SR filing requirement applies to successor issuers to the extent that the filing requirement filings on Form SR are required of the predecessor and that the filing requirement does not apply to issuers that succeed to seasoned issuers;

(2) An amendment to Rule 463 to make clear that, where an offering of a first-time issuer has terminated but the issuer has not yet finally applied the offering proceeds, the issuer must continue to file reports on Form SR until the final application of the proceeds has been reported;

(3) An amendment to Rule 463 to exempt from the Form SR filing requirement issuers of securities offered in connection with certain business combination transactions, pursuant to employee benefit plans, or pursuant to dividend or interest reinvestment plans;

(4) Revision of Form SR's narrative format to a standardized short-answer format; and

(5) An amendment to Form SR to include a materiality standard in the requirement to disclose differences between the actual uses of proceeds and the uses stated in the prospectus.

Originally adopted in 1971,[1] Rule 463 and Form SR require first-time issuers, absent an exemption, to file reports with the Commission concerning the progress of their offerings and the use of proceeds therefrom. In addition to eliciting information for investors and the marketplace, Rule 463 and Form SR are intended to permit the Commission to monitor the compliance of first-time issuers with the prospectus delivery and updating requirements of Sections 4(3)[2] and 10(a)(3)[3] of the Securities Act.

On October 23, 1980, the Commission proposed for comment[4] the first substantial revisions of Rule 463 and Form SR since 1971.[5] Rule 463 was proposed to be amended: to extend the filing requirement to offerings by issuers through direct distributions and by best efforts underwritings; to eliminate the current exemption for public utility companies and to add three new exemptions to the filing requirement;[6] to reduce the number of reports on Form SR required to be filed; and to clarify the time at which reports on Form SR must be filed. Form SR was proposed to be amended: to change its narrative format to a standardized short-answer format easily digested by a data processing system; to obtain more detailed information from issuers regarding their offering expenses and use of proceeds; to obtain certain identifying and market information from issuers; and to include a materiality standard in connection with the requirement to disclose differences between the actual uses of proceeds and the uses set forth in the prospectus. The proposals were designed to provide investors and the Commission with information concerning offerings pursuant to a direct distribution or by a best efforts underwriting, in addition to those by first-time issuers.

The Commission received five comment letters on the proposals.[7] The commentators generally supported the proposals that were designed to simplify the reporting procedures, such as the change to a short-answer format. While certain commentators supported the application of Form SR to first-time issuers, the majority opposed any increase in the Form SR reporting burdens, particularly the proposed extension of the filing requirement to direct distributions and best efforts offerings.

Based on the Commission's reconsideration of the proposals in light of the views expressed by the commentators, the adopted amendments differ from the proposals but do not constitute significant changes in the current regulation. Thus, the Commission is not extending the application of Form SR to direct distributions or best efforts offerings, as proposed, nor is it substantially expanding the disclosures required concerning offering expenses and the use of proceeds, as proposed. In this regard, the Commission affirms the need for first-time issuers to provide the disclosures required by Form SR to investors and the Commission.

This release contains a synopsis of the amendments which is intended to assist in a better understanding of the Commission's actions. Attention is directed, however, to the text of the rule and form for a more complete understanding of the amendments.

I. Synopsis

A. Amendments to Rule 463

1. *Applicability.*

While existing Rule 463, and the adopted amendments, require only first-time issuers to file reports on Form SR, the proposal would have extended the filing requirement to issuers of securities

[1] Securities Act Release No. 5141 (April 19, 1971) [36 FR 7896].

[2] Section 4(3) provides that dealers effecting transactions in a security registered for the first time under the Securities Act must deliver a prospectus to prospective customers during the ninety-day period following the commencement of the offering.

[3] Section 10(a)(3) provides that if a prospectus is used more than nine months after the effective date of the registration statement the information contained therein must be no more than sixteen months old.

[4] Securities Act Release No. 6251 (October 23, 1980) [45 FR 71611] (the "1980 Release").

[5] Rule 463 had previously been amended in one minor respect to make clear that a report on Form SR should be filed at the office of the Commission where the registration statement was filed. Securities Act Release No. 6049 (April 3, 1979) [44 FR 21562].

[6] The proposed exemptions were for securities issued in connection with a business combination under paragraph (a) of Securities Act Rule 145, pursuant to an employee benefit plan, or pursuant to a dividend reinvestment plan.

[7] The five commentators may be categorized as follows: law firms and associations (2); corporations (2); and individuals (1). Copies of the comment letters are available for public inspection and copying at the Commission's Public Reference Room (File No. S7-860).

offered pursuant to direct distributions or best efforts underwritings. The 1980 Release stated that the purpose of the proposed extension was to facilitate the determination of whether an issuer of securities offered pursuant to a direct distribution or by a best efforts underwriting is complying with the prospectus delivery and updating requirements of the Securities Act and to provide additional information to investors and the Commission concerning direct distributions and best efforts offerings.

The proposed extension, which received more comment than any other proposal, was not favored by the commentators. One stated that the Commission has not shown that problems of non-compliance with prospectus delivery and updating requirements have arisen in connection with direct distributions and best efforts offerings to warrant an extension of the Form SR filing requirement to those offerings. Another stated that the extension of the filing requirement to such offerings as "shelf" registrations by seasoned issuers would result in minimal improvement in the quality of disclosure. The commentators generally, however, did not object to the use of Form SR to elicit information from first-time issuers regarding the progress of their offerings or their use of proceeds. Two commentators strongly supported the Form SR reporting requirement for regulating the new issuer market and for having a prophylactic effect on new issuers with respect to the use of proceeds.

The Commission believes that it is both necessary and appropriate for the protection of investors that first-time issuers provide the information required by amended Form SR. In its Report of Special Study of Securities Markets, the Commission recognized that there are special characteristics and risks associated with first-time offerings and that the disclosure process should be especially refined and adapted in connection with such offerings.[8] In the case of first-time offerings, the use by an issuer of the proceeds of the offering may well determine the nature of the business, so that the use of proceeds for a purpose other that than stated in the prospectus is apt to be of substantial importance to investors.

Furthermore, the Commission believes that it is not necessary to extend the Form SR filing requirement beyond its current application to first-time issuers. An extension of the filing requirement to direct distributions and best efforts offerings would substanitally increase the number of issuers required to file reports on Form SR. In view of the comments received, it is not clear at this time that the benefits that would be derived from such an extension outweigh the additional reporting burdens that would be imposed on issuers. Accordingly, the Commission is not amending Rule 463 to require issuers of securities sold pursuant to direct distributions or best effort underwritings to file reports on Form SR.

In the 1980 Release, the Commission also proposed to extend the Form SR filing requirement by eliminating the current exemption for any public utility company and public utility holding company required to file reports with any state or federal authority. At the same time, however, the Commission proposed to add three new exemptions for securities issued in connection with a business combination as described in Rule 145(a) (17 CFR 230.145(a)) under the Securities Act; pursuant to an employee benefit plan; and pursuant to a dividend reinvestment plan. In light of the degree of state regulation over public utility companies' uses of proceeds and the Commission's determination to limit the application of the Form SR filing requirement as much as practicable consistent with the public interest, the Commission is retaining the exemption from Rule 463 for public utility companies. Moreover, the Commission is adopting the three additional exemptions. The exemption for dividend reinvestment plans has been revised, however, to include interest reinvestment plans, which are substantially similar in nature. All exemptions are contained in paragraph (d) of the rule.

Finally, the Commission proposed to amend Rule 463 to clarify the application of the Form SR filing requirement to certain successor issuers. Although the one commentator expressing views on this issue supported the Commission's intent to clarify the matter, that commentator suggested changes to avoid any implication that a successor to a seasoned issuer (an issuer that has had one or more registered offerings and thus is not subject to the Form SR filing requirement) would be required to file reports on Form SR with respect to its first effective registration statement after the succession.

The Commission agrees that successor issuers to seasoned issuers should not be subject to the Form SR filing requirement. The proposed clarification of the term was intended to ensure that, where a first-time issuer that is required to file reports on Form SR is succeeded by another issuer before a final report has been filed, investors and the Commission should continue to receive meaningful information concerning the offering and use of proceeds with respect to the predecessor's effective registration statement. In such a situation, the successor issuer should assume responsibility to file any report(s) on Form SR that remain to be filed in connection with the registration statement when such reports are due.

To clarify the applicability of the Form SR filing requirement to an issuer that succeeds to another issuer while that other issuer is engaged in distributing its first offering or has not yet applied all of the proceeds of such offering, Rule 463(a) has been amended to require that a successor issuer file reports on Form SR with respect to the first effective registration statement of its predecessor issuer. Paragraph (b) of Rule 463 has been added to state that a successor issuer is required to file reports on Form SR only to the extent that filings on Form SR are required with respect to the first effective registration statement of the predecessor issuer.

A related addition was made in Rule 463(d) to make clear that an issuer that has succeeded to a seasoned issuer is not required to file reports on Form SR with respect to any effective registration statement subsequent to the succession. More specifically, Rule 463(d)(2) will exempt registration statements for securities to be offered by an issuer which, pursuant to a business combination described in Rule 145(a) under the Securities Act, has succeeded to another issuer that, prior to such business combination, had a registration statement declared effective under the Securities Act and, on the date of such business combination, was not subject to the requirements of paragraph (a) of Rule 463 to file reports on Form SR.

2. *Filing procedures.*

Currently, Rule 463 requires that Form SR be filed within 10 days after the end of the first three-month period following the effective date of the registration statement and within 10 days after the end of each successive six-month period, with a final report being filed within 10 days after "completion or termination of the offering and application of the proceeds therefrom."[9]

[8] Report of the Special Study of Securities Markets of the Securities and Exchange Commission, H.R. Doc. No. 95, 88th Cong., 1st Sess., Part 1, at 487–559 (1963).

[9] Form SR includes an instruction to the effect that a registrant shall continue to file reports on Form SR as long as the offering proceeds have only been temporarily invested and not applied to their ultimate use.

The 1980 Release proposed to amend Rule 463 to require an initial report on Form SR within 30 days after the date that is six months after the effective date of the registration statement (if the offering has not yet terminated), a report within 30 days after the termination of the offering ("termination" being defined to mean the date on which securities cease to be offered for sale) and within 30 days after the application of the proceeds, if that occurs subsequent to the termination of the offering ("application" being defined not to include the temporary investment of proceeds pending final application). The proposals were intended to minimize reporting burdens on issuers, particularly in view of the proposed extension of the Form SR filing requirement to direct distributions and best efforts underwritings. They were also intended to clarify the time at which reports on Form SR must be filed in the case of an offering that terminated prior to the application of proceeds and to clarify when the proceeds are deemed to be applied. In connection with these proposals, the 1980 Release specifically requested comment on whether the existing filing procedures should be retained.

Commentators did not object to the existing filing requirements nor did they express much support for the proposed amendments. One commentator specifically objected to reducing the number of reports required to be filed by first-time issuers stating that, although reduction of filing burdens is normally desirable, it need not be given priority in the case of first-time issuers, as there is need of special care in introducing such issuers into the responsibilities of the federal disclosure system.[10]

On the basis of the comments received, it does not appear that the filing requirement is overly burdensome on first time issuers. Moreover, as commentators indicated, the existing Form SR reporting system has worked well to make disclosure available to investors and the Commission and to prevent abuses in connection with first-time offerings. In view of this, and since the application of Rule 463 is not being expanded, the Commission has determined to retain the current filing procedures.

The Commission believes, however, that the existing filing procedures need certain clarification. Rule 463 requires an issuer to file a final report after the application of the proceeds received from the offering, in order that investors and the Commission may evaluate whether the proceeds were used for substantially the same purposes as stated in the prospectus. By requiring, however, that a final report on Form SR be filed "at completion or termination of the offering and application of the proceeds therefrom," Rule 463 may not make clear an issuer's continuing reporting obligation where its offering has terminated but the proceeds have not yet been finally applied. Similarly, an issuer may be confused under Rule 463 as to its final reporting obligation where its offering has terminated but there are no offering proceeds or the offering proceeds have already been applied.

To remedy these interpretive problems, the Commission is amending paragraph (a) of Rule 463 to require an issuer to file a final report on Form SR within 10 days after the application of proceeds or within 10 days after the termination of the offering, whichever is later. Thus, the date on which the offering terminated will be the trigger for the final filing requirement only in those situations where an offering terminates without any offering proceeds to be applied, or where the proceeds from the offering were applied before the offering terminated. Definitions of the terms "application" and "offering proceeds" are also included in paragraph (c) of Rule 463. The term "application" would not include the temporary investment of proceeds prior to their final application and the term "offering proceeds" would exclude any amounts received for the accounts of selling security holders. The term "termination" has not been included in Rule 463(c) since the term is generally understood to mean the date on which the securities cease to be offered for sale.[11]

The Commission has adopted one other amendment to the filing procedures that is designed to clarify those procedures. As proposed in the 1980 Release, Rule 463(a) is amended to require that copies of the report on Form SR be filed at the same office of the Commission where the registration statement to which the report relates was filed.

B. *Amendments to Form SR*

1. *Short-answer format.*

The 1980 Release proposed to change the current narrative format of Form SR to a standardized short-answer format. The proposal was intended to make it possible for data reported on Form SR to be digested by a data processing system, thereby enhancing the usefulness of Form SR to investors and the Commission. Commentators supported the proposal for the reasons that it would simplify reporting on Form SR and would minimize burdens on the Commission's staff without decreasing the level of regulatory oversight or significantly increasing burdens on issuers. To enhance the usefulness by investors and the Commission of the information provided on Form SR, Form SR is being amended from a narrative format to a standardized short-answer format.

2. *Instructions.*

In connection with the proposal to change Form SR to a standardized short-answer format, the 1980 Release included two proposed instructions dealing with the method of entering information on the form and the preparation of a report by a successor issuer. Designed to assist issuers in the preparation and filing of reports on Form SR, these instructions are adopted essentially as proposed.

To further assist issuers in the preparation of reports, three additional instructions have been adopted. The first directs issuers to refer to Rule 463 and, in addition, to Rules 405 (17 CFR 230.405) and 409 (17 CFR 230.409) under the Securities Act regarding definitions of terms used in the form and information unknown or not reasonably available, respectively. Just as Rules 405 and 409 provide guidance to issuers in the preparation of registration statements for the offering of securities under the Securities Act, they are appropriate sources of guidance for the preparation of reports on Form SR. The second instruction makes clear that there is no need for an issuer to report information, other than identifying information, in subsequent reports if the information has not changed from the previous Form SR filed. Finally, the third instruction would indicate where, and how many copies of, Form SR should be filed.

3. *Expenses and Use of Proceeds.*

The disclosure requirements concerning expenses and use of proceeds are central to Form SR, as the form's primary purpose is to enable investors and the Commission to track

[10] The Form SR filing procedures are substantially similar to those in effect in connection with Forms 242 (17 CFR 239.242) and 4(6) (17 CFR 239.246) under the Securities Act.

[11] It should be noted that, if the Commission adopts proposed Rule 462A, which would permit registration of securities to be sold on a delayed or continuous basis (i.e., a "shelf" registration) under certain conditions (Securities Act Release No. 6334 (August 6, 1981)[46 FR 42001]), the Form SR filing requirement would be applicable to any shelf registration that is the first effective registration statement of the issuer. If Rule 462A is adopted, as proposed or in a revised form, the Commission may consider at that time whether any of the filing requirements of Rule 463, particularly the requirement to file successive six-month reports, should be changed for shelf registrations.

the expenses and use of proceeds stated in the prospectus, through the offering, to the actual uses of the offering proceeds. Currently, the issuer provides this information through a reasonably itemized list of the uses made of its proceeds from the sale of securities, with certain expenses and purposes stated separately,[12] and payments to affiliates [13] stated separately from payments to others. Form SR also contains requirements to disclose the nature and terms of any temporary investments and to disclose the existence of, and reasons for, any difference between the actual uses of proceeds and the uses stated in the prospectus.

The 1980 Release proposed to amend the disclosure requirements to obtain more detailed information concerning expenses and the use of proceeds, and to include general partners of the issuer among the persons to whom payments must be separately stated. The proposal would also have required an explanation of only material differences between the use of proceeds described in the prospectus and the actual use of proceeds. The amendments to Form SR substantially retain the existing disclosure requirements, include general parnters of the issuer among those affiliates to whom payments must be separately stated, and include a materiality standard in disclosure of differences in the use of proceeds.

The change to a short-answer format of necessity requires an enumeration of expenses and uses of proceeds. The Commission is amending the requirements relating to disclosure of these items to contain enumerated categories, analogizing the new requirements to existing requirements to the extent practicable.[14] In the case of expenses, amended Form SR lists those expenses that are currently required to be stated separately. With respect to the uses of proceeds, the amended form enumerates those purposes that are normally contained in registration statements or are currently required by Form SR, such as construction of plant, building, or facilities, acquisition of other businesses, working capital, and temporary investments. Like the current form, amended Form SR instructs the issuer to enumerate each purpose for which 5 percent of its total offering proceeds or $50,000, whichever is less, has been used. Thus, an issuer reporting on amended Form SR would indicate the amounts used for the specific categories of expenses and uses of proceeds enumerated. The amended Form SR makes clear, however, that amounts should not be stated as having been applied to "working capital" where a more specific category applies.

In addition, the Commission is making two revisions in the disclosure requirements relating to expenses and use of proceeds designed to decrease reporting burdens without reducing the quality of reports on Form SR. First, the requirement that the issuer disclose any difference between the actual uses of proceeds and the uses described in the prospectus has been amended to require that the issuer indicate only whether the uses of proceeds represent a material change from those disclosed in the prospectus and, if so, to explain briefly the reasons for such material change.[15] This change was proposed in the 1980 Release and was not objected to by commentators. Second, an issuer may provide an estimate of any expense or amount applied to a particular purpose if the actual amount is not known.[16] Where an estimated, rather than an actual, amount is provided, the issuer is required to so indicate by checking a box on the form.[17]

4. *Other disclosure requirements.* Currently, Form SR requires, in addition to information on expenses and the use of proceeds, information concerning the names of the managing underwriters, if any, and information concerning the progress of the offering.[18] The Commission's proposal that these items be put into a short-answer format resulted in the proposed consolidation or separation of certain items. In addition, the 1980 Release proposed to revise the disclosure requirements of Form SR to require certain identifying information (e.g., the issuer's CUSIP number and Standard Industrial Classification number), market information (e.g., the market on which the securities are traded), and additional information concerning the progress of the offering (e.g., the total amount of securities sold, but not delivered, as of the most recent practicable date) currently not required by the Form.

Consistent with its determination to essentially retain the existing Form SR disclosure system and not to substantially change the applicability, filing procedures, or disclosure requirements as to expenses and use of proceeds, amended Form SR includes, for the most part, only the proposed short-answer disclosure items that are analogous to the existing disclosure items in Form SR. Certain requirements were revised to clarify their application in the case of a registration statement pursuant to which more than one class of securities is being offered or pursuant to which securities are being offered for the accounts of selling security holders as well as for the issuer.

The Commission is not amending Form SR to require additional identifying and market information with the exception of the effective date of, and file number assigned to, the registration statement and the issuer's CUSIP number, if such a number has been assigned. In addition, Form SR is not being amended to require disclosure of the amount of securities sold, but not delivered, as of the most recent practicable date. Identifying and market information can be obtained, if necessary, from various sources without substantial difficulty. Information concerning the amount of securities sold but not delivered, while possibly helpful to the Commission in monitoring first-time filings, might not be readily available to issuers without incurring undue expense. Accordingly, the Commission does not believe that it is necessary to impose additional burdens on issuers to provide such information.

II. Statutory Authority

These amendments are being adopted pursuant to Section 19(a) of the Securities Act, 15 U.S.C. 77s(a).

[12] Form SR requires separate disclosure of separate payments to directors and officers of the issuer and their associates, persons owning 10 percent or more of any class of equity securities of the registrant and affiliates of the registrant.

[13] Specifically, Form SR requires separate disclosure of underwriting discounts and commissions, finders' fees, expenses paid to or for the underwriters, other expenses paid to date, and other purposes for which the lesser of $50,000 or 5% of the total proceeds has been used.

[14] In this regard, the Commission is not revising the dislosure items, as proposed in the 1980 Release, to require substantially more detailed information regarding expenses and the use of proceeds than that currently required by Form SR. Based on commentators' objections to these proposals, the Commission believes that an enumeration more detailed than that provided in the prospectus is not necessary.

[15] It should be noted that the Commission recently proposed to modify the definition of the term "material" contained in Rule 405 to bring that definition into conformance with the Supreme Court's decision in *TSC Industries, Inc. v. Northway, Inc.*, 426 U.S. 438 (1976) and with subsequent case law. Securities Act Release No. 6333 (August 6, 1981) [46 FR 41971].

[16] In this regard, the appropriate standard of knowledge is whether the expense or amount applied to a particular purpose is known to the issuer, not whether it is known to the individual signing the report.

[17] This requirement is derived from Forms 242 and 4(6).

[18] Specifically, Form SR requires information concerning the date the offering commenced or, if it has not commenced, the reasons why; the date the offering was completed and, if the offering terminated prior to completion, the reasons why; the amount of securities registered, sold and still being offered; and the total amount received from the public from the sale of securities for the account of the registrant.

III. Text of Rule and Form

In accordance with the foregoing, the Commission is amending Title 17, Chapter II, of the Code of Federal Regulations as follows:

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933; REGULATION C: REGISTRATION

1. Section 230.463 is revised to read as follows:

§ 230.463 Report of offering of securities and use of proceeds therefrom.

(a) Except as hereinafter provided in this section, within 10 days after the end of the first three-month period following the effective date of the first registration statement filed under the Act by an issuer, and within 10 days after the end of each six-month period following such three-month period, the issuer or successor issuer shall file with the Commission four copies of a report on Form SR (§ 239.61 of this chapter) containing the information required by that form. A final report shall be filed within 10 days after the later of (1) the application of the offering proceeds or (2) the termination of the offering. A report on Form SR shall be filed at the same office of the Commission where the registration statement to which it relates was filed.

(b) A successor issuer shall comply with paragraph (a) of this section only to the extent that filings on Form SR are required with respect to the first effective registration statement of the predecessor issuer.

(c) For purposes of this section—

(1) The term "offering proceeds" shall not include any amount(s) received for the account(s) of any selling security holder(s).

(2) The term "application" shall not include the temporary investment of proceeds by the issuer pending final application.

(d) This section shall not apply to any effective registration statement for securities to be issued:

(1) In a business combination described in Rule 145(a) (§ 230.145(a));

(2) By an issuer which pursuant to a business combination described in Rule 145(a) has succeeded to another issuer that prior to such business combination had a registration statement become effective under the Act and on the date of such business combination was not subject to paragraph (a) of this section;

(3) Pursuant to an employee benefit plan;

(4) Pursuant to a dividend or interest reinvestment plan;

(5) As American depository receipts for foreign securities;

(6) By any investment company registered under the Investment Company Act of 1940; or

(7) By any public utility company or public utility holding company required to file reports with any State or Federal authority.

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

Subpart A—Forms for Registration Statements

2. By revising § 239.61 to read as follows:

§ 239.61 Form SR, Report of sales of securities and use of proceeds therefrom.

This form shall be used for filing a report of sales of securities in use of proceeds pursuant to § 230.463 of this chapter.

BILLING CODE 8010-01-M

U. S. SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

REPORT OF SALES OF SECURITIES AND USE OF PROCEEDS THEREFROM

For period ending Mo Day Year

Indicate whether the report is

an initial report ☐, an amendment ☐, or a final report ☐.

If the report is an amendment, indicate the number of such amendment ☐.

GENERAL INSTRUCTIONS:

A. The report shall be filed in accordance with the provisions of Rule 463 (17 CFR 239.463). The provisions of Rule 405 (17 CFR 230.405) regarding definitions of terms and Rule 409 (17 CFR 239.409) regarding information unknown or not reasonably available are applicable to the report.

B. Answer each item in the box(es) or space provided. If additional space is required for any response, continue the response on the attached sheet. Where the number of boxes provided exceeds the number required for the response, enter zero(es) in any unnecessary box(es) to the left of the response. For example, if the date August 1, 1981 is to be entered into the boxes provided, the entry should appear as Mo 0/8 Day 0/1 Year 8/1

C. If the report is being filed by a successor issuer, answer each item with respect to the successor issuer.

D. If the issuer is required to file any report(s) on this form subsequent to its initial filing thereon, each subsequent filing shall be deemed to be an amendment to the initial filing. Do not report in any amendment on this form any response to Items 3-12 unless the response reported on the most recent prior filing has changed.

E. No fee is required to be paid in connection with the filing of the report.

F. File four copies of the report at the office of the Commission where the registration statement was filed. At least one copy shall be manually signed; the other three copies may bear typed or printed signatures.

1. (a) State the name of the issuer or successor issuer filing the report.

(b) If a successor issuer is filing the report with respect to the registration statement of its predecessor, state the name of such predecessor issuer.

2. (a) Indicate the effective date of the registration statement for which this form is filed. Mo Day Yr

(b) Provide the SEC file number assigned to the registration statement. 2 -

(c) If the issuer has been assigned a CUSIP number, specify the first six (6) digits.

3. (a) Has the offering commenced? Yes No

(b) If yes, indicate the date the offering commenced.

Mo Day Year

If no, explain briefly. . . . . .

4. Did the offering terminate before any securities were sold? Yes ☐ No ☐

If yes, explain briefly . . . . . .

. . . . . .

. . . . . .

Note: If the offering terminated before any securities were sold, see Rule 477 under Regulation C (17 CFR 239.477) regarding withdrawal of the registration statement

Instruction: If the answer to Item 4 is "yes," do not answer Items 5-12.

5. Did the offering terminate prior to the sale of all securities registered? Yes ☐ No ☐

If yes, explain briefly . . . . . .

. . . . . .

. . . . . .

6. Furnish the name(s) of the managing underwriters, if any.

(01)
(02)
(03)
(04)

7. (a) Indicate the title and code of each class of securities registered and, where a class of convertible securities is being registered, indicate the title and code of any class of securities into which such securities may be converted.

Title of security	Code
(01)	
(02)	
(03)	
(04)	

Instruction: Select the appropriate code for each class of securities registered. Debt — DE; Convertible Debt — CD; Equity -EQ; Limited Partnership Interest — LP; Other (e.g., investment contracts, warrants, rights, and options) — OT.

(b) Describe briefly any class of securities categorized as "other." . . . . . .

. . . . . .

8. Indicate on the following table the amount and aggregate offering price of securities registered and sold to date for the account of the issuer and for the account(s) of any selling security holder(s).

	For the account of the issuer					For the account(s) of any selling security holder(s)			
Title of security	Amount registered	Aggregate offering price of amount registered	Amount sold	Aggregate offering price of amount sold	Amount registered	Aggregate offering price of amount registered	Amount sold	Aggregate offering price of amount sold
(01)								
(02)								
(03)								
(04)								
(05) Total								

Instructions: 1. List each class of securities registered except any class of securities into which a class of convertible securities registered may be converted without additional payment to the issuer. Match any class listed with the line on which it was listed in Item 7(a) (e.g., the class listed on line (01) of the table should be the same class as listed on line (01) of Item 7(a)). 2. Compute all amounts from the effective date of the registration statement to the ending date of the reporting period for this report. 3. Round all dollar amounts to the nearest dollar.

9. State, if known, or furnish a reasonable estimate of, the amount of expenses incurred for the issuer's account in connection with the issuance and distribution of the securities registered for each category listed below. Place an "X" in the box to the left of any amount given that is an estimate.

	Direct or indirect payments to directors, officers, general partners of the issuer or their associates; to persons owning ten percent or more of any class of equity securities of the issuer; and to affiliates of the issuer (A)	Direct or indirect payments to others (B)
(01) Underwriting discounts and commissions	☐ $	☐ $
(02) Finders' Fees	☐	☐
(03) Expenses paid to or for underwriters	☐	☐
(04) Other expenses	☐	☐
(05) Total Expenses	☐ $	☐ $

Instruction: Compute all amounts from the effective date of the registration statement to the ending date of the reporting period for this report. 2. Round all amounts to the nearest dollar.

10. Indicate the net offering proceeds to the issuer after the total expenses in Item 9 above $

11. State, if known, or furnish a reasonable estimate of, the amount of net offering proceeds to the issuer used for each of the purposes listed below. Do not include any amount in "working capital" to which a more specific category is applicable. Place an "X" in the box to the left

of any amount given that is an estimate.

	(A) Direct or indirect payments to directors, officers, general partners of the issuer or their associates; to persons owning ten percent or more of any class of equity securities of the issuer; and to affiliates of the issuer	(B) Direct or indirect payments to others
(01) Construction of plant, building and facilities	$	$
(02) Purchase and installation of machinery and equipment		
(03) Purchase of real estate		
(04) Acquisition of other businesses		
(05) Repayment of indebtedness		
(06) Working capital		

Temporary investment (specify)

(07)		
(08)		
(09)		
(10)		

Other purposes (specify)

(11)		
(12)		
(13)		
(14)		
(15)		
(16)		

BILLING CODE 8010-01-C

Instructions: 1. Specify under "other purposes" any purpose for which 5 percent of the issuer's total offering proceeds or $50,000, whichever is less, has been used. 2. Compute all amounts from the effective date of the registration statement to the ending date of the reporting period for this report. report. 3. Round all amounts to the nearest dollar.

12. Do the use(s) of proceeds in Item 11 represent a material change in the use(s) of proceeds described in the prospectus? Yes ☐ No ☐

If yes, explain briefly . . . . . .

SIGNATURE

Pursuant to the requirements of Rule 463 under the Securities Act of 1933, _____ has caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

_____ Issuer

_____ (Date)

By _____ (Signature)

Instruction: The report shall be signed by an executive officer, general partner or counsel of the issuer or by any other duly authorized person The name and any title of the person who signs the report shall be typed or printed beneath his/her signature

ATTENTION: Intentional misstatements or omissions of facts constitute Federal criminal violations (See 18 U.S.C. 1001).

Form SR Continuation Sheet

Item of Form; Response

* * * * *

[Sec. 19(a), 48 Stat. 85; Sec. 209, 48 Stat. 908; 15 U.S.C. 77s(a)]

George A. Fitzsimmons,

Secretary.

September 21, 1981.

[FR Doc. 81-28559 Filed 9-30-81; 8:45 am]

BILLING CODE 8010-01-M

---

17 CFR Part 241

[Release No. 34-18114]

Interpretive Release on Rules Applicable to Insider Reporting and Trading

AGENCY: Securities and Exchange Commission.

ACTION: Publication of staff interpretations.

SUMMARY: The Commission has authorized the issuance of this release setting forth the views of its Division of Corporation Finance on various interpretive questions regarding the rules promulgated under Sections 16(a) and 16(b) of the Securities Exchange Act of 1934. These views are being published to resolve certain recurring issues that arise under the rules and to establish uniform interpretations for the benefit of those persons subject to their requirements.

FOR FURTHER INFORMATION CONTACT: Persons with specific questions concerning the subject matter of this release should contact Michael R. Kargula or William E. Toomey, (202) 272-2573, Office of Chief Counsel, Division of Corporation Finance, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: Section 16 of the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. 78a et seq.] was designed to provide the public with information on insider [1] securities transactions and holdings and to deter insiders from profiting on short term trading transactions in the securities of their corporations on the basis of undisclosed information. The section was enacted primarily in response to abuses, described in detail in the legislative history of the Exchange Act,[2] where insiders with advance knowledge of facts which would produce a rise or fall in the market value of securities of their companies bought and sold such securities as the circumstances warranted to their personal advantage. On occasion, insiders actually manipulated the market price of their stock by causing a corporation to follow financial policies calculated to produce sudden changes in market prices in order to obtain short swing profits. To combat these practices, Congress enacted Section 16 to require reports of securities transactions by insiders and to provide for the recovery of any short swing profits.[3]

Congress believed prompt publicity to be a potent weapon in the effort to curb the abuse of inside information. Thus, Section 16(a) requires insiders to file public reports with respect to transactions in the equity securities of their corporations. This publicity was intended to encourage voluntary maintenance of proper fiduciary standards by those in control of corporations and at the same time give public investors information as to purchases and sales by insiders, which might in turn indicate their private opinions as to the prospects of the company.[4] In addition, the reports may reveal insider purchases and sales of securities which are subject to the profit recovery provisions of Section 16(b) of the Exchange Act. Section 16(b) provides that any profit realized by an insider as a result of a purchase and sale or sale and purchase of an equity security of the insider's company made within a six-month period shall inure to the company.[5] The intent of this section is to deprive officers, directors and substantial stockholders of the incentive to utilize their positions to trade in the securities of their companies on the basis of inside information.

The Commission has general rulemaking power under the Exchange Act to interpret and define statutory provisions and to exempt securities from any provision of the Act.[6] In addition, it has specific power under Section 16(b) to exempt from that subsection "any transaction or transactions which the Commission by rules and regulations may exempt as not comprehended within the purpose of this subsection." Since 1934, the Commission has exercised this authority by adopting a number of rules designed to implement and administer the insider trading and reporting provisions of Section 16. During this period, the staff has responded to a great many requests for interpretations of these rules as applied to particular facts.

In an effort to provide guidance to the public, and as part of a continuing program to clarify and simplify the application of the various rules administered by the Division, a number of these interpretations have been selected for publication in this release. The interpretations selected are not exhaustive. Rather, they represent fundamental, recurring questions which arise under the rules. Most of the illustrations used in the release represent actual inquiries received by the staff. While the Commission has authorized the issuance of this release, the views expressed are those of its Division of Corporation Finance.

---

[1] By its terms, Section 16 applies to every person who is directly or indirectly the beneficial owner of more than 10 percent of any class of equity security of an issuer registered pursuant to Section 12 of the Exchange Act, and to any director or officer of the issuer of such security. Persons who are subject to Section 16 are often termed "statutory insiders" or, simply, "insiders." This release does not treat questions raised by the trading activities of persons who may not be within the statutory definition of insider, but who nonetheless acquire non-public information about a particular company and utilize it to enhance their trading in the company's securities. See *SEC* v. *Texas Gulf Sulphur Co.*, 401 F.2d 833 (2d Cir. 1968), *cert. denied*, 394 U.S. 976 (1969).

[2] For example, as observed by the Senate Committee which considered the bill:

"Among the most vicious practices unearthed at the hearings before the subcommittee was the flagrant betrayal of their fiduciary duties by directors and officers of corporations who used their positions of trust and the confidential information which came to them in such positions, to aid them in their market activities. Closely allied to this type of abuse was the unscrupulous employment of inside information by large stockholders who, while not directors and officers, exercised sufficient control over the destinies of their companies to enable them to acquire and profit by information not available to others." Stock Exchange Practices, Report of the Committee on Banking and Currency, S. Rep. No. 1455, 73rd Cong., 2d Sess. p. 55 (1934). The section was "aimed at the general evil of officers and directors rigging their stock up and down squeezing out their own stockholders." Stock Exchange Practices, Report of the Committee on Banking and Currency, S. Rep. No. 1455, 73rd Cong., 1st Sess., Part 15, p. 6559 (1934).

[3] Substantially identical provisions appear as Sections 17(a) and 17(b) of the Pacific Utility Holding Company Act of 1935 [15 U.S.C. 79a et seq.], and the reporting requirements of Section 16(a) are adapted in Section 30(f) of the Investment Company Act of 1940 [15 U.S.C. 81a et seq.]. The exemptive rules under Section 16 are fully applicable to these parallel statutes, as are the illustrations herein.

[4] Committee on Interstate and Foreign Commerce, H. Rep. No. 1383, 73rd Cong., 2d Sess., pp. 13 and 24 (1934).

[5] Section 16(b) provides that the profits obtained by an insider from transactions completed within six months in equity securities of the insider's company may be recovered by the corporation or by any security holder suing on behalf of the corporation.

[6] See, e.g., Sections 3(a)(12), 3(b), and 23(a) of the Exchange Act. The Commission also has authority under Section 12(h) of the Exchange Act to exempt any officer, director or beneficial owner of securities from the provisions of Section 16, so long as such action is not inconsistent with the public interest or the protection of investors. This particular exemptive power has rarely been used.

Although many of the issues dealt with in this release have previously been addressed by the staff in public interpretive letters, the release clarifies and, in some instances, revises certain positions expressed in those letters. Any previous staff interpretations which are contrary to those set forth in this release should be regarded as superseded by this release. Similarly, the views expressed in previous interpretive letters on issues which are not addressed by this release, may still be considered to represent the staff's position on the questions raised. To the extent that particular facts and circumstances are substantially similar to those set forth in this release, interested persons may rely on the views expressed herein and need not seek individual interpretive advice.

The Commission is hopeful that the issuance of this release will reduce the need for members of the public to request interpretive advice from the staff regarding the rules in question. It should be noted, however, that the staff is considering possible amendments to the rules promulgated under Sections 16(a) and 16(b), particularly Rule 16b-3, and invites interested persons who wish to express an opinion on the rules, or on the interpretations contained in this release to submit their views in writing.

The staff routinely responds to interpretive requests concerning the rules adopted under both Sections 16(a) and 16(b). However, the staff declines to take no-action or interpretive positions on questions involving the scope of liability under Section 16(b). Whether liability under Section 16(b) will result from particular transactions can only be determined on the basis of the facts in each case in an appropriate action brought by the issuer or a security holder.[7]

This release considers first the reporting rules under Section 16(a) with a prefatory discussion of concepts and definitions, some of which are essential to an understanding of the Section 16(b) rules which follow. The rules are treated simply in their numerical order, and no attempt has been made to group them by function. A table of contents follows.

17 CFR Part 241 is amended by adding this release thereto.

Table of Contents

I. Section 16(a)—The Reporting Requirement
A. Definition of Officer
B. Definition of Director
C. Definition of Beneficial Ownership
D. Definition of 10 Percent Beneficial Owner
E. Definition of Equity Security
F. Definition of Exempted Security
G. Section 12
II. Interpretations Relating to the Commission's Rules Under Section 16(a)
A. Rule 16a-1: Filing of Statements
B. Rule 16a-2: Ownership of More Than 10 Percent of an Equity Security
C. Rule 16a-3: Disclaimer of Beneficial Ownership
D. Rule 16a-4: Exemption From Sections 16(a) and 16(b) of the Act
E. Rule 16a-5: Exemption From Section 16 of Securities Purchased or Sold by Odd-Lot Dealers
F. Rule 16a-6: Certain Transactions Subject to Section 16(a)
G. Rule 16a-7: Statements Filed Under More Than One Act
H. Rule 16a-8: Ownership of Securities Held in Trust
I. Rule 16a-9: Exemption for Small Transactions
J. Rule 16a-10: Exemption From Section 16(b) of Transactions Which Need Not Be Reported Under Section 16(a)
K. Rule 16a-11: Exemption for Acquisitions Under Dividend Reinvestment Plans
III. Section 16(b)—The Liability Provision
A. *Statutory Concept*
B. *Purchase and Sale*
IV. Interpretations Relating to the Commission's Rules Under Section 16(b)
A. Rule 16b-1: Exemption From Section 16(b) of Certain Transactions by Registered Investment Companies
B. Rule 16b-2: Exemption From Section 16(b) of Certain Transactions Effected in Connection With a Distribution
C. Rule 16b-3: Exemption From Section 16(b) of Acquisitions of Shares of Stock and Stock Options and Stock Appreciation Rights Under Certain Stock Incentive, Stock Option or Similar Plans
1. Introduction
2. Approval by Security Holders
3. Disinterested Administrators
4. Plan Limitations
5. Definition of Plan
6. Cash Settlements of Stock Appreciation Rights
D. Rule 16b-4: Exemption From Section 16(b) of Certain Transactions by Public Utility Holding Companies and Subsidiaries Thereof
E. Rule 16b-5: Exemption From Section 16(b) of Equity Securities Received in Certain Transactions of Redemption
F. Rule 16b-6: Exemption of Long Term Profits Incident to Sales Within Six Months of the Exercise of an Option
G. Rule 16b-7: Exemption From Section 16(b) of Certain Acquisitions and Dispositions of Securities Pursuant to Mergers or Consolidations
H. Rule 16b-8: Exemption From Section 16(b) of Transactions Involving the Deposit or Withdrawal of Equity Securities Under a Voting Trust or Deposit Agreement
I. Rule 16b-9: Exemption From Section 16(b) of Transactions Involving the Conversion of Equity Securities
J. Rule 16b-10: Exemption From Section 16(b) of Transactions of Exchange by Railroads Incident to Unifications, Mergers and Acquisitions of Control Approved by the Interstate Commerce Commission
K. Rule 16b-11: Exemption From Section 16(b) of Certain Transactions Involving the Sale of Subscription Rights

I. Section 16(a)—The Reporting Requirement

Section 16(a) of the Exchange Act provides that every person[8] who is directly or indirectly the beneficial owner of more than 10 percent of any class of equity security (other than an exempted security) registered pursuant to Section 12,[9] or who is an officer or director of the issuer of such security, shall file with the Commission an initial report disclosing the amount of all equity securities of such issuer of which he is the beneficial owner, and a subsequent transaction report within 10 days after the close of each calendar month in which there has been any change in his holdings.[10] If the registered security is also listed on a national securities exchange, such ownership reports must also be filed with the exchange.

A. Definition of Officer

The term "officer" is defined by Rule 3b-2 [17 CFR 240.3b-2] under the Exchange Act to mean a president, vice-president, treasurer, secretary, comptroller, and any other person who performs for an issuer, whether incorporated or unincorporated, functions corresponding to those performed by the foregoing officers.[11]

[7] Letters re *Chromalloy American Corporation*, dated May 5 and May 15, 1980.

[8] The term "person" is defined in Section 3(a)(9) of the Exchange Act as meaning "a natural person, company, government, or political subdivision, agency, or instrumentality of a government."

[9] Section 12 of the Exchange Act provides for the registration of securities to be listed on a national securities exchange, and requires the registration of equity securities of companies having more than $1,000,000 in assets and a class of equity security held by over 500 persons. For convenient reference, and only for purposes of this release, a company with a class of equity securities registered pursuant to Section 12 of the Exchange Act will be termed a "registered company." Section 16, of course, does not apply to unregistered companies, including those which file periodic reports with the Commission pursuant to Section 15(d) of the Exchange Act. Section 16 becomes operative only after registration under Section 12 has become effective.

[10] Initial reports of ownership are filed on Form 3 [17 CFR 249.103] within ten days after the date a person acquires insider status. Reports of subsequent transactions and holdings are made on Form 4 [17 CFR 249.104].

[11] Although similar in thrust, this definition is somewhat narrower than the definition of "executive officer" found in Items 3 and 4 of Regulation S-K [17 CFR 229.20.3 and .4, respectively]. It should also be noted that, in connection with the Commission's sunset review of existing rules and regulations, Rule 3b-2 is proposed

Continued

The determination whether a particular individual is an officer hinges on an examination of all the relevant facts. Generally, it is not difficult to identify a company's principal officers by their traditional titles and functions. However, an employee who does not possess a title may nevertheless be an officer because of the significant functions he performs; similarly, an employee who holds a title may nonetheless not be an officer because his functions and duties are insignificant, despite his formal position. The staff generally takes the view that anyone holding an appropriate title is an officer for purposes of Section 16(a). The staff, however, no longer expresses opinions on questions of officer status. These questions usually involve difficult assessments of fact which can best be made by the issuer and its counsel. For the same reason, the staff will not express a view as to whether a particular individual is in fact a director. Nevertheless, as an indication of staff analysis in this area, the following three hypotheticals are set forth.

(1) *Question:* Would the following persons be deemed to be "officers" for purposes of Section 16(a):

(a) An assistant treasurer, assistant vice president or assistant comptroller?

(b) The president of a wholly-owned subsidiary?

(c) A vice president who has no significant duties, and who does not participate in the management of the company?

Answer: The persons named in (a) may be officers if they regularly perform a substantial part of the duties of the officers they assist. An assistant who performs only some of the duties of his superior would not normally be considered an officer, so long as those functions are performed under the supervision of his chief. Finally, assistants would not be considered officers if they regularly perform only routine administrative duties.[12]

The president referred to in (b) would not ordinarily be considered an officer under Section 16(a) since he is not an officer of the issuer.[13] If the vice president described in (c) is vice president in name only, and has no access to inside information, he is not an officer for purposes of Section 16(a).[14]

B. Definition of Director

Section 3(a)(7) of the Exchange Act defines the term "director" to mean any director of a corporation or any person performing similar functions with respect to an organization whether incorporated or unincorporated. As with the application of the term "officer," the determination whether a particular person is a director sometimes involves the evaluation of unusual or difficult facts. The staff will not express a view as to whether a particular person may be deemed to be a director.

(2) *Question:* Is a person who is an honorary director of an issuer, but does not attend board meetings and is inactive in the affairs of the issuer, considered to be a director for Section 16(a) purposes?

Answer: If an honorary director does not take part in formulating and deciding policy issues, and does not have access to inside information, he is not a director under Section 16(a).[15]

(3) *Question:* Can the term "director" include a person who designates another to be a director on a theory of deputization?[16]

Answer: Yes. A person who has the power, by agreement or otherwise, to name another to be a corporate director is likely to have the same sort of access to inside information by reason of that relationship as any other insider and should be considered a director for purposes of Section 16(a) of the Exchange Act.

Illustration: Company X lends Company Y a substantial amount of money in order for Company Y to complete its plans for expansion. One of the express terms of the loan agreement permits Company X to designate a person to serve on the board of directors of Company Y. Company X designates its vice president to sit on Y's Board.

Interpretation: Company X may be considered a director for purposes of Section 16(a).

C. *Definition of Beneficial Ownership*

The Commission has never specifically defined the term "beneficial ownership" for purposes of Section 16(a) of the Exchange Act. However, some of the generally accepted indicia of beneficial ownership include: (1) the right to vote or control the voting of the securities; (2) the right to transfer the securities or control their transfer; (3) the right to receive income from the securities or control the disposition of such income; and (4) the right to receive or control the disposition of the proceeds in liquidation. The staff has interpreted the term broadly to implement fully the disclosure function of Section 16(a).[17]

(4) *Question:* The spouse and minor children of a director of a registered company hold securities of that company in their own name. The director owns additional securities of the company which are held of record by a broker. Can the director be considered the beneficial owner of all of these securities?

Answer: Yes. Absent countervailing facts, it is expected that securities held by a spouse, minor children and other relatives who share the same home as the insider will be reported as being beneficially owned by the insider since such relationships ordinarily result in the insider obtaining benefits substantially equivalent to ownership.[18] The sharing of economic benefits among the members of the family group, as well as the potential influence of the reporting person over securities held by family members, are factors which tend to support this view. Securities held by a broker in street name, of course, are generally beneficially owned by the broker's principal. Accordingly, Section

---

to be amended to include an issuer's "principal financial officer" and "principal accounting officer" within the definitional scope of the term "officer." Such persons were previously covered by the rule although not specifically mentioned. See Securities Act Release No. 6333 (August 6, 1981) [46 FR 41971].

[12] Securities Exchange Act Release No. 2687 (November 15, 1940) [5 FR 4501].

[13] Letters re *CMI Investment Corp.* dated June 11, 1974 and *Associated Bank & Services, Incorporated* dated June 23, 1971.

[14] See *Merrill Lynch, Pierce, Fenner & Smith, Inc.* v. *Livingston*, 566 F.2d 1119 (9th Cir. 1978).

[15] While access to inside information is a key factor in determining insider status under Section 16, the staff has taken the view that the term "director," as defined in Section 303(5) of the Trust Indenture Act of 1939, does not include emeritus, honorary or advisory directors who are appointed rather than elected and who serve merely as advisors without any other customary responsibilities or duties of directors. See letter re *Wells Fargo Bank* dated June 22, 1981.

[16] The existence of deputization if a factual question determined on a case-by-case basis. The United States Court of Appeals for the Second Circuit has held that a defendant corporation was in fact liable as a director under a deputization theory. *Feder v. Martin Marietta Corp.*, 403 F. 2d 260 (2d Cir. 1969), *cert. denied*, 396 U.S. 1036 (1970). For a discussion of the factual elements that may establish deputization, see Wagner, *Deputization under Section 16(b): The Implications of Federal v. Martin Marietta Corporation*, 78 Yale L. J. 1151 (1969).

[17] Rule 13d-3 [17 CFR 240.13d-3] under the Exchange Act sets out a very detailed definition of beneficial ownership for purposes of the reporting requirements under Section 13(d) and the Commission's tender offer rules. While the concepts of beneficial ownership under Section 16(a) and under Rule 13d-3 have much in common, the former stresses the economic benefit to be derived from the securities and the latter emphasizes the ability to control or influence the voting or disposition of the securities. As a result, different determinations of beneficial ownership under the section and rule are possible.

[18] Securities Exchange Act Release No. 7824 (February 14, 1966) [31 FR 3175]. A person may also be regarded as the beneficial owner of securities held in the name of a spouse, minor children or other person, even though he does not obtain benefits substantially equivalent to ownership, if he can vest or revest title in himself at once or at some future time.

16(a) would require the director to report the holdings of the spouse and minor children, and other relatives who share the home, as well as any securities held of record by a broker, bank or other nominee for the director's account.[19] It should be noted, however, that a reporting person may disclaim that a report filed is an admission of beneficial ownership with respect to any particular security. See Rule 16a-3 [17 CFR 240.16a-3].

(5) *Question:* Mr. Smith is a director of a registered company and has recently become president of a non-profit foundation which is operated exclusively for charitable purposes and is qualified under Section 501(c)(3) of the Internal Revenue Code. The foundation owns approximately 3 pecent of the outstanding common stock of the registered company. Should Mr. Smith include the holdings and transactions of the foundation in the company's stock on his own ownership report?

Answer: The determination of beneficial ownership of securities is dependent upon the relevant facts and circumstances in a particular situation. Additional facts which should be considered are: (1) whether Mr. Smith has voting power, investment power, or other indications of control with respect to the securities held by the foundation; and (2) whether he has any other interest in the foundation itself, or transactions entered into by the foundation. If the answers to these questions are affirmative, Mr. Smith may be considered the beneficial owner of the securities held by the foundation.[20]

(6) *Question:* Must a member of a partnership take into account the entire holdings of the partnership in determining whether he is a 10 percent beneficial owner of a class of equity security of a registered company?

Answer: No. A partner is required to include only his own economic interest in the partnership holdings. Thus only his pro rata interest in the securities held by the partnership must be added to his own personal beneficial interest.[21]

Of course, where a partnership holds for its own account more than 10 percent of a class of equity security of a registered company, it should file reports of such holdings in accordance with the requirements of Rule 16a-1, whether or not individual reports are filed by the partners, since the partnership would be the direct beneficial owner of more than 10 percent.[22]

Illustration: Three individuals form a general partnership in which each has an equal interest. The partnership holds 29 percent of a class of registered equity security. The partners do not hold any other securities of that class.

Interpretation: Since each partner's pro rata interest in the securities is less than 10 percent of the class, the individual partners are not subject to Section 16(a). Of course, the partnership itself would be subject to the reporting requirements.

(7) *Question:* If an officer or director of a registered company were a member of a partnership, would that relationship automatically subject the partnership to the requirements of Section 16(a)?

Answer: No. However, the officer or director-partner should report his indirect beneficial ownership of all partnership holdings in the securities of the registered company. If the partnership ever owned more than 10 percent of a class of registered equity security of the company, it would be required to report independently.

(8) *Question:* Should a director of a registered company, who is also a control person of a closely-held company, file ownership reports with respect to transactions by the latter company in the securities of the registered company?

Answer: Yes. As a control person of the closely-held company, the insider is deemed to be the beneficial owner of all securities held by that company. Since all of the indicia of beneficial ownership are present, the insider should report the closely-held company transactions, even if that company itself files separate reports as a 10 percent beneficial owner.[23]

(9) *Question:* Would the answer to Question (8) be different if the company holding the registered security were a public company which the insider did not control?

Answer: Yes. The basic question is whether the insider may be deemed to be the beneficial owner of the securities held by the other company. Normally, an insider who is a shareholder of a publicly held company would not be obligated to report his interest in that company's transactions in the registered security, since he would not usually be considered to be, even indirectly, the beneficial owner of that security.

(10) *Question:* An insider is the trustee of an irrevocable trust. Neither the insider nor any member of his or her family is the beneficiary of the trust. Must the insider aggregate the shares held in trust with his personal holdings for purposes of Section 16(a)?[24]

Answer: No. The trustee of an irrevocable trust or a trust revocable at the discretion of another person,[25] who has no interest in the income or corpus of the trust, is not the benefical owner of any securities held in the trust.

Illustration: A member of the board of directors of a registered company is also the trustee of 3 trusts established solely for the benefit of the minor children of the company's president. The trusts hold less than 4 percent of the outstanding common stock of the company. The director, as an independent trustee, has the power to manage the assets of the trusts, including the power to make acquisitions and dispositions and to vote the securities held by the trusts.

Interpretation: The shares of common stock of the registered company held by the trusts would not be deemed beneficially owned by the director trustee.[26]

(11) *Question:* If the facts of question (10) were modified so that the trustee had a vested interest in the income or corpus of the trusts, would the answer be the same?

Answer: No. If the trustee has a vested interest in the income or corpus of the trusts, attribution would be required, i.e., the trustee should report the holdings and transactions of the trusts as his own.

(12) *Question:* A person is trustee and sole beneficiary of a trust which owns less than 10 percent of a class of registered equity security. In his personal capacity, he owns an amount of the same security which, if added to the holdings of the trust, would exceed 10 percent of the class outstanding. Must this individual file Section 16(a) reports?

Answer: Yes. Although the trustee owns less then 10 percent of the

[19] *Whiting v. The Dow Chemical Co.*, 523 F. 2d 680 (2d Cir. 1975).

[20] Letter to *Dean L. Buntrock and Elizabeth Buntrock Foundation* dated September 24, 1980.

[21] Opinion of General Counsel, Securities Exchange Act Release No. 1965 (December 21, 1938) [11 FR 10971].

[22] The names of the individual members of the partnership do not have to be set forth when the partnership itself files a Section 16(a) report.

[23] The insider may, if he so desires, indicate in a footnote the extent of his individual interest in the transaction.

[24] Questions (10) through (14), inclusive, should also be read in conjunction with the discussion of Rule 16a-8 [17 CFR 240.16a-8], *infra*.

[25] If the trust is subject to revocation, the person who possesses the power to revoke the trust for his own benefit would appear to be the beneficial owner of the securities held by the trust, and, if an insider, such person would have to report the trust shares as his own. It should be noted, however, that if the trust holds more than 10 percent of a registered equity security, the fact that a power of revocation exists would not relieve the trustee from his duty to file reports concerning transactions of the trust in that security. See Rule 16a-8(c).

[26] Letter re *Chilton Corporation* dated May 15, 1973.

securities in this personal capacity, he would be deemed to be the beneficial owner of the trust securities.

(13) *Question:* Must a report be filed to reflect a transaction whereby an insider, as settlor, establishes a trust with the settlor as the sole beneficiary and in whose administration the settlor has a voice?

Answer: No. The creation of a trust which does not substantially alter the benefits of ownership, including rights to the income or corpus of the trust, is not a change in beneficial ownership required to be reported under Section 16(a).[27]

(14) *Question:* Is an insider required to report the securities held by his or her spouse as trustee for the benefit of their children?

Answer: Yes. The insider is considered to have a sufficient interest in the securities held by such a trust. Since an insider is considered to be the indirect beneficial owner of securities held by his or her spouse and children, the insider should report the indirect beneficial ownership of the holdings of the spouse as trustee for their children.[28]

(15) *Question:* A director of a registered company transfers stock of that company to his or her spouse pursuant to a divorce settlement. Should the director report the transfer under Section 16(a)?

Answer: Yes. The director has effected a change in the beneficial ownership of that security which is required to be reported.

(16) *Question:* When is an insider who purchases securities under an installment agreement, deemed to have acquired beneficial ownership of such securities thereby triggering his reporting obligation under Section 16(a)?

Answer: As a general rule, an insider is deemed to have acquired beneficial ownership of a security at the time he makes a firm commitment for its purchase. Similarly, he divests himself of such beneficial ownership at the time he makes a firm commitment for its sale.[29]

Illustration: A director of a registered company enters into a contract to purchase 2,000 shares of the company's common stock. The terms of the contract call for a 25 percent down payment, with the balance of purchase price paid in installments over the next six months. At the time of the final payment, the director will receive the stock.

Interpretation: The director would be deemed to have acquired beneficial ownership of the securities at the time the contract was entered into, i.e., the time he agreed to purchase the securities, and made the down payment, notwithstanding the fact that the purchase price had not been paid in full and the stock was not delivered until final payment.

(17) *Question:* For purposes of Section 16(a), when is an insider deemed to acquire beneficial ownership of a stock dividend; on the declaration date, the record date, or the payment date?

Answer: On the record date. The record date generally fixes the time when security holders are entitled to receive the dividend. The fact that delivery of the stock certificate has not been effected or transfer recorded on the stock transfer books of the issuer is immaterial.

(18) *Question:* When an insider sells "short against the box,"[30] must he report the sale as of the date his sell order is executed by the broker, or the date when he ultimately delivers stock to cover his short position?

Answer: The insider effects a change in his beneficial ownership of the security at the time the sell order is executed. The date of the transaction for purposes of Form 4 is the date of execution.

D. Definition of 10 Percent Beneficial Owner

Under the framework of Section 16, officers and directors automatically become insiders of a registered company by virtue of the positions they hold with the company. Persons who are not officers or directors may also become insiders by accumulating more than 10 percent of any class of an equity security which is registered pursuant to Section 12 of the Exchange Act.[31] Once insider status has been acquired, changes in beneficial ownership of the equity securities of the company should be reported.

(19) *Question:* Is a person required to file an initial ownership report reflecting the transaction which increases his beneficial ownership to more than 10 percent?

Answer: Yes. For purposes of Section 16(a), it does not matter that the person was not a 10 percent holder prior to the transaction. Section 16(a) specifically requires the filing of reports by all persons who own beneficially more than 10 percent of a class of registered equity security. The obligation to report arises at the time of the transaction which results in one's owning more than 10 percent of the class and, accordingly, such person must report within 10 days after the date on which the transaction occurred.

Illustration: A company has 2,000,000 shares of common stock outstanding which are listed on a national securities exchange. On October 1, a stockholder, not otherwise affiliated with the company, acquires 10,000 additional shares of its common stock, bringing his total ownership to 205,000 shares. Thereafter, on January 5, he sells 30,000 of these shares at a profit.

Interpretation: This stockholder would be required to file ownership reports covering both of these transactions.[32]

(20) *Question:* Must a person who owns more than 10 percent of the registered common stock of a company also report his transactions in any unregistered equity securities of the company?

Answer: Yes. An insider must report all changes in beneficial ownership arising from transactions involving any equity security of the company, whether or not such equity security is registered pursuant to Section 12 of the Exchange Act. However, to be a 10 percent beneficial owner within the meaning of Section 16(a), one must beneficially own

[27] Letters re *Park Chemical Company* dated June 2, 1976, and *Litton Industries, Inc.* dated April 27, 1973.

[28] See letter to *Jane Gillespie*, dated October 7, 1971; See also question 4, *supra;* and Rule 16a-8(a), *supra.*

[29] See Securities Exchange Act Release No. 116 (March 9, 1935) [11 FR 10968].

[30] A "short sale against the box" is a brokerage transaction in which the seller already owns an amount of securities at least equal to the amount he wishes to sell short. While Section 16(c) of the Exchange Act prohibits insiders from making short sales, i.e., the sale of a security which the seller does not own, this prohibition does not extend to short sales against the box where the securities ultimately to be delivered already belong to the seller. See letter to *Michael G. Marks* dated February 26, 1980.

[31] Rule 16a-2 [17 CFR 240.16a-2] provides that for the purpose of determining whether a person is the beneficial owner of more than 10 percent of a class of equity security, other than voting trust certificates or certificates of deposit, such class is deemed to consist of the total amount of the securities of the class outstanding, exclusive of any securities of the class held by or for the account of the issuer or a subsidiary of the issuer. The rule further provides that such person will be deemed to be the beneficial owner of securities which he or she has the right to acquire through the exercise of presently exercisable options, warrants or rights or through the conversion of presently convertible securities.

[32] It should be noted, however, that this individual has not incurred any short swing trading liability because he was not a 10 percent beneficial owner prior to the October 1 transaction. To incur liability under Section 16(b) one must have insider status both at the time of purchase and sale. Although this insider was beneficial owner of more than 10 percent immediately after the purchase transaction, he was not such a beneficial owner at the time of purchase. *Foremost-McKesson, Inc. v. Provident Securities Co.*, 423 U.S. 232 (1976). See also *Reliance Electric Co. v. Emerson Electric Co.*, 404 U.S. 418 (1972).

more than 10 percent of a registered equity security.

Illustration: An individual owns 15 percent of the common stock of a company which is registered on a national securities exchange. He also owns 15 percent of its cumulative – preferred stock and 15 percent of a class of subordinated debentures, neither of which is registered pursuant to Section 12. In order to diversify, he sells both the preferred stock and the subordinated debentures.

Interpretation: This individual is an insider since he owns more than 10 percent of the common stock which is a class of registered equity security. Accordingly, he must report the sale of the preferred stock since it is an equity security. The subordinated debentures are debt rather than equity securities and so their sale need not be reported. Note that insider status based on ownership of securities derives *only* from ownership of an equity security which is registered pursuant to Section 12 of the Exchange Act. Had this person owned less than 10 percent of the common stock, he would not have been an insider despite his other holdings, and his sale of the preferred stock would not have been reportable because it was not registered.

E. Definition of Equity Security

Section 3(a)(11) of the Exchange Act broadly defines the term "equity security" to include any stock or similar security; or any security convertible into such a security, or carrying any warrant or right to subscribe to or purchase such a security; or any such warrant or right; or any other security which the Commission by rule shall deem an equity security. Rule 3a11–1 [17 CFR 240.3a11–1] under the Exchange Act interprets the statutory definition by enumerating a number of the less familiar securities ranging from voting trust certificates to various rights to subscribe to or purchase a security.

(21) *Question:* Does the term "equity security" include puts and calls?[33]

Answer: Yes. In Securities Exchange Act Release No. 10129 (April 27, 1973) [38 FR 11449], Rule 3a11–1 was amended specifically to include puts, calls, straddles, and other rights to buy and sell securities within the definition of equity security. Rule 16a–6 [17 CFR 240.16a–6] requires the reporting of puts, calls and similar rights whether or not such securities are issued by a registered company since the ownership of such rights may have a real impact on the insider's beneficial ownership of the security to which the right relates.[34] It must be emphasized that the reporting provisions of Section 16(a) relate not only to purchases and sales of securities, but also to changes in their beneficial ownership. The acquisition or disposition of a put, call or other right or obligation to sell an equity security of a registered company not only effects a change in the insider's beneficial ownership of the right, but it also gives rise to derivative right with respect to the beneficial ownership of the underlying security.

(22) *Question:* Must an insider report the acquisition of a stock appreciation right?

Answer: Yes. A stock appreciation right ("SAR") is a form of deferred incentive compensation, generally granted pursuant to a plan adopted for the benefit of key employees. In practice, a key employee is granted a number of SAR units representing an equal number of shares of a company's common stock. When the employee exercises a SAR, the company pays him an amount equal to the appreciation in market value of the number of shares subject to the SAR for the period between the date of grant and the date of exercise. This amount may be paid or "settled" in cash or stock, or a combination of both, usually at the discretion of a committee administering the plan. The grant of a SAR may be coupled with the grant of a stock option, in which case the SAR units are generally awarded in an amount equal to the number of shares subject to the option. Exercise of any portion of the stock option or the SARs results in a corresponding reduction in the number of shares or SAR units remaining subject to exercise. An award in this form is often referred to as a "tandem grant."

The stock appreciation right in its various forms has posed important interpretive questions under both Sections 16(a) and 16(b). It is generally agreed, for example, that the acquisition of a SAR which may be settled in stock creates the kind of derivative right in an equity security which must be reported as a change in beneficial ownership pursuant to Rule 16a–1. There has been a broad difference of view, however, with respect to the obligation to report the acquisition of a SAR exercisable only for cash. Although such an instrument would not seem to represent a direct claim on the equity securities of a company, its cash settlement has been viewed by some as a simultaneous purchase and sale of the related common stock, a theory which would suggest the applicability of both the reporting and the liability provisions of Section 16 of the Exchange Act.[35] Indeed, the very nature of the stock appreciation right as an instrument falling within the definition of "equity security" has been controversial, and although this question has been touched upon by at least three courts, as yet there is no clear judicial statement as to whether a stock appreciation right is an equity security for purposes of Section 16(b).[36]

These, and other issues were a source of genuine concern to many who wished to use the stock appreciation right concept as a part of their employee benefit programs. The stock appreciation right appeared to be a valuable new tool for employee compensation, but its use raised novel concerns under Section 16. The Commission recognized the legitimacy of these concerns and, in 1976, amended Rule 16b–3 to provide an exemption for the transactions necessary to implement a plan involving stock appreciation rights, that is, the acquisition and disposition of the rights by employee participants as well as the cash settlement of rights pursuant to the terms of the plan.[37] The exemption is subject to a number of conditions which are intended to guard against the abuse of inside information. The amendment does not attempt to resolve the troublesome legal issues posed by the stock appreciation right; it simply exempts the transactions required to effectuate stock appreciation right plans without addressing the legal implications of the transaction themselves under Section 16 of the Exchange Act.[38]

(23) *Question:* Are debt securities which are convertible into the common stock of an issuer considered to be "equity securities" within the meaning of Section 3(a)(11) of the Exchange Act?

[33] Generally, a put is a contract giving its holder the right to sell a fixed amount of securities within a specified period at a set price. A call is a similar arrangement conferring the right to purchase securities. Exchange traded options are essentially put and call contracts.

[34] Read discussion of Rule 16a–6, *infra*.

[35] See footnote 108, *infra*.

[36] *Id.*

[37] See Securities Exchange Act Release No. 13097 (December 22, 1976) [42 FR 755].

[38] In the 1976 release, the Commission observed that its "action in revising Rule 16b–3 in order to provide a 'safe harbor' for certain transactions in stock appreciation rights should not be construed as a statement by it that SAR transactions which do not satisfy the conditions of the rule necessarily are subject to Section 16(b). In this regard, the Commission wishes to emphasize that because of the unsettled legal status of stock appreciation rights under Section 16, it is expressing no view as to the applicability of that section to transactions in stock appreciation rights that are outside the scope of Rule 16b–3, and no inference in that connection should be drawn from the Commission's actions today."

Answer: Yes.[39] However, the purchase of over 10 percent of a class of non-registered securities by itself will not subject a person to the requirements of Section 16(a). In order for Section 16(a) to apply, a person must be the beneficial owner of over 10 percent of a class of equity security registered under Section 12 or an officer or director of the issuer of such security. Once a person acquires this status, he must report ownership of convertible securities which are not themselves registered under Section 12. If, however, the convertible securities are registered, a person owning more than 10 percent thereof would be required to report his ownership of the convertibles, even though the common stock which could be acquired upon conversion represents less than 10 percent of the class of common stock outstanding.

(24) *Question:* Should ownership reports be filed with respect to limited partnership interests which are registered under Section 12, even though they are not publicly traded?

Answer: Yes. Limited partnership interests are considered to be equity securities. General partners of a limited partnership are deemed to perform functions corresponding to those of directors and officers. Thus, a person owning more than 10 percent of a class of such interests and the general partners should file the requisite reports.

F Definition of Exempted Security

Section 3(a)(12) of the Exchange Act exempts certain specified securities from some or all of the statute's provisions, including Section 16. Among those securities exempted are obligations of the United States, certain municipal bonds, interests in bank-maintained trust funds, and securities issued in connection with certain employee benefit plans. In addition, the Commission has exempted by rule certain other securities from the Exchange Act's requirements, again including Section 16. These exemptive rules generally cover mortgages sold by the Federal Home Loan Mortgage Corporation;[40] securities substantially guaranteed by the states;[41] and securities of foreign issuers.[42]

(25) *Question:* Are registered securities issued by foreign companies exempt from the operation of Section 16?

Answer: Yes, if the provisions of Rule 3a12–3, promulgated under the Exchange Act, are met. The rule cannot be relied upon if (1) more than 50 percent of the outstanding voting securities of the issuer are held of record either directly or through voting trust certificates or depository receipts by residents of the United States, and (2) the business of such issuer is administered principally in the United States or if 50 percent or more of the members of the issuer's board of directors are residents of the United States.

G. Section 12

Section 12(b) of the Exchange Act provides that a company may register or list a security on a national securities exchange by filing an application with the exchange and duplicate originals of that application with the Commission. The application must contain the disclosures required by Section 12(b)(1) of the statute. In addition, the company and the security must meet the individual exchange requirements for listing. Once the exchange certifies to the Commission that the security has been approved for listing and registration, the registration becomes effective thirty days after the receipt of such certification by the Commission or within such shorter period of time as the Commission may determine by order. Accordingly, the provisions of Section 16(a) and 16(b) become operative for insiders on the effective date of the registration.

Section 12(g) of the Exchange Act, on the other hand, provides for the mandatory registration of the equity securities of companies of a certain size.[43] Section 12(g) requires that any company with total assets exceeding $1,000,000 and a class of equity security held by 500 or more persons must file a registration statement with the Commission to register such equity security.[44] The information disclosed in this registration statement is comparable to that required for registration under Section 12(b). The registration statement becomes effective sixty days after filing, or within such shorter period as the Commission may direct. As with Section 12(b) registration, the mandates of Section 16 become operative on the effective date of the registration statement.

(26) *Question:* A company recently completed its first public offering registered under the Securities Act of 1933. As a result it files periodic reports with the Commission pursuant to Section 15(d) of the Exchange Act. At the end of its fiscal year, its assets total $900,000 and it has over 600 common shareholders. Are the company's officers and directors subject to Section 16 of the Exchange Act?

Answer: No. Since the company does not have $1,000,000 in assets, it is not required to register its common stock under Section 12(g). Until the company's common stock or other class of equity security is registered under Section 12(b) or 12(g), the insiders are not subject to Section 16.[45]

(27) *Question:* If the same company were to list its securities on a national securities exchange, would the insiders be subject to Section 16?

Answer: Yes. A class of equity securities is now listed on a national securities exchange and registered pursuant to Section 12(b). Section 16 applies to all insiders of companies with a class of equity security registered under Section 12, and its obligations attach as soon as registration becomes effective.[46]

II. Interpretations Relating to the Commission's Rules Under Section 16(a)

A. Rule 16a–1 [17 CFR 240.16a–1]

Rule 16a–1 implements the statutory reporting requirement by establishing Form 3[47] for initial reports of securities beneficially owned by insiders and Form 4[48] for statements of subsequent changes in such beneficial ownership.[49]

[39] See Securities Exchange Act Release No. 8202 (December 6, 1967) [32 FR 18063] and footnote 57, *infra.*

[40] [17 CFR 240.3a12–1].

[41] [17 CFR 240.3a12–2].

[42] [17 CFR 240.3a12–3].

[43] Of course, an issuer may at any time voluntarily register a class of equity security under Section 12(g) even if it has not reached the specified size. (See Section 12(g)(1)(B)). Voluntary registration may be motivated by any number of practical considerations, such as broadening the market for an issuer's securities through more regular distribution of information. Or an issuer may choose to register to accomplish a related objective. For example, in order to elect to be regulated as a business development company, an issuer must register a class of its equity securities under Section 12. (See Section 54 of the Small Business Incentive Act of 1980) [15 U.S.C. 80a–53].

[44] Section 12(g)(2) of the Exchange Act provides varying types of exemptions from the registration provisions of Section 12(g) for specific classes of issuers (e.g., cooperative organizations and insurance companies).

[45] Letter re *Superior Packing Company* dated January 13, 1978.

[46] However, Rule 16a–(d) [17 CFR 240.16a–(d)] requires that certain transactions which occurred prior to registration under Section 12 must be reported pursuant to Section 16(a) after registration becomes effective.

[47] A Form 3 must be filed within 10 days after the occurrence of the event which requires the filing of the form.

[48] A Form 4 must be filed within 10 days after the close of the month in which a change in beneficial ownership of the securities of the issuer has occurred.

[49] At one time, different forms were required to be filed by insiders under each of the relevant statutes: Forms 4, 5 and 6 under the Securities Exchange Act of 1934; Forms U–17–1 and U–17–2 under the Public Utility Holding Company Act of 1935; and Forms N–30F–1 and N–30F–2 under the Investment Company Act of 1940. These forms were consolidated into

Continued

(28) *Question:* Are there any provisions under Section 16 which would permit an insider to file a late ownership report?

Answer: No. The reporting provisions of Section 16(a) are designed to insure prompt disclosure of insider holdings. There are no provisions in the Exchange Act, or the rules, permitting an extension of time for filing an ownership report. However, instruction 15 to Form 3 and instruction 17 to Form 4 allow the reports to be filed and signed by an agent on behalf of the reporting person, provided the authority for such an arrangement is furnished to the Commission.

Illustration: A director of a registered company purchases shares of the company's common stock and immediately leaves the country on a month long business trip.

Interpretation: The director is still required to arrange for the filing of a Form 4 within the time prescribed, notwithstanding the fact that he is abroad.

(29) *Question:* Must a person selected to become an officer or director of a registered company file an initial ownership report on Form 3, within the time prescribed, even though he beneficially owns no securities of the company?

Answer: Yes. The purpose of this report is simply to indicate the status of the insider's holdings at the time he becomes subject to Section 16(a). The fact that he owns no securities does not eliminate the filing requirement.

(30) *Question:* Should the officers and directors of a registered company file an additional Form 3 report when the company registers a new class of equity security under Section 12(g)?

Answer: No. The purpose of filing the Form 3 report is to determine and disclose the holdings of officers, directors and certain beneficial owners of registered companies at the time such persons become subject to Section 16(a). Since the officers and directors are already subject to the reporting requirements of Section 16(a), they do not need to file an additional Form 3 report for the newly registered class of equity security. Of course, an insider who acquires shares of the new class would be required to file a report on Form 4 disclosing the amount of securities acquired.

Illustration: In a proposed corporate reorganization, Company B will become a wholly-owned subsidiary of newly-formed Company A. To effect the reorganization, Company B will merge into a wholly-owned subsidiary of Company A and, upon the effective date of the merger, each outstanding share of common stock of Company B will be automatically converted into one share of common stock of Company A. For a number of years, the common stock of Company B has been registered pursuant to Section 12 of the Exchange Act. Company A will file a registration statement at the time of the merger to register its own common stock pursuant to Section 12.

Interpretation: Former insiders of Company B, who have now become insiders of Company A, need not file initial statements of beneficial ownership on Form 3 to reflect their new interest in Company A, inasmuch as Company A is the successor corporation of Company B. However, in the interest of ownership reporting continuity, the initial filing on Form 4 by an insider reporting a change in his ownership of Company A equity securities should reflect the fact that Company A is the successor issuer to Company B for purposes of filings under Section 16(a).

(31) *Question:* The Vice President of Finance of a registered company is selected to fill a vacancy on the company's Board of Directors. Must he file an additional Form 3 report showing his change in status?

Answer: No. The newly selected director is already subject to the reporting requirements of Section 16(a) since he is an officer of the company, and no additional filing is required to indicate his change of status.

(32) *Question:* A company's common stock is listed on three national securities exchanges. Must insiders file copies of Forms 3 and 4 with each exchange as well as with the Commission, in order to satisfy the requirements of Section 16(a)?

Answer: No. Rule 16a-1(c) allows an issuer listed on more than one exchange to designate which exchange will receive the reports required to be filed under 16(a). However, if no designation is made, ownership reports must be filed with each national securities exchange on which an equity security of the issuer is listed.

(33) *Question:* Must a person who becomes an officer or director of a registered company report changes in his beneficial ownership which occurred prior to his assuming that status?

Answer: Yes. When he becomes an officer or director he files a Form 3; in addition, he must file a Form 4 with respect to any subsequent purchase or sale. In his first Form 4, the insider must report all prior purchases or sales that occurred within the preceding six months even though they were effected before he became an officer or director. Transactions which occur outside of this six month period need not be reported. The purpose of this requirement is to provide disclosure with respect to all transactions which may be subject to the recovery provisions of Section 16(b).[50]

Illustration: On May 1, an employee purchases stock of his registered company on a national securities exchange. Thereafter, on June 30, he becomes an officer of the company and files his Form 3 within 10 days. On September 15, he acquires additional shares of the company under an employee benefit plan and prepares to file his first Form 4.

Interpretation: The officer's May 1 purchase should be included in his first Form 4 report.

(34) *Question:* Should directors and officers of an issuer report changes in their beneficial ownership of equity securities of such issuer which occur prior to the issuer's first registration of an equity security under Section 12 but within six months of an otherwise reportable transaction?

Answer: Yes. Pursuant to Rule 16a-1(d) [17 CFR 240.16a-1(d)], directors and officers are required to report in their initial Form 4 all changes of beneficial ownership which occur within six months prior to the date of the transaction which required the filing of the form.

Illustration: On January 3, a non-registered company sells 1,000 shares of its common stock to one of its directors. On April 2, the company's common stock is registered under Section 12(g) and the director files his Form 3. From May 15 through May 28, the director acquires an additional 5,000 shares of the common stock in a series of private transactions.

Interpretation: The first Form 4 report is triggered by the purchase of the common stock on May 15. Accordingly, the director would have to report all his transactions in the company's common

Forms 3 and 4 in Securities Exchange Act Release No. 6487 (March 9, 1961) [26 FR 2465].

[50] Securities Exchange Act Release No. 8697 (September 18, 1969) (34 FR 15246). See also *Adler v. Klawans*, 172 F. Supp. 502 (S.D.N.Y. 1959), *aff'd*, 267 F.2d 840 (2d Cir. 1959; *Blau v. Allen*, 163 F. Supp. 702 (S.D.N.Y. 1958). In both cases the courts held that for purposes of Section 16(b), a purchase of an equity security made before a person becomes a director or officer of a registered company may be matched with a sale within 6 months, at a time when such person is a director or officer of the issuer.

It should be noted that while directors and officers are subject to the requirements of Section 16 for certain transactions occurring before becoming directors and officers, there is no corresponding requirement for 10 percent beneficial owners. See footnote 32, *supra*.

stock which occured since the preceding November 15.

(35) *Question:* If a person ceases to be a director or officer of a registered company or if his company ceases to be a registered company, does he have any obligation to report changes in his beneficial ownership which occur following termination of his office or of the company's status as a registered company?

Answer: Yes. Rule 16a-1(e) requires that such person report any change in beneficial ownership which occurs on or after the date he ceases to be an officer or director, if such change occurs within six months of any other change prior to that date.[51] Under the rule the same result would obtain were the company to terminate its registered status. The rule provides, in effect, that the last reportable transaction occurring while a person is an officer or director, or while the company still has an equity security registered, establishes the time from which the six month period is measured.[52]

B. Rule 16a-2 [17 CFR 240.16a-2]

Rule 16a-2 sets out standards to help determine whether a person is the beneficial owner, directly or indirectly, of more than 10 percent of a class of equity security for purposes of Section 16(a).

(36) *Question:* Where a company has two series of registered preferred stock outstanding, differing only with respect to dividend rate and redemption price, is each series considered a separate "class" of security for the 10 percent computation?[53]

Answer: No. Securities with substantially similar characteristics are generally considered to constitute one class, even though they may confer slightly different ancillary privileges. Accordingly, a person who owns over 10 percent of one such series, but less than 10 percent of both series combined, is not subject to Secton 16(a).[54]

(37) *Question:* In determining whether a person is the beneficial owner of more than 10 percent of a class of securities, is the base the number of shares outstanding, excluding the number of shares held by or for the account of the issuer or its subsidiaries?

Answer: Yes.

Illustration: A registered company has 2,000,000 shares of authorized common stock. There are 1,100,000 shares outstanding, of which the company's subsidiary holds 100,000 shares.

Interpretation: A person owning 99,000 shares of the company would not be considered a 10 percent holder since such person would own only 9.9 percent of the class (99,000-1,000,000).

(38) *Question:* Are substantial stockholders charged with the responsibility of knowing exactly how many shares a company has outstanding at any particular time?

Answer: No. The Commission realizes that an issuer may engage in numerous transactions involving its securities, with the result that the total amount of securities outstanding may fluctuate. Even major shareholders may not be aware of these changes on a timely basis. In recognition of this fact, Rule 16a-2 provides that a person acting in good faith may rely on the information contained in the latest consolidated financial statement in a registration statement or annual report filed with the Commission in determining the amount of a class outstanding.

Illustration: Assume that the registered company referred to in the above illustration acquires 19,000 shares of its stock in the open market. The person owning 99,000 shares, who has no knowledge of the issuer's purchase, becomes a beneficial owner of more than 10 percent. Unaware of this fact, he does not file an initial report on Form 3.

Interpretation: Absent actual knowledge, this person would not be deemed to be in violation of the reporting requirements of Section 16(a). However, he must report no later than 10 days after the close of the month in which the company's annual report on Form 10-K is filed with the Commission indicating the reduced amount of stock outstanding or such earlier time when he obtains knowledge of such reduction.[55]

(39) *Question:* Are securities issuable pursuant to the exercise of warrants or a conversion privilege excluded from the 10 percent class computation?

Answer: No. Rule 16a-2(b) provides that for purposes of determining whether a person is a beneficial owner of more than 10 percent of any class of equity security he shall be deemed to be the beneficial owner of securities which he has the right to acquire through the exercise of presently exercisable options, warrants, or rights, or through the conversion of presently convertible securities. Securities subject to such options, warrants, rights or conversion privileges, held by such person, are deemed outstanding for the purpose of computing the percentage of the class owned by him, but are not deemed outstanding for the purpose of computing the percentage of the class owned by any other person.[56]

Illustration: An individual owns 10,000 shares of common stock and $90,000 principal amount (of a total outstanding principal amount of $1,000,000) of debentures which are presently convertible into 50,000 shares of common stock of a registered company. That company currently has 700,000 shares of common stock outstanding.

Interpretation: Since this individual would be deemed to own only 60,000 shares of the total 750,000 shares which would be outstanding in the event of his conversion, he would not be considered a 10 percent beneficial owner of the common stock.

(40) *Question:* Are ownership reports required for persons owning in excess of 10 percent of a class of registered security which is convertible into less than 10 percent of a class of equity security?

Answer: Yes. The staff is of the view that the statute requires reports to be filed by persons holding more than 10 percent of a class of any registered security which is convertible into an equity security. The same result would obtain where a person held more than 10 percent of a registered class of warrants exercisable for shares of common stock of the company.[57]

Illustration: A person owns 8 percent of a class of presently exercisable warrants and 15 percent of a class of presently convertible debentures, both of which are registered on a national securities exchange. Upon exercise and conversion, he would own approximately 6 percent of the outstanding common stock.

---

[51] Letter to *Michael J. Halloran, Esq.* dated May 30, 1980 and letter re *Biospherics, Inc.* dated October 2, 1975.

[52] See *Feder* v. *Martin Marietta Corp.*, 406 F.2d 260 (2d Cir. 1969), *cert. denied*, 396 U.S. 1036 (1970), where the United States Court of Appeals for the Second Circuit held that Section 16(b) liability arose if a director who had purchased shares of a company while he was a director sold them at any time within 6 months after the purchase even though he had in the interim resigned as a director.

[53] Section 12(g)(5) defines the term "class" as: " . all securities of an issuer which are of substantially similar character and the holders of which enjoy substantially similar rights and privileges."

[54] *Ellerin* v. *Massachusetts Mutual Life Insurance Company*, 270 F.2d 259 (2d Cir. 1959).

[55] Securities Exchange Act Release No. 7667 (August 3, 1965) [30 FR 9878].

[56] Securities Exchange Act Release No. 8325 (June 6, 1968) [33 FR 8774].

[57] The United States Court of Appeals for the Second Circuit has stated in *Chemical Fund* v. *Xerox Corp.*, 377 F.2d 107 (2d Cir. 1967), that a class of registered securities which is convertible into equity securities of the issuer should not be considered a separate class of equity security for purposes of determining liability for short-swing profits under Section 16(b). In light of the differing purposes of Section 16(a), the staff does not believe this decision to be determinative of the obligation to file ownership reports under that section.

Interpretation: Notwithstanding the fact that in the event of exercise and conversion this person would own less than 10 percent of the common stock outstanding, ownership reports are required because such person owns more than 10 percent of a class of a registered equity security, i.e., the convertible debentures. In the event such debentures were not registered under Section 12, no reports would be required provided the person is not otherwise an insider. However, if the person is a director or officer of the issuer, ownership information with respect to all equity securities of the issuer, whether registered or not, must be reported.

C. Rule 16a-3 [17 CFR 240.16a-3]

Rule 16a-3 permits a person to include a declaration in his ownership report that the filing of such report is not to be construed as an admission that such person is, for the purpose of Section 16 of the Act, the beneficial owner of securities covered by the report.

(41) *Question:* Could Mr. Smith in Question 5, *supra,* disclaim beneficial ownership with respect to the securities held by the foundation?

Answer: Yes. In case of genuine doubt, Mr. Smith can include such holdings in his own ownership report and in a footnote disclaim beneficial ownership pursuant to Rule 16a-3.

D. Rule 16a-4 [17 CFR 240.16a-4]

Rule 16a-4 provides an exemption from the operation of both Sections 16(a) and 16(b) for executors and administrators of various kinds of estates for a limited period of twelve months following their appointment. Thereafter, ownership reports are required under Section 16(a) and liability attaches under Section 16(b), but only if the estate is a more than 10 percent beneficial owner of a registered class of equity security.

(42) *Question:* Should the executrix of an estate which holds over 10 percent of the equity securities of a registered company, report estate transactions in such securities occurring during the first 12 months of her appointment as executrix?

Answer: No. Rule 16a-4(a) states that executors and administrators of the estate of a decedent, guardians and committees for an incompetent, and various administrators of the estates or assets of others are exempt during the first twelve months of their administration from the duties and liabilities imposed by Section 16(a) and Section 16(b).

Illustration: On January 1, a person is appointed the executrix of the estate of a decedent who, at the time of his death, was a director of a registered company. The only securities held by the estate are 100,000 shares of the common stock of the company, which is equal to 10.1 percent of the common stock outstanding. On February 1, the executrix sells 20,000 of these shares in order to pay some expenses.

Interpretation: The executrix is not required to report this transaction since it occurred within twelve months of her appointment.[58]

(43) *Question:* Must a registered company report repurchases of its own equity securities pursuant to Section 16(a)?

Answer: No. Issuer repurchases are exempt from the application of Sections 16(a) and 16(b) by virtue of Rule 16a-4[59]

E. Rule 16a-5 [17 CFR 240.16a-5]

Purchases and sales by odd-lot dealers insofar as such transactions are reasonably necessary in the ordinary course of their business are exempt from Section 16 of the Exchange Act pursuant to Rule 16a-5. Odd-lot dealers perform the function of purchasing and selling securities in amounts less than the exchange unit of trading, usually 100 shares. Since odd-lot dealers must accept every order transmitted,[60] their transactions in odd-lots and adjustment of their inventory positions caused by such transactions do not ordinarily provide an opportunity for speculative abuse. It should be noted that any person who properly performs the functions of an odd-lot dealer would be entitled to the exemption provided by the rule.

(44) *Question:* Is a specialist on a national securities exchange exempt from the operation of Section 16 when trading in odd-lots, even though he may be an officer, director or 10 percent beneficial owner of the company whose securities are involved?

Answer: Yes. The specialist executes odd-lot orders in addition to his primary responsibility to maintain an orderly round lot market, and thus he is also considered to be an odd-lot dealer.

(45) *Question:* Can persons acting in their capacity as odd-lot dealers ever be subject to Section 16 when trading?

Answer: Yes. The exemption does not apply to transactions by an odd-lot dealer which involve his taking a position on the long or short side in excess of that necessary to transact his odd-lot business. An odd-lot dealer who takes a position not reasonably related to his odd-lot business may be subject to all the requirements of Section 16.

F. Rule 16a-6 [17 CFR 240.16a-6]

Rule 16a-6 requires the reporting of certain transactions occurring in connection with puts, calls, options and similar rights. However, the acquisition, expiration, surrender to the issuer, or cancellation of any non-transferable stock option or stock appreciation right issued under an employee benefit plan which meets the conditions of Rule 16b-3 is exempt from reporting by virtue of paragraph (c) of the rule. For purposes of this release, employee benefit plans which do not meet the conditions of Rule 16b-3[61] may be termed "non-complying plans."

(46) *Question:* Are non-transferable options or rights granted to an employee under a plan which does not meet the conditions of Rule 16b-3 required to be reported pursuant to Section 16(a)?

Answer: Yes. Rule 16a-6 requires the reporting of the grant, acquisition, or disposition of any put, call, option or similar right on the ground that such a transaction involves a change in the beneficial ownership of the equity security to which the right relates.

The transferability or non-transferability of the right itself is unimportant in this context since the recipient acquires or disposes of the same beneficial interest in the underlying equity security in either case.

(47) *Question:* Should the award of a stock option granted in tandem with a SAR[62] under a non-complying plan be reported by an insider?

Answer: Yes. If currently exercisable the option and SAR shares should be reported within 10 days after the end of the month in which they are granted; both should be reported even if the SAR is exercisable only for cash. In the event they are not exercisable until sometime in the future, the award should be reported for the month in which they become exercisable. Of course, if the

[58] It should be emphasized that even after the twelve month grace period has elapsed, the executrix would be subject to the provisions of Section 16 only if the estate were a 10 percent beneficial owner of a class of equity security registered under Section 12. In such a situation ownership reports are required to be filed by the executrix.

[59] Imposition of the short-swing profit recovery provisions of Section 16(b) would be incongruous in this context, since the company would owe any profit to itself.

[60] That is, the odd-lot dealer must always buy when a customer wants to sell, and sell when a customer wants to buy, at the first possible opportunity following receipt of an order.

[61] Rule 16b-3 provides an exemption from the liability provisions of Section 16(b) of the Exchange Act for certain transactions involving acquisitions and dispositions of securities by participants under employee benefit plans which meet the conditions specified in the rule.

[62] See discussion of SARs in Question 22, *supra.*

plan meets the requirements of 16b-3, the acquisition of the option and SAR is exempt from the liability and reporting provisions of Section 16 by virtue of that rule and Rule 16a-6(c).

(48) *Question:* Under a non-complying plan, an insider receives an award of the right to acquire shares of his registered company, exercisable only at the time of his retirement. When must the employee report the award?

Answer: At the time the right becomes exercisable.

(49) *Question:* A registered company grants a stock bonus award to an insider. The bonus shares are subject to a repurchase option, exercisable only if the grantee's employment is terminated. Should the employee report the award on Form 4?

Answer: Yes. A Form 4 should be filed covering the stock granted to the insider. The reporting date for the transaction would be the date of the grant, and the transaction should be described as the receipt of a stock bonus. Pursuant to Rule 16a-6, Note 1, the company's repurchase option need not be reported by the insider until it is exercisable.

Upon termination of employment, the grantee should file a Form 4 reporting the company's repurchase option provided that other reportable changes in the insider's beneficial ownership occurred within the six months preceding such termination.[63] The termination of the company's repurchase option need not be reported if such option lapses without ever having been exercised.

(50) *Question:* Where an insider ("lender") loans equity securities of his registered company to a brokerage firm ("borrower"), which of the following events requires the lender to file a report on Form 4?

(a) The initial loan of the securities to the borrower;

(b) The transfer of record ownership of the securities from the lender to the borrower (or its nominee);

(c) A disposition of the borrowed securities, by loan or sale, by the borrower prior to the return of an equivalent amount of such securities to the lender; and

(d) A purchase by the lender of replacement securities in the event of a default by the borrower.

Answer: The lender is not required to report the actual loan of securities to the borrower, nor the transfer of record ownership.[64] Similarly, no report is required when there is a sale of such securities by the brokerage firm, so long as the loan is not in default; nor would a loan made by the borrower through failure to return the borrowed securities and the subsequent purchase by the lender of replacement securities would be reported on Form 4.

(51) *Question:* Is the right to acquire securities to be obtained in connection with a merger, a right to buy securities within the meaning of Rule 16a-6?

Answer: No.

Illustration: The shareholders of two otherwise unrelated companies agree to merge. Pursuant to the merger agreement, shares of common stock of the acquiring registered company are to be exchanged for the common stock of the other company. One person is a director and stockholder of both companies.

Interpretation: The common director need not report his right to acquire shares of the registered company in the merger. Of course, his acquisition of common stock upon completion of the merger must be reported.

(52) *Question:* "A" acquires a currently exercisable option to purchase 15 percent of the outstanding common stock of a registered company from "B". Must this transaction be reported under Section 16(a)?

Answer: "A" is required to report the acquisition of beneficial ownership of 15 percent of the outstanding common stock of the registered company. "B" is required to report the granting of the option as a change in his beneficial ownership. Both "A" and "B" have a sufficient interest in the securities to be considered beneficial owners under Section 16(a). If "A" is not already filing reports as an insider, his report will be filed on Form 3.

In the event the option expires or is cancelled, without "A" exercising his right to buy, both "A" and "B" would be required to report the expiration or cancellation of the option as a change in their beneficial ownership, and "A" would no longer be deemed a beneficial owner of the securities underlying the option. If the option were exercised, "A" would be required to report the purchase of the shares and "B" would report their sale on Form 4. "B" would no longer be deemed to be a beneficial owner of the securities.[65]

(53) *Question:* Is the acquisition of a currently exercisable right to purchase shares of a registered company for a 30 day period the "acquisition * * * of a presently exercisable * * * call, option or other right * * * to buy securities" which is reportable pursuant to Rule 16a-6?[66]

Answer: Yes. However, reporting would not be required if the provisions of paragraph (c) of Rule 16a-6 are satisfied.[67]

(54) *Question:* Is the acquisition of an exchange traded option or other type of put or call option by an insider exempt from reporting by virtue of Rule 16a-6(c)?

Answer: No. Rule 16a-6(c) is only available for non-transferable stock options and stock appreciation rights issued in connection with certain employee benefit plans that satisfy the conditions of Rule 16b-3.[68] Accordingly, an insider would be required to report the acquisition of the exchange traded or other type of option on Form 4.

(55) *Question:* Must an insider report the grant of performance units under a performance share plan [69] that meets the conditions of Rule 16b-3?

[63] Letters re *Itel Corporation* dated May 16, 1978 and *Amdahl Corp.* dated January 19, 1977.

[64] The staff has long held the view that neither a bona fide pledge nor a loan of securities is a reportable event pursuant to the requirements of Section 16(a) of the Exchange Act. This position is grounded on the belief that the vast majority of such transactions are not subterfuges for sales, but rather straightforward commercial transactions which contemplate payment of the loan and the return of the pledged or borrowed securities to their owner, with no consequent change in his beneficial ownership for purposes of Section 16(a). Recently, the United States Supreme Court has ruled in *Rubin v. United States*, 49 U.S.L.W. 4103 (January 21, 1981), that the pledge of stock to a bank as collateral for a loan is an "offer" or "sale" of a security under Section 17(a) of the Securities Act of 1933. The staff has carefully examined the *Rubin* opinion in light of its administrative practice not to require the reporting of bona-fide pledges and loans of securities. In brief, the staff notes that *Rubin* deals essentially with issues arising largely under the Securities Act of 1933. *Rubin* does not address the impact of a pledge or loan in the context of the prohibition against insider trading found in Section 16(b) of the Exchange Act, nor does the opinion treat the effect of such arrangements with respect to the disclosure system established by Section 16(a). Given the different statutory objectives, the staff does not regard the *Rubin* decision as dispositive for reports filed under Section 16(a). Accordingly, the staff will adhere to its position that bona-fide pledges and loans of securities need not be reported as changes in beneficial ownership.

[65] Securities Exchange Act Release No. 9429 (February 23, 1972) [37 FR 4329].

[66] For consideration of the question whether the 30 day right to purchase shares is an "option, warrant, or right" within the meaning of Rule 16b-3, see the discussion of Rule 16b-3, *infra*.

[67] Rule 16a-6(c) provides that an ownership report need not be filed with respect to the acquisition, expiration, surrender to the issuer, or cancellation of any non-transferable stock option or stock appreciation right granted pursuant to a plan that meets the conditions of Rule 16b-3.

[68] Rule 16a-6(c), of course, exempts only transactions in the rights, or ancillary securities. Acquisitions of the underlying or principal securities must be reported under Section 16(a).

[69] In general, these plans call for the grant of accounting units or performance shares which entitle participants to payments contingent upon the attainment of pre-established employment performance objectives set over the award period typically three or more years. The payment value of each unit earned is equal to the current market

Continued

Answer: No. However, the acquisition of common stock in satisfaction of the performance units would be reportable under Section 16(a) even though exempted from Section 16(b) by Rule 16b-3.

Illustration: A registered company adopts a performance share plan. The plan provides for the granting of awards to participants in the form of performance units, but no payments will be made on account of such awards until after the end of a four-year award period. At the end of an award period, participants become entitled to receive, based on their performance units, payments in cash and/or common stock of the company, in amounts related to the average annual growth of the company's earnings per share during the award period.

Interpretation: Assuming that the plan satisfies all applicable provisions of Rule 16b-3, an insider need not report the acquisition of performance units by virtue of paragraph (c) of Rule 16a-6.

G. Rule 16a-7 [17 CFR 240.16a-7]

Rule 16a-7 provides that persons subject to the reporting requirements of both Section 16(a) of the Exchange Act as well as Section 17(a) of the Public Utility Holding Company Act of 1935 or Section 30(f) of the Investment Company Act of 1940 may file a single ownership report which will be deemed to be filed under both Acts.

(56) *Question:* A director of a closed end investment company, which is registered under the Investment Company Act of 1940, purchases stock of his company which is listed on a national securities exchange. His purchase triggers reporting requirements under both the Exchange Act and the Investment Company Act. Must the director file two separate reports to satisfy these requirements?

Answer: No. The filing of a single ownership statement containing the required information will be deemed to satisfy the reporting obligation under both Acts.

H. Rule 16a-8 [17 CFR 240.16a-8]

Rule 16a-8 treats the filing of ownership reports with respect to situations where securities are held in trust.

(57) *Question:* For purposes of Rule 16a-8(a), in determining whether a person is part of the "immediate family" of the trustee, are factors such as age, marital status, and the sharing of a common household relevant?

Answer: No. Rule 16a-8(e) specifically defines the phrase "immediate family" [70] for purposes of the rule. The age, marital status and household of a particular person are not relevant to this determination.

Illustration: The trustee of an irrevocable personal trust is also a director of a registered company. The trust holds less than 10 percent of the common stock of that company. The sole beneficiary of the trust is the 35-year old married daughter of the trustee, who receives the income from the trust until age 45 and then is entitled to the corpus.

Interpretation: Since the beneficiary of the trust is the daughter of the trustee, she is considered part of his "immediate family," despite her maturity, marital status and presumed independence. Accordingly, the trustee must report trust transactions in the securities of the registered company as though they were his own.[71]

(58) *Question:* An officer of a registered company is the beneficiary of an irrevocable trust which holds shares of common stock of that company. The officer has the right to vote the trust shares but receives income from them only in the discretion of an independent trustee. Does the officer have a vested beneficial interest in the trust within the meaning of Rule 16a-8(a)(2)?

Answer: Yes. As already noted, the term "beneficial ownership" of securities has not been specifically defined by the Commission for purposes of Section 16. It is generally recognized, however, that among the hallmarks of beneficial ownership are the right to control voting and transfer; the right to receive or control the disposition of income; and the right to control disposition of proceeds upon liquidation. Not all of these characteristics need be present in order for beneficial ownership to exist. In this case, since the insider may receive income from the trust, and since he does have the right to vote the trust securities, it appears that he receives benefits sufficient to constitute him the beneficial owner of securities held in the trust.[72]

(59) *Question:* An insider establishes a trust whose assets consist of shares of his registered company. The sole beneficiary of the trust is a person not related to the insider, and the trustee is independent. The insider retains the power to remove the trustee without the consent of the beneficiary. Would the insider be deemed the beneficial owner of the trust shares?

Answer: Yes.[73]

(60) *Question:* Employee benefit plans of various types frequently provide for the accumulation of interests in registered company shares by participating employees, including officers and directors. Many such plans are based on a form of trust arrangement, often with an independent trustee, with the participants as beneficiaries. Where the beneficial interest in company common stock held by a plan trust for the accounts of officers and directors does not exceed, in the aggregate, 20 percent of the market value of all securities held by the trust, are officers and directors required to report: (1) participant and company contributions under the plan; (2) the purchase by the trustee of the common stock of the company for use in connection with the plan; (3) the allocation of company stock to their individual trust accounts; or (4) the periodic vesting of rights to acquire the common stock so allocated?[74]

Answer: No.[75] Such intra-plan transactions are exempt from the reporting requirements under Rule 16a-8(b). However, a plan participant who is required to report changes in beneficial ownership pursuant to Section 16(a) must continue to file reports on Form 4 to disclose any other changes in his beneficial ownership which occur outside the plan. Each such report should include, by footnote, a statement as to the number of shares vested for such individuals in the plan as shown by

value of a share of company stock at the end of the award period, subject in some cases to a maximum payment ceiling. Payments are made at the end of the award period in cash, stock, or a combination of both, in the sole discretion of a disinterested committee which administers the plan. Performance shares are not transferable by a participant.

[70] Rule 16a-8(e) defines an immediate family member as:

1. a son or daughter of the trustee, or a descendant of either,
2. a stepson or stepdaughter of the trustee,
3. the father or mother of the trustee, or an ancestor of either,
4. a stepfather or stepmother of the trustee,
5. a spouse of the trustee.

For the purpose of determining whether any of the foregoing relations exists, a legally adopted child of a person shall be considered a child of such person by blood.

[71] Opinion of General Counsel, Securities Exchange Act Release No. 1965 (December 21, 1938) [11 FR 1091].

[72] Letter to *John R. Blake* dated June 30, 1971.

[73] See Rule 16a-8(a)(3). [17 CFR 240.16a-8(a)(3)].

[74] See letters re *The Pillsbury Company* dated June 17, 1981 and *Associated Madison Companies, Inc.* dated October 27, 1980.

[75] Where a trust holds more than one class of equity security of the same issuer, the aggregate value of all classes of equity securities of the issuer held by the trust should be taken into consideration when computing the 20 percent threshhold established in paragraph (b) of Rule 16a-8. Further, the exemption provided by Rule 16a-8(b) is not "acquired or lost solely as a result of changes in the value of the trust assets during any fiscal year or during any time when there is no transaction by the trust in the securities otherwise subject to the reporting requirements of Section 16(a)."

its latest annual report. The footnote should also indicate that the information reflected therein does not include securities which may have accured to his account since the filing of the plan's last report. Of course, actual distributions of plan securities to insider participants should be reported in accordance with Rule 16a-1. Finally, should the plan itself become a 10 percent beneficial owner, the plan would be required to file its own reports pursuant to Rule 16a-8(c).

(61) *Question:* Would the existence of a provision in an employee plan which permits participants to reallocate their contributions among the various funds in the plan at least once a year affect the availability of the 16a-8(b) exemption?

Answer: No. As long as the aggregate market value of reportable securities allocated to the accounts of officers and directors represents less than 20 percent of the market value of all securities held by the plan, Rule 16a-8(b) is available.

(62) *Question:* Assuming that a trust does not meet the 20-percent test of Rule 16a-8(b), is the second sentence of that rule available to provide an exemption from reporting for officer and director participants if the benefit plan provides that the company, in its sole discretion, can determine when distributions will be made except in the case of death, disability or termination of employment?

Answer: No. Rule 16a-8(b) does provide an additional exemption from reporting when the ownership, acquisition or disposition of the securities by a trust is made without the settlor's or beneficiary's prior approval.[76] Here, however, the company as settlor has full control over the disposition of the securities held by the trust and, accordingly, Rule 16a-8(b) is not available.[77]

(63) *Question:* Would the answer to Question (62) be different if the company did not have any discretion over distributions but the participant had the right to withdraw his interest in the trust after a period of 5 years from the time the shares were allocated to his account?

Answer: No. Here the beneficiary has some control over the disposition of securities made by the trust. Since the plan contemplates withdrawals by participants prior to actual termination of employment, the exemption provided by the second sentence of Rule 16a-8(b) would not appear to be available.[78]

(64) *Question:* Is there any provision under Rule 16a-8(b) which would exempt from reporting the actual distribution of securities to insider participants in a plan?

Answer: No. Actual distributions of company stock are not exempt from reporting and therefore such acquisitions must be reported within the time prescribed by Rule 16a-1.[79]

(65) *Question:* Must a trust, and its trustee, file separate reports pursuant to Section 16(a), if the trust holds 5 percent of the outstanding common stock of a registered company and the trustee is an insider of the same company?

Answer: No.[80]

(66) *Question:* Is it ever appropriate to file only one annual ownership report covering all officer and director participants in a benefit plan?

Answer: Yes. The staff recognizes that the assembling and reporting of transactions for individual insider participants as frequently as on a monthly basis may require burdensome and costly procedures. Accordingly, the staff has interpreted the provisions of Rule 16a-8(d) to provide partial relief from the reporting provisions of Section 16(a) for officers and directors who are participants in a plan.[81] Under this interpretation, the plan trustee may file a single annual report naming the insider participants, and showing the dates, amounts and average price per share of company securities attributable to each officer and director for the period.[82] If this procedure is followed, individual ownership reports reflecting interests accrued under the plan are not required.

(67) *Question:* Is Rule 16a-8(d) available to officer and director participants in benefit plans that do not provide for the establishment of a trust?

Answer: No. Rule 16a-8(d) permits deferred reporting only for plan securities held in trust.

Illustration: A registered company adopts an employee benefit plan which allows employees to make monthly purchases of company common stock on the open market, through a broker, by means of monthly payroll deductions. Each month, a participant immediately acquires full ownership of shares purchased for his or her account. Shares are held for the participant's account in the name of the broker until delivery is requested by the participant.

Interpretation: Since this plan does not provide for the establishment of a trust, Rule 16a-8(d) is not available, and officer and director participants must file a Form 4 for each month in which there is a change in beneficial ownership resulting from participation in the plan. Since the shares held by the plan are segregated in a brokerage account for the benefit of the participant, and since the participant can vote the shares and obtain physical possession of them, there is no basis for deferred reporting.[83]

(68) *Question:* As a matter of administrative convenience, may the committee administering a benefit plan file the Form 4 report on behalf of all participating officers and directors, instead of the trustee?

Answer: Yes.[84]

(69) *Question:* Under the terms of a retirement plan in use by a registered company, participants are allowed to reallocate contributions annually among various funds in the trust and they are entitled to vote the shares of company common stock credited to their accounts. However, participants are not entitled to receive such shares until their retirement, disability, death or other termination of employment. Is the reporting exemption provided by Rule 16a-8(g)(3) available to officer and director participants in the plan?[85]

---

[76] The second sentence of Rule 16a-8(b) states: "[E]xemption is likewise accorded from section 16(a) with respect to any obligation which would otherwise be imposed solely by reason of ownership as settlor or beneficiary of securities held in trust, where the ownership, acquisition, or disposition of such securities by the trust is made without prior approval by the settlor or beneficiary."

[77] See letter re *Quaker Oats Company* dated April 12, 1973.

[78] See letter re *Dain, Kalman & Quail* dated November 29, 1973. It should be noted that in those situations where this exemption is applicable, that is, where the settlor or beneficiary has no control over the ownership, acquisition or disposition of the company's securities, participants who are otherwise required to report changes in beneficial ownership should include a notation, on any report filed, of the number of shares vested to their accounts under the plan as shown by its latest annual report, and an indication that such report does not include securities which may have been acquired since the last plan report.

[79] Letters re *Buckhorn, Inc.* dated April 30, 1981 and *Butler Manufacturing Company* dated February 5, 1981.

[80] Notwithstanding the fact that the definition of the term "person" in Section 3(a)(9) does not expressly include trusts, if the trust were a 10 percent beneficial owner, both it and the trustee would have to file separate ownership reports reflecting such transactions. Letter re *Coltron Systems, Inc.* dated September 6, 1973.

[81] Letters re *Royal Crown Cola Co.* dated July 31, 1974 and *General Tire and Rubber Company* dated January 5, 1973.

[82] It should be noted that a trust which is a 10 percent stockholder may not avail itself of this relief. Accordingly, if a trust owns more than 10 percent of a class of equity security of a registered company, both the trustee and the trust would have to report, on a regular basis, the transactions of the trust in the securities of the company. Letter re *The Bendix Corporation* dated August 10, 1972.

[83] Letters re *Northwest Energy Company* dated September 8, 1976; and *The Texstar Corporation* dated July 11, 1975.

[84] Letters re *North American Group Associates* dated January 24, 1979 and *Clarkson Industries, Inc.* dated December 13, 1973.

[85] As noted above, Rule 16a-8(b) may also be available to participants in the plan if the beneficial

Continued

Answer: Yes. The mere pass-through of voting rights to participants in a pension or retirement plan, even when coupled with the power to reallocate contributions on an annual basis does not change the primary emphasis of the pension or retirement plan.[86] Since a participant's interest remains substantially indirect, Rule 16a-8(g)(3) is available.[87]

(70) *Question:* Would the existence of withdrawal provisions in a plan automatically destroy the availability of Rule 16a-8(g)(3)?

Answer: No. If limited withdrawal provisions are accompanied by the imposition of significant penalties on the participants, such provisions will not automatically disqualify the plan from being considered a "pension or retirement plan." [88] Significant penalties might consist of denying the participant the right to participate in the plan for at least a one-year period,[89] and/or requiring the forfeiture of a substantial portion of the participant's interest in the employer's contribution.[90]

(71) *Question:* Is the rule available where a participant can make withdrawals, without penalty, for emergency and educational purposes subject to the approval of the committee administering the plan?

Answer: No. Withdrawal provisions of any kind must be accompanied by corresponding penalties.

(72) *Question:* Would a voluntary, contributory employee benefit plan that requires the establishment of a trust, and allows the employee participant to choose from different investment media, be deemed a "business trust" within the meaning of Rule 16a-8(g)(4)?

Answer: No. The term "business trust" has been construed to mean a type of business organization formed along the lines of the common-law or "Massachusetts trust," and which is engaged in general commercial enterprise. An employee benefit plan would not normally be considered such an entity, and the exemption provided by Rule 16a-8(g)(4) would not be available.[91]

I. Rule 16a-9 [17 CFR 240.16a-9]

Rule 16a-9 provides a temporary exemption or, more accurately, deferred reporting for certain transactions in which the amounts involved are sufficiently small that there appears to be no public interest in requiring reports of the transactions as they occur.

(73) *Question:* is the exemption provided by Rule 16a-9 available to an insider who participates in a registered company's employee benefit plan?

Answer: The exemption provided by Rule 16a-9 would be available for acquisitions by an insider participating in the plan so long as the following two conditions are met: (1) all acquisitions and sales of securities of the same class effected by the insider during any six month period do not exceed $3,000 in aggregate market value; and (2) the insider does not sell securities of the same class within six months *after* an acquisition.[92] These limitations, however, do not apply to the acquisition or disposition of securities by gift in an amount not exceeding $3,000 in aggregate market value during any six month period. Thus, the rule provides a temporary exemption for up to $3,000 in acquisitions, otherwise than by gift, so long as the conditions of paragraph (a) of the rule are satisfied, and an additional $3,000 for acquisitions or dispositions by gift in accordance with the provisions of paragraph (b) of the rule.[93] It should be emphasized that any transaction involving a sale of securities is not exempt under Rule 16a-9.

Illustration: An insider, who has had no recent transactions in the securities of his registered company, acquires on January 1 registered common stock with a market value of $1,000 through the company's benefit plan. No Form 4 report need be filed in accordance with the exemption provided by paragraph (a)(2) of Rule 16a-9. On February 1, he acquires additional common stock, again in the amount of $1,000, and on the same day he donates $1,000 worth of stock to a charity. On May 1, the insider acquires common stock in the amount of $1,000 and makes a second donation of $2,000 worth of common stock to the same charity. The $3,000 in acquisitions and the $3,000 in dispositions by gift would be exempt from reporting under Section 16(a) by virtue of Rule 16a-9. However, if the insider made further donations of the common stock, or acquired additional shares of such stock within the relevant six month period, the exemption would be lost since he has exceeded the limits of the rule.[94] Under these circumstances, he must file a Form 4 reporting all transactions temporarily exempted by Rule 16a-9. See paragraph (c) of the rule.[95]

(74) *Question:* Would the exemption be available with respect to an insider's gifts of a company's registered equity security having a total market value of $10,000 during a six-month period?

Answer: No. Based on the specific language of Rule 16a-9(b), gifts of registered securities by an insider in

---

interest in company common stock held by the trust for the account of statutory insiders does not exceed, in the aggregate, 20 percent of the market value of the securities having a readily ascertainable market value held by the trust.

Although Rule 16a-8(b) technically provides only an exemption from reporting changes in beneficial ownership of securities held in trust, and Rule 16a-8(g)(3) provides an exemption only for changes in an insider's indirect interest in portfolio securities held by certain types of plans, it is the staff's view that all intra-plan transactions are exempt from reporting if either of these two provisions is applicable.

[86] A "pension or retirement plan," within the meaning of the rule, is one in which participants generally are not entitled to receive a distribution until their retirement, death, or other termination of employment.

[87] For example, the staff is of the view that the following are two indications of direct ownership: (1) the ability to control or influence the timing and amount of purchase or sale of securities for the plan; and (2) the ability of a participant to withdraw his vested interest in the plan without substantial penalty.

[88] Even where the penalties are not significant, the reporting obligations may be deferred if the administrators of the plan file annually a single report pursuant to Rule 16a-8(d) which reflects the beneficial interests of officer and director participants in the company stock held by the plan. Individual ownership reports which are otherwise filed by participants should note their participation in the plan.

[89] Letter re *Santa Anita Realty Enterprises, Inc.* dated May 30, 1980. A lesser period of time is not sufficient; see letters re *United Bank Corporation of New York* dated March 5, 1981; *Newhall Land and Farming Company* dated September 29, 1980; *Western Gear Corp.* dated April 9, 1979; and *Heritage Communications, Inc.* dated September 14, 1978.

[90] While a 10 percent forfeiture is considered to be substantial, a lesser percentage would not; see letters re *Harris Bankcorp, Inc.* dated November 24, 1978 and *Ex-Cell-O Corporation* dated May 9, 1977.

[91] Letter to *Theodore C. Bolliger* dated December 16, 1970.

[92] The sale transactions referred to in (1) above must occur *prior* to an acquisition intended to be exempt from reporting under the sale since the exemption is lost pursuant to Rule 16a-9(a)(1) if sales occur within six months after the subject acquisitions.

[93] Rule 16a-9 provides:

(a) Any acquisition of securities shall be exempt from Section 16 where

(1) The person effecting the acquisition does not within six months thereafter effect any disposition, otherwise than by way of gift, of securities of the same class, and

(2) The person effecting such acquisition does not participate in acquisitions or in dispositions of securities of the same class having a total market value in excess of $3,000 for any six months' period during which the acquisition occurs.

(b) Any acquisition or disposition of securities by way of gift, where the total amount of such gifts does not exceed $3,000 in market value for any six months period, shall be exempt from section 16(a) and may be excluded from the computations prescribed in paragraph (a)(2).

(c) Any person exempted by paragraph (a) or (b) of this section shall include in the first report filed by him after a transaction within the exemption a statement showing his acquisitions and dispositions for each six months' period or portion thereof which has elapsed since his last filing.

[94] Similarly, if the insider sold securities of the same class during such period the protection of the rule would be forfeited.

[95] Letters re *Atlantic Richfield Thrift Plan* dated June 6, 1973 and *Washington National Corporation* dated August 11, 1975.

excess of $3,000 market value in any six-month period would not be entitled to the exemption provided by the rule.

(75) *Question:* In computing the $3,000 ceiling, can the value of the shares acquired through dividend reinvestment plans be excluded?

Answer: No. All acquisitions of securities of the same class should be included in calculating the $3,000 ceiling.[96]

J. Rule 16a-10 [17 CFR 240.16a-10]

Rule 16a-10 provides that any transaction which has been or shall be exempted by the Commission from the requirements of Section 16(a) shall, insofar as it is otherwise subject to the provisions of Section 16(b), be likewise exempted from section 16(b). The plain language of Rule 16a-10 needs no elaboration. The rule simply expresses the Commission's view that transactions which are exempt from the reporting requirements of Section 16(a) should not be subjected to the liability provisions of Section 16(b), and thus the rule exempts such transactions from the recovery provisions of the Exchange Act.[97] It might be noted that Rule 16a-10 was designed to be self-operative, and the Division will not express any view as to the applicability of the rule to a given fact situation.

K. Rule 16a-11 [17 CFR 240.16a-11]

Rule 16a-11 exempts from the liability and reporting requirements of Section 16 the acquisition of securities by insiders pursuant to dividend reinvestment plans.

(76) *Question:* Is the exemption provided by Rule 16a-11 available to insider participants in a dividend reinvestment plan which restricts plan participation to key employees of the issuer?

Answer: No. As stated in Securities Exchange Act Release No. 16806 (May 14, 1980) [45 FR 33957], the rule is available only to participants in dividend reinvestment plans which, by their terms, are available to all security holders of the class on which the dividend is being paid. It should be noted, however, that the staff has expressed the view that Rule 16a-11 is available for a dividend reinvestment feature of a profit sharing plan which was not available to all shareholders of the company's common stock, since the company did maintain a separate dividend reinvestment plan which was open to all of the company's shareholders.[98]

(77) *Question:* Assuming Rule 16a-11 is available, are acquisitions of securities pursuant to a dividend reinvestment plan forever exempt from reporting by an insider?

Answer: No. For reporting purposes, Rule 16a-11 means only that an insider is not required to file current reports of acquisitions of dividend securities within ten days of the close of the month in which such securities are acquired pursuant to a dividend reinvestment plan. The rule does not mean, however, that plan securities are forever insulated from the reporting requirements of Section 16(a), one purpose of which is to require a periodic public statement of the total amount of equity securities actually owned by each insider. Accordingly, the ownership of plan securities, as distinguished from their acquisition, should be reported on the next Form 4 report otherwise required to be filed. On that, and in subsequent reports, participation in the dividend reinvestment plan may be indicated by a footnote, which also shows the aggregate number of plan shares acquired to date. Specific dates of acquisitions are not necessary. This technique permits accurate reconciliation of reports by the Commission as well as the public.[99]

(78) *Question:* Many dividend reinvestment plans permit participants to make additional cash contributions toward the purchase of securities along with the reinvestment of dividends and interest. Are such cash contributions by insiders exempt under Rule 16a-11?

Answer: No. The rule exempts only the reinvestment of dividends or interest. Additional securities acquired through voluntary cash contributions which may be permitted under such plans are not covered by the rule and must be reported under Section 16(a).

(79) *Question:* When is a reporting person deemed to acquire beneficial ownership of securities purchased through additional cash contributions under a dividend reinvestment plan?

Answer: On that date which corresponds to the last day on which the participant is able to withdraw any uninvested cash held for his account, before becoming entitled only to a distribution of whole shares which have been or will be purchased for his account.[100]

(80) *Question:* Is a sale of securities which were acquired pursuant to a dividend reinvestment plan exempt from the liability and reporting provisions of Section 16?

Answer: No. Rule 16a-11 exempts only the acquisition of such securities, not their subsequent disposition.

III. Section 16(b)—The Liability Provision

A. Statutory Concept

In order to minimize any possible inclination on the part of statutory insiders to utilize non-public information to their own advantage in trading the equity securities of their companies, Congress enacted Section 16(b) of the Exchange Act as a complement to the disclosure requirements of Section 16(a). Section 16(b) provides, in pertinent part, that for the purpose of preventing the unfair use of information which may have been obtained by an insider by reason of the insider's relationship to the issuer any profit realized by the insider from any purchase and sale, or any sale and purchase, of any equity security of such issuer within any period of less than six months shall inure to and be recoverable by such issue.[101] As a general rule, the "profit realized" is calculated so as to produce the maximum recovery. Thus, in the simplest computation involving a single purchase and a single sale within six months, the profit realized (or the amount recoverable) is the difference between the insider's purchase price and his sale price. If, in fact, the matching of these transactions results in no profit, or a loss, then the recovery provisions of Section 16(b) are inapplicable even through transactions of purchase and sale occurred within six months. The calculation of profit, however, becomes more complex when there are multiple transactions since, among other things, it may be difficult to determine how the various transactions should be matched. The order in which the transactions occurred is not controlling, since Section 16(b) provides for recovery of profit in connection with "any purchase and sale or sale and purchase."[102]

[96] This would be the result even if certain acquisitions were exempted under Rule 16a-11 or another exemptive provision. See, generally, letter re *Orange and Rockland Utilities, Inc.* dated August 12, 1977.

[97] Securities Exchange Act Release No. 4801 (February 20, 1953) [18 FR 1132].

[98] See letter re *The Girard Company* dated February 3, 1981.

[99] Letter to *Dorothy L. Roberts* dated August 15, 1980.

[100] Letter to *John W. Brocks, Jr.* dated January 12, 1973.

[101] Section 16(b) also provides that such profits may be recovered in an appropriate action by the corporation or, if the corporation fails to bring suit, by any security holder suing on its behalf. Such actions may not be brought more than two years after the date the profit was realized.

[102] See e.g., *Smolowe v. Delendo Corporation*, 136 F. 2d 231 (2d Cir), *cert. denied*, 320 U.S. 751 (1943), where the Court held that the only rule that would effectuate the Congressional purpose was one which would require the insider to disgorge all possible profit. The court accomplished this through

Continued

The disclosure requirements of Section 16(a) and the liability provisons of Section 16(b), mesh to form a significant deterrent to short-swing trading by those whose close relationships with their companies may afford them access to information not generally known by the public or other shareholders. It must be emhasized that, while Sections 16(a) and 16(b) rest on the hypothesis that insiders are likely to possess inside information, the actual possession or use of such information is not a pre-condition to the operation of the recovery provisions of Section 16(b).

It is sometimes overlooked that Congress left the implementation of the recovery provisions of Section 16(b) of the Exchange Act to private parties exclusively, namely corporations and their security holders, who alone are authorized to bring actions to recover short-swing profits in courts of appropriate jurisdiction. Consequently, the Commission and its staff generally refrain from expressing any interpretive views as to the impact of that section on particular facts. Of course, the Commission does participate as amicus curiae in private litigation under Section 16(b), sometimes at the request of the parties or the court itself where the issues involved raise important questions of law or policy.

Finally, section 16(b) grants the Commission specific rulemaking authority to exempt from its provisions any transaction or transactions which the Commission determines as not comprehended within the purposes of the section.[103] Over the years, the Commission has made use of this authority, and has adopted rules exempting certain types of transactions as well as certain acquisitions and dispositions of equity securities from the recovery provisions of Section 16(b), in situations where it appeared that such exemptions were consistent with the statutory purposes.

B. Purchase and Sale

The threshold determination that must be made when considering the applicability of Section 16(b) is whether there has been a purchase and sale of equity securities within six months. The terms "purchase" and "sale" are broadly defined by the Exchange Act. Section 3(a)(13) provides that "The terms 'buy' and 'purchase' each include any contract to buy, purchase, or otherwise acquire." Section 3(a)(14) of the Exchange Act defines the terms "sale" and "sell" to include "any contract to sell or otherwise dispose of." While the meaning of these terms is usually clear,[104] their application in certain special situations has given rise to difficult problems of construction. Thus, the courts have applied these terms somewhat differently to transactions of exchange involving conversions,[105] recapitalizations and reclassifications,[106] and mergers and consolidations.[107] Similar difficulty with the application of these terms has been encountered in certain employee compensation situations.[108]

In general, the rules adopted by the Commission under Section 16(b) do not address the problems of construction which arise from the application of that statutory provision. Rather, the rules are exemptive in nature and designed to alleviate the impact of the short-swing profit recovery provisions in situations where their mechanical application does not appear to effectuate the purpose of the statute. It should be noted that the exemptive rules under Section 16(b) do not provide any exemption from the reporting requirements of Section 16(a) of the Exchange Act.

The final portion of this release is devoted to the interpretation of the rules promulgated under Section 16(b).

IV Interpretations Relating to the Commission's Rules Under Section 16(b)

A. Rule 16b-1 [17 CFR 240.16b-1]

Rule 16b-1 provides an exemption from Section 16(b) liability for transactions involving purchases and sales of securities by an investment company registered under the Investment Company Act of 1940, so long as such transactions have been exempted, by order of the Commission, from the provisions of Section 17(a) of the Investment Company Act.[109]

(81) *Question:* Is a formal order of the Commission under Section 17 of the Investment Company Act always a prerequisite to the availability of Rule 16b-1?

Answer: No. Rule 16b-1 would also be available to an investment company which could rely on an exemptive rule under Section 17(a) for both the purchase and sale. The exemption provided by Rule 16b-1 gives recognition to the fact that before it may grant an exemptive order pursuant to Section 17(b), the Commission is required by that Section to make an appropriate finding with respect to the fairness and reasonableness of the transactions concerned and the absence of overreaching. In a similar fashion, the Commission's adoption of exemptive rules pursuant to Section 17(a) reflects the Commission's determination that the classes of transactions satisfying the specified standards for exemption meet the requisite standards of Section 17(b) as to fairness, reasonableness, and absence of overreaching.

For example, Rule 17a-5 excludes from the terms "purchase" and "sale",

---

the use of a formula which has become known as the "lowest price in highest price out" method. Under this method, profit is computed by matching the highest sale price with the lowest purchase price within six months, the next highest sale price with the next lowest purchase price within six months, and so on, until all shares have been included in the computation.

[103] Section 3(a)(12) of the Exchange Act exempts a limited number of securities from some or all of the provisions of the Exchange Act. These exempted securities are not subject to Sections 16(a) or 16(b).

[104] For example, a bona fide gift of securities is not considered to be a "sale" for purposes of Section 16(b). *Lewis v. Adler*, 331 F. Supp. 1258 (S.D.N.Y. 1971); *Truncale v. Blumberg*, 80 F. Supp. 387 (S.D.N.Y. 1948); *Shaw v. Dreyfus*, 79 F. Supp. 533 (S.D.N.Y. 1948), *aff'd*, 172 F. 2d 140 (2d Cir. 1949).

[105] *Park & Tilford, Inc. v. Schulte*, 160 F. 2d 984 (2d Cir.), *cert. denied*, 332 U.S. 761 (1947) (conversion of redeemable preferred stock held to be a purchase); *Heli-Coil Corp. v. Webster*, 352 F. 2d 156 (3rd Cir. 1965) (conversion of a convertible debenture deemed a sale of the debenture and a simultaneous purchase of the underlying common stock); *Ferraiolo v. Newman*, 259 F. 2d 342 (6th Cir. 1958), *cert. denied*, 359 U.S. 927 (1959) (conversion of preferred stock held not to be a purchase).

[106] *Blau v. Lehman*, 286 F. 2d 786 (2d Cir. 1960), *aff'd without consideration of this point*, 368 U.S. 403 (1962) (exchange of common stock for preferred stock was a purchase); *Roberts v. Eaton*, 212 F.2d 82 (2d Cir.), *cert. denied*, 348 U.S. 827 (1954) (exchange in connection with a reclassification not a purchase).

[107] In the area of mergers and other reorganizations, some courts have looked to the opportunity for abuse as the test for determining the applicability of Section 16(b). See *Kern County Land Co. v. Occidental Petroleum Corp.*, 411 U.S. 582 (1973) (exchange of stock in a merger was not a sale since it did not present the possibility of speculative abuse of inside information); *American Standard, Inc. v. Crane Co.*, 510 F.2d 1043 (2d Cir 1974), *cert denied*, 421 U.S. 1000 (1975) (exchange in merger was neither a sale of stock of disappearing corporation nor a purchase of stock of the surviving corporation). Other courts have followed a more literal or objective approach and applied the statute without regard for actual abuse or the opportunity for such abuse. *Reliance Electric Co. v. Emerson Electric Co.*, 404 U.S. 418 (1972); *Foremost-McKesson, Inc. v. Provident Securities Co.*, 423 U.S. 232 (1976).

[108] For example, one court has indicated that the cash settlement of a stock appreciation right involves a simultaneous purchase and sale of the stock to which it relates. *Matas v. Siess*, 467 F.Supp. 217 (S.D.N.Y. 1979). Two other decisions in the same district, however, suggest that Section 16(b) liability does not attach solely because of the exercise of a stock appreciation or similar right, at least in the circumstances described in those cases. *Rosen v. Drisler*, 421 F. Supp. 1282 (S.D.N.Y. 1976) (cash payments in settlement of stock option rights); *Freedman v. Barrow*, 427 F. Supp. 1129 (S.D.N.Y. 1976) (Stock appreciation rights exercised for stock or cash). In *Freedman* at 1152, the court stated "The exercise of a stock appreciation right does not involve the sale of an equity security by the officer-director, and thus, there is no inherent or *per se* violation of Section 16(b) as a result of the simultaneous receipt of shares thereunder."

[109] Rule 16b-4 extends comparable relief to companies registered under the Public Utility Holding Company Act of 1935.

as used in Section 17(a), any pro-rata distribution in cash or in kind made by a company to its common stockholders, where the individual stockholder has no election as to the type of asset he will receive in the distribution. It is the Division's view that, for purposes of Rule 16b-1, the general exemption from the provisions of Section 17(a) embodied in an exemptive rule such as Rule 17a-5 is substantially equivalent to an exemptive order of the Commission issued under the Investment Company Act.

B. Rule 16b-2 [17 CFR 140.16b-2]

Rule 16b-2 recognizes that an underwriter engaged in the public distribution of securities of a registered company may also be an insider of that company for purposes of section 16(b). Accordingly, the rule exempts those transactions of purchase and sale which are essential in connection with the distribution as not comprehended within the purpose of Section 16(b), so long as the conditions specified in the rule are satisfied.

(82) *Question:* A registered company is making an underwritten distribution of its securities. A member of the underwriting firm is also a director of the registered company. Can the underwriting firm conduct customary stabilizing transactions during the distribution period without incurring Section 16(b) liability, assuming the conditions of Rule 16b-2 are satisfied?

Answer: Yes. Rule 16b-2 exempts transactions in the security being distributed, as well as such stabilizing transactions as may be considered necessary to effect the distribution.

Illustration: The same company proposes to make an offering of preferred stock which is convertible into shares of its common stock. The underwriter intends to stabilize during the distribution period by buying the preferred stock.

Interpretation: The stabilizing purchases are exempt from the recovery provisions of Section 16(b).

(83) *Question:* Is the exemption afforded by Rule 16b-2 available to the underwriter who enters into a standby agreement with an issuer in connection with the redemption of a class of convertible debt securities?

Answer: Yes.

Illustration: A registered company proposes to call its outstanding subordinated convertible debentures for redemption. The company does not wish to use its own cash for the redemption. Accordingly, it will enter into a standby agreement with a group of dealers represented by a managing dealer, one of whose partners is also a director of the company. The standby agreement provides that the dealers will undertake to purchase any debentures tendered for cash at a price slightly in excess of the redemption price. The dealers would then convert the debentures into common stock of the company and sell such common stock in the open market.

Interpretation: The exemption provided by Rule 16b-2 is available to the managing dealer for the purchase and sale transactions contemplated so long as the conditions of the rule are met.

(84) *Question:* Is Rule 16b-2 available to an underwriter whose participation exceeds 50 percent of the aggregate offering where a member of the underwriter is also a director of the issuer?

Answer: No. Since the aggregate participation of persons not subject to the provisions of Section 16(b) must be at least equal to the aggregate participation of those subject to that section, the exemption would not be available.[110]

(85) *Question:* An unaffiliated underwriter purchases 35% of a new offering of common stock in a firm commitment underwriting for a registered company. As a result of that purchase the underwriter becomes the owner of more than 10 percent of the company's outstanding common stock. Is the protection of Rule 16b-2 available to the underwriter in such a situation?

Answer: Yes. Rule 16b-2 will exempt purchases and sales of the security being distributed, as well as necessary stabilizing transactions.

C. Rule 16b-3 [17 CFR 240.16b-3]

(1) *Introduction.* Rule 16b-3 establishes exemptions from the liability provisions of Section 16(b) for certain securities transactions occurring under those employee benefit plans which meet the conditions specified in the rule.[111] First adopted in 1935, and amended numerous times, Rule 16b-3 has had a long and complex history largely because of rapidly developing techniques in employee compensation. From the beginning, however, the basic thrust of the rule was to provide statutory insiders with a measure of relief from the impact of Section 16(b) on their participation in various types of employee benefit plans. Essentially, Rule 16b-3 is applicable to two broad categories of employee plans: (1) those plans which provide for the acquisition of securities of the issuer through the individual exercise of a stock option or other right and thus involve some element of choice by the insider as to the timing of the acquisition of the stock; and (2) those plans which provide for the acquisition of securities of the issuer on a more or less mechanical basis, such as stock bonus, retirement, incentive, thrift, savings and similar plans, and involve virtually no individual decision on the part of the participant as to the timing of the acquisition of the stock.

The concept of volition, or the ability on the part of a participant to make an independent choice or decision affecting his actual receipt of securities under an employee benefit plan, is central to the application of Rule 16b-3 to the two major types of benefit plans which involve the distribution of employer securities to participants. The first type, plans providing for the acquisition of employer securities through the exercise of options, warrants or similar rights and generally covering a limited group of key employees, usually gives broad discretion to the participant with respect to the timing of the exercise of his options or rights. A participant may be able to exercise his options at any time or for substantial periods during their stated life, and this freedom permits him to acquire the securities underlying the options at points in time which are within his control. As a consequence, it may be possible for an insider participant to coordinate the exercise of his options with the possession of non-public or inside information and perhaps obtain the kind of economic benefit that Section 16(b) of the Exchange Act was designed to discourage. Accordingly, Rule 16b-3 recognizes the element of volitional control present in plans of the first type and does not provide an exemption from Section 16(b) for the securities acquired pursuant to the exercise of options, warrants or rights. The rule, however, does exempt from the recovery provisions of Section 16(b) the acquisition of options, warrants and rights themselves since they are essential to the operation of plans of this type. Rule 16b-3 requires that all such rights be non-transferable, and thus, in the context of an employee benefit plan, they are not effective vehicles for the abuse of inside information.

Employee benefit plans of the second type, stock bonus, retirement, thrift and similar plans, may cover most if not all of a company's employees. Unlike the option plans, they are generally structured to eliminate any meaningful volition or choice on the part of the participant. As a rule, the employee's basic choice is whether to participate in the plan or not. Once the employee

[110] See Rule 16b-2(a)(3) [17 CFR 240.16b-2(a)(3)].

[111] For purposes of this release, a benefit plan which complies with the conditions of Rule 16b-3 may be referred to as a "complying plan."

elects to participate, and depending upon the plan, he may have limited additional decisions to make such as the amount of his regular contribution to the plan and his selection of an investment vehicle within the plan, if more than one is available. But in plans of the second type the employee cannot control the moment in time when he will receive a distribution of securities of the employer as a result of his participation in the plan. Distributions are made in accordance with the terms of the plan, rather than any decision of an individual participant. The meaningful volition is absent from plans of the second type. The mechanical nature of such plans, coupled with the inability of a participant to influence allocations to his account or distributions to him under the plan tend to make plans of the second type ineffective for the abuse of inside information. Consequently, and in contrast to plans of the first type, Rule 16b-3 exempts the actual acquisition of securities issued to participants, although the rule does not exempt the subsequent disposition of such securities by participants under either type of plan. In addition, for plans of the second type, Rule 16b-3 exempts certain formal transactions which may be regarded as purchases and sales and which are necessary to the operation of these plans, such as the transfer of employer securities from the trustee to the plan, the allocation of such securities within the plan, and the crediting of securities to individual accounts.

Were it not for the exemptive provisions of Rule 16b-3, it would be extremely difficult for officers and directors of a registered company to participate in either type of plan because of the impact of Section 16(b). Stock options and similar rights may be considered equity securities within the meaning of the Exchange Act's definition. Thus, an insider who receives a stock option may be deemed to have acquired an equity security for purposes of Section 16(b); should he decide to exercise that option, he must dispose of one equity security, the option, in order to acquire another, the underlying common stock. This situation is further complicated if the insider participates in a stock bonus, retirement, incentive or similar plan, which usually entails the accumulation of the issuer's shares for his account at relatively frequent intervals. Under these circumstances, and absent Rule 16b-3, an insider might never be able to make a casual sale of his company's securities without facing the possibility of liability, since his casual sale could always be matched against a purchase under either or both plans. The Commission has long held the view that transactions such as these do not readily lend themselves to the abuse of inside information and should not automatically be subject to the recovery provisions of Section 16(b).[112] Accordingly, the Commission adopted Rule 16b-3 to exempt these and other limited types of related transactions from the operation of the statute in situations where the nature of the transaction, coupled with the conditions imposed by the rule, affords some real assurance against the likelihood of misuse of inside information.

Specifically, Rule 16b-3 exempts the following types of transactions:

(1) The acquisition of shares of stock pursuant to a plan, otherwise than upon the exercise of an option, warrant or right, as well as certain ministerial transactions essential to the operation of such a plan, such as the crediting of securities to a participant's account.

(2) The acquisition, expiration, cancellation or surrender of a stock option or stock appreciation right.

(3) The delivery to the issuer of shares of its own stock as payment for the exercise of a stock option.

(4) Upon the exercise of a stock option, the acquisition of a number of shares of the issuer's stock equal to the number delivered to the issuer in payment.

(86) *Question:* Is the sale of stock by an insider, which was received under an employee benefit plan, exempt from the reporting and liability provisions of Section 16 if the plan satisfies the conditions of Rule 16b-3?

Answer: No. Rule 16b-3 provides an exemption from the liability provisions of Section 16(b) for the acquisition of shares of stock only under a non-volitional complying plan. Except for one limited, technical provision,[113] the rule does not apply to the disposition or sale of stock.[114] Finally, Rule 16b-3 does not confer any exemption from the reporting requirements of Section 16(a).[115] (But see discussion of Rule 16a-6, *supra*, with respect to the reporting of options and rights.)

(87) *Question:* Rule 16b-3 exempts from Section 16(b) the acquisition of a stock option or stock appreciation right,[116] but not the acquisition of the underlying shares.[117] What is the reason for this distinction?

Answer: A principal justification for the exemption of options, warrants and rights under Rule 16b-3 is that the acquisition of such rights is an event not normally within the control of the recipient.[118] Since the insider generally has no choice as to when or even whether he will receive such an award, it is unlikely that any inside information he may possess will affect the granting of the right. This concept is reflected in paragraph (b) of the rule which states that the selection of those insiders who are to receive stock options or stock appreciation rights under complying plans will be made by "disinterested" persons. Once such rights are granted, however, the discretion of insiders to control the timing and amount of exercise is not generally restricted. Since that decision to exercise may be influenced by inside information, the rule does not create an exemption for the acquisition of the underlying stock.

Illustration: The employee benefit plan of a company provides that the administering committee shall have the authority to offer to optionees the opportunity, at such times and on such terms and conditions as the committee may prescribe, to surrender their options to the company for cancellation, and to receive upon such surrender a payment in common stock of the company in an amount determined by a set formula.

Interpretation: The surrender of options pursuant to the plan would be exempt from the operation of Section 16(b) by virtue of Rule 16b-3. However, the acquisition of common stock upon such surrender would not be exempt. By permitting participants to determine

[112] The exemption of the option transaction alone may be significant. As the Commission observed in Securities Exchange Act Release No. 6111 (November 5, 1959) [24 FR 9272], ". . . plans frequently provide that grants are to be made at regular intervals, often annually. In consequence, it may be impossible to sell stock, without having a 'purchase' occur within six months before or after the 'sale.' Accordingly, the exemption is particularly important to the continued usefulness of these methods of providing employee compensation and incentives."

[113] That is, the delivery of stock by an officer or director as payment for the exercise of an employee stock option.

[114] Letter re *Tele-Communications, Inc.* dated July 12, 1978.

[115] Letters re *American Quasar Petroleum Co.* dated February 8, 1978; and *Risdon Manufacturing Co.* dated January 6, 1978.

[116] See question 22, *supra*, for a discussion of stock appreciation rights.

[117] See *Keller Industries, Inc. v. Walden*, 402 F. 2d 388 (5th. Cir. 1972). See also letters re *Doyle, Dane Bernbach, Inc.* dated March 2, 1977 and *SmithKline Corporation* dated March 23, 1976.

[118] The other main justifications are that stockholders in approving the plan have expressly authorized the additional compensation, and that the plan contains set limits so that it is not easily abused. The purpose of Rule 16b-3 is to permit the functionng of plans which serve a legitimate corporate purpose by providing additional incentives to officers and directors, where the safeguards surrounding such plans minimize the possibility of abuse of inside information.

whether they will deliver their options for payment pursuant to the terms of the surrender or continue to hold such options, the company is, in effect, providing the participant with the opportunity to control the timing of the acquisition of the common stock, with the concurrent possibility of speculative abuse.[119] Accordingly, Rule 16b-3 does not exempt the acquisition of the underlying shares. But since the rule does exempt the acquisition and disposition of the option, it is possible for this plan, and many similar compensation plans, to achieve their basic purpose and still avoid the mechanical application of the short-swing liability provisions of Section 16(b).

(88) *Question:* Rule 16b-3 does not exempt the acquisition of shares of stock "acquired upon the exercise of an option, warrant or right."[120] In the following types of plans,[121] are the shares received acquired other than upon the exercise of an option, warrant or right and thus exempted by the rule?

(a) *Performance Share Plan.* The acquisition of stock received on the settlement of performance share units awarded by a disinterested committee. Performance share units, in effect, are accounting units which entitle the holder to payments contingent upon the attainment of pre-established employment and performance objectives set over a period of time, typically three or more years. The payment value of each unit earned is equal to the current market value of a share of company stock at the end of the award period, subject in some cases to a maximum payment ceiling. Participants have no discretion as to the time or manner in which the units will be settled or valued.

(b) *Stock Appreciation Right Plan.* The acquisition of stock received upon the exercise of a right which is directly related to a stock option, whereby an insider is entitled to receive the appreciation in market value of the shares covered by the related stock option (i.e., current market price less purchase price of option shares), in lieu of actually exercising the option.

(c) *Employee Stock Purchase Plan.* The acquisition of stock received upon the exercise of a non-transferable "option" under a plan which, by its terms, gives the holder 90 days to purchase at 85 percent of market value as many shares of stock as his employee contributions will allow. The "options" are automatically exercised on the last day of the 90 day period, unless the employee withdraws from participation in the plan before that time. The only discretion exercised by an employee is whether to participate in the plan.

(d) *Restricted Stock Plan.* The acquisition of restricted stock by grant from the company with no cash consideration required. If the participant leaves the company's employ before the end of the restricted period (usually three to five years), the shares are forfeited to the company.

(e) *Restricted Stock Purchase Plan.* The acquisition of stock from a company by purchase at a substantial discount from current market value, often for a nominal amount such as par value. Rights to execute such purchases are granted to employees on a periodic basis, with the right expiring within a short time period, often thirty to sixty days following the grant.

Answer: In determining whether an acquisition of stock is pursuant to the exercise of an "option, warrant or right," the staff examines the facts and circumstances of a given plan with a view to determining whether the participant can exert a meaningful degree of control as to the timing of his acquisition, and also whether there is an element of consideration involved in the exercise. Thus, the staff has determined that the acquisition of stock in situations (a), (c) and (d) would be exempt from the operation of Section 16(b) by virtue of Rule 16b-3. However, the acquisition of stock in situation (e) would be exempt only under the limited circumstances discussed below. The acquisition of stock in situation (b) would not be exempt under the rule.

Certain interpretive letters concerning the applicability of Rule 16b-3 to performance share plans such as the one described in situation (a) have reached different conclusions. In some instances, the staff found such plans to be "bonus plans," and so concluded that the acquisition of stock under the plans would be exempt from Section 16(b). In other instances, the rights conferred by these plans were deemed to be "tantamount to stock appreciation rights." Under that approach, the acquisition of stock pursuant to the rights would not be exempt under the rule, although cash settlements of the rights could be exempted upon compliance with the provisions of paragraph (e) of Rule 16b-3.[122] After review, the staff modified its position and determined that the settlement of performance share units in either common stock or cash is essentially non-volitional and would be exempt under Rule 16b-3, at least under a plan which places all volition as to the form of settlement of a performance share unit (i.e., stock or cash) with a disinterested committee.[123] Since the form of settlement of the performance share units in situation (a) is made by a disinterested committee, the acquisition of stock in settlement of such units would be exempt from the operation of Section 16(b) by virtue of Rule 16b-3.

Situation (c) illustrates a common type of employee stock purchase plan. The staff has regularly taken the position that such plans may be deemed to be "retirement, incentive, thrift, savings or similar plan(s)" within the meaning of Rule 16b-3, and that the acquisition of shares pursuant to such plans would be deemed to constitute an acquisition of shares of stock other than upon the exercise of an option, warrant or right.[124] Unlike stock options granted under traditional option plans, the options granted under this type of stock purchase plan are granted and deemed to be exercised at regular intervals. A participant has discretion only as to his participation in the plan and the extent of his contributions within the limits established by the plan. He has no control over the timing of the automatic option exercise, and there is little opportunity for the kind of speculative abuse that Section 16(b) was designed to prevent.

With respect to situation (d), which describes a restricted stock plan, the staff's position has been that such a plan would constitute a "bonus" or "incentive" plan, and that an award of common stock would be exempt from the operation of Section 16(b). These plans clearly do not involve the exercise of an option or right, and there is no

[119] Letter re *The Rouse Company* dated October 29, 1980.

[120] With one limited, but important, exception. Rule 16b-3 does exempt delivery by the participant of a number of shares to the issuer in payment of the exercise price of a stock option, as well as the acquisition by the participant of a like number of shares received upon exercise. See Question 91, *infra*.

[121] These descriptions are based in part upon those supplied by Frederick W. Cook & Co., Inc. in a letter to the Commission dated November 1, 1978. They are intended only to be helpful illustrations, not a comprehensive summary of plan provisions in this area.

[122] Letters re *Chemical New York Corporation* dated August 2, 1978 and *West Point Pepperell, Inc.* dated August 29, 1978.

[123] Letter to *Lawrence C. Bickford* dated November 22, 1978. It should be noted, however, that if a performance share plan gives participants discretion as to the time or manner in which the units granted thereunder will be settled or valued, the units may be treated as SAR's under the rule. Under these circumstances, the settlement of the units for stock would not be exempt, and cash settlements would be exempt only upon compliance with paragraph (e) of Rule 16b-3.

[124] Letters re *Plantronics, Inc.* dated September 28, 1979; *Tratec Incorporated* dated March 7, 1979; *Baker International Corporation* dated December 29, 1978; and *Four-Phase Systems, Inc.* dated September 6, 1978.

period of time during which a participant might abuse inside information.[125]

Situation (b) provides an example of stock acquired upon the exercise of a right. The introductory paragraph to Rule 16b-3 specifically excludes shares acquired upon the exercise of a right, and therefore the acquisition of stock in situation (b) is not exempted by the rule. In such situations, of course, the participant can control the timing of the exercise of the right.

Situation (e) typifies a restricted stock purchase plan. Since the participants under such plans may have control over the timing of the exercise of the right, if only for a relatively short period of time, there exists some potential for speculative abuse. Further, the requirement that participants pay some measure of consideration in order to acquire stock pursuant to the plan makes it difficult to view such plans as "bonus" plans within the meaning of the rule. Nonetheless, various arguments have been advanced in support of the view that acquisitions under such plans should be exempted by Rule 16b-3. These arguments, essentially, are as follows: (1) the restricted stock purchase plan does not present a real opportunity for speculative abuse due to the inability of a participant to "time" his acquisition in the long-term sense of conventional stock options; (2) the economic reality of the transaction is an "award" of stock in recognition (and upon condition) of employment service; and (3) the grantee of such a "right" exercises no true volition due to the nominal nature of the purchase price.

After a review of this area, the staff has concluded that these contentions have merit, and that the acquisition of shares pursuant to a restricted stock purchase plan such as that described in situation (e) should be exempt from Section 16(b) by virtue of Rule 16b-3 if certain conditions are met. In reaching this conclusion, the staff deems it essential that the plan provide: (1) that rights granted to participants under the plan expire within a period of no longer than sixty days; and (2) any nominal consideration required of a participant in connection with the exercise of a right must be required only in order to assure compliance with applicable state law, and must not exceed ten percent of the market value of the shares subject to the right at the time of exercise.[126]

(89) *Question:* Does the phrase "option, warrant, or right" include the right of a participant to elect to defer receipt of an award payable in stock or in cash?

Answer: If the provisions of the plan governing such an election otherwise conform to the requirements of Rule 16b-3(d)(2)(i),[127] the election would not be considered the acquisition of a security pursuant to an "option, warrant or right." In this regard it should be noted that a participant who has this right is really making a choice as to the timing and manner in which payments are made under the plan. Broad discretion as to timing and manner of payment would be susceptible to potential abuse.[128] However, where the election is made either prior to the making of the award or prior to the fulfillment of all conditions to the receipt of the award, and where the participant is obligated to take the award in the form he previously elected, it would appear that the opportunity for misuse of inside information is slight. In recognition of this fact, Rule 16b-3 was amended to except from the phrase "exercise of an option, warrant or right" certain events which may occur in the operation of a plan where the award is ordinarily made in cash, but where the plan allows the recipient to defer payment of the award and elect to receive the deferred award in stock rather than in cash.[129]

(90) *Question:* Are the exceptions provided by Rule 16b-3(d)(2) relevant in the following circumstances:

(a) The right to elect to participate in a plan;

(b) The right to defer receipt of vested stock already credited to a participant's account where there is no cash alternative;

(c) The election of a retiring participant to receive a distribution in kind of his interest in the company common stock fund, in lieu of receiving cash?

Answer: Although the circumstances described in (a) and (b) do not literally fall within paragraph (d)(2) of Rule 16b-3, they do not constitute the acquisition of shares of stock upon the exercise of an "option, warrant or right" within the meaning of the rule. Situation (a) does not involve a purchase or acquisition, and thus would not appear to need the protection of an exemption. In situation (b), the participant is really not exercising volition since his right to a specific number of shares is fixed, whether he receives the shares now or later. By permitting the participant in situation (c) to elect to receive payment in stock in lieu of cash, an immediate acquisition of stock can be said to have occurred pursuant to the exercise of an "option, warrant or right."[130] Therefore, the provisions of Rule 16b-3(d)(2) must be satisfied if the election is to be exempt from the operation of Section 16(b) by virtue of Rule 16b-3.

(91) *Question:* Rule 16b-3 provides a special exemption for transactions whereby an officer or director satisfies the exercise price of a stock option by delivering to the issuer shares of the same class of stock which he already owns. The rule exempts the insider's disposition of the number of shares surrendered in payment, as well as his acquisition of an equal number of shares upon exercise of the option. Shares received upon exercise, in excess of the number surrendered, are not exempted by the rule. Does this mean that an insider can exercise an option under this provision and then proceed to sell the exempted shares he acquires upon exercise without regard for the liability provisions of Section 16(b)?

Answer: No. When an insider exercises a stock option in this fashion,

---

[125] It should be noted that Section 16(a) reports should be filed at the time when share certificates are issued in the recipient's name since, even though the shares are restricted, voting power and the right to receive dividends will usually vest at that time.

[126] See letter re *Western Gear Corporation* dated June 11, 1981. Issuers relying on prior interpretive letters, utilizing other standards, may continue to rely on such letters for the life of current plans.

[127] Rule 16b-3(d)(2) provides:

2. The term "exercise of an option, warrant or right" contained in the parenthetical clause of the first paragraph of this rule shall not include

(i) The making of an election to receive under any plan compensation in the form of stock of credits therefor, provided that such election is made either prior to the making of the award or prior to the fulfillment of all conditions to the receipt of the compensation and, provided further, that such election is irrevocable until at least six months after termination of employment;

(ii) The subsequent crediting of such stock;

(iii) The making of any election as to the time for delivery of such stock after termination of employment, provided that such election is made at least six months prior to any such delivery;

(iv) The acceptance of certificates for shares of such stock.

[128] An exemption for shares acquired pursuant to such an unlimited right would be contrary to the underlying theory of Rule 16b-3 as set forth in Securities Exchange Act Release No. 6111 (November 5, 1959) [24 FR 9272], to exempt only those acquisitions which are unrelated to the use of inside information, primarily because of a lack of volition or limitation of discretion on the part of the insider with respect to the amount and timing of such acquisitions.

[129] See Securities Exchange Act Release Nos. 7776 (December 23, 1965) [31 FR 86] and 8592 (May 1, 1969) [34 FR 7574]. See also letter re *PPG Industries* dated September 20, 1980.

[130] See *Greene v. Dietz*, 247 F.2d 669 (2d Cir. 1957), and *Perlman v. Timberlake*, 172 F.Supp. 246 (S.D.N.Y. 1959).

he routinely acquires more shares than he surrenders. By its terms, Section 16(b) is applicable to any purchase and sale occurring within six months. Since the insider would have purchased shares upon exercise of the option (to the extent that the shares received exceeded those delivered) and would have sold some or all of the shares received,[131] these transactions would be subject to the recovery provisions of Section 16(b).

Illustration: A director of a registered company holds an option for 200 shares of its common stock at an exercise price of $10 per share. On June 1, when the common stock is trading at $20 per share, he decides to exercise the option by delivering 100 shares already owned (with a value of $2,000) in payment for the 200 shares subject to the option. Thereafter, on August 1, he sells 150 shares at $25 per share. These are his only relevant transactions during the calendar year.

Interpretation: Since the only purchase that can be matched with the August sale is in the amount of 100 shares (the number of shares received upon exercise that exceeded the number delivered), the amount of the director's liability under Section 16(b) is limited to the profit realized on the sale of 100 of the 150 shares sold.

(92) *Question:* In delivering already owned shares to satisfy the exercise price of a stock option, can the optionee also use the shares received upon such exercise to satisfy the exercise price of additional options?

Answer: Yes. The optionee can use any shares of the same class that are in his possession. However, the so-called "pyramiding of shares" is not contemplated by Rule 16b–3. Under this technique, the optionee requests the issuer to automatically apply the shares received upon the exercise of a stock option to satisfy the exercise price for additional options. The effect of pyramiding, at least in theory, is to allow the optionee to deliver a relatively small number of shares in satisfaction of the exercise price of even the largest option.[132] In amending Rule 16b–3 to provide an exemption in connection with the exercise of stock options, the Commission did not intend that this relief would extend to the practice of pyramiding.

(93) *Question:* Since the fair market value of the already owned shares will seldom exactly equal the exercise price, does the rule also exempt the sale by an optionee of the fractional share interest that will result when the market value of the already owned shares is fractionally in excess of the purchase price of the option shares?

Answer: Yes. Although Release No. 34–17080 (August 28, 1980) [45 FR 57389], speaks in terms of exempting whole shares, the staff is of the view that the sale by an optionee of a fractional share interest in connection with the exercise of an option would be exempt from the operation of Section 16(b).

2. *Approval by Security Holders:* In order to be eligible for the exemptive relief afforded by Rule 16b–3, a plan must satisfy the relevant conditions specified in the rule. The first condition is that the plan must be approved by the affirmative vote or consent of the company's security holders, solicited in accordance with the rules and regulations in effect under Section 14(a) of the Exchange Act.

(94) *Question:* Can the shareholder approval requirement be satisfied if the original vote or consent was not solicited substantially in accordance with the rules and regulations in effect under Section 14(a), because such action was taken at a time when Section 14(a) was not applicable to the company?

Answer: Yes. Paragraph (a) of Rule 16b–3 recognizes that a plan may be approved by security holders prior to the registration of the company's equity securities under Section 12 of the Exchange Act and thus at a time when the Commission's proxy rules under Section 14(a) do not apply. In such cases, the approval requirement of Rule 16b–3 can be satisfied by the issuer furnishing in writing to its shareholders of record entitled to vote on the plan substantially the same information regarding the plan that would be required by the rules and regulations under Section 14(a).[133]

Illustration: The company's common stock was recently registered under Section 12(g). Employees of the company received stock options pursuant to a plan both before and after such registration. The plan has not been submitted to shareholders for approval in accordance with the rules and regulations under Section 14(a) of the Exchange Act.

Interpretation: The exemption afforded by Rule 16b–3 would not be available for options granted under the plan until such time as the company complies with the informational requirements of the rule.[134]

(95) *Question:* In order to rely on the exemption afforded by the rule, when must this alternate informational requirement be met?

Answer: Rule 16b–3(a)(2) provides that the written information is required to be furnished on or prior to the date of the first annual meeting of security holders held subsequent to the later of (a) the first registration of an equity security under Section 12 of the Exchange Act or (b) the acquisition of an equity security for which exemption is claimed by a officer or director.

(96) *Question:* Where a company is not subject to the Commission's proxy rules, must the alternate information be provided to all security holders, including benefical owners, and holders of securities not entitled to vote on the plan?

Answer: No. The information is required to be sent only to security holders of record who would be entitled to vote on approval of the plan at the time the information is sent.[135] This group may include holders of securities which are not registered under section 12 of the Exchange Act.[136]

(97) *Question:* Does shareholder approval of a plan adopted by a predecessor corporation carry over to a successor corporation?

Answer: Yes. In connection with a merger, reorganization, purchase of assets or similar transaction, approval of a plan by the shareholders of a predecessor corporation, in accordance with the provisions of paragraph (a) of Rule 16b–3, would carry over to the successor corporation provided, of course, that the plan was assumed by the successor.[137]

---

[131] Of course, a sale of shares other than the option shares would have the same result.

[132] Theoretically, only one share is needed. For example, suppose an insider holds an option for 5,000 shares at an exercise price of $30. He decides to exercise the option when the stock is at $60 by delivering one share of stock. As a result, he received 2 shares which are automatically used to purchase 4 shares under the option, which in turn are used to purchase 8 shares, and so on until the maximum number of shares purchasable under the option pursuant to this technique are received.

[133] As a matter of policy, the staff will not express any opinion whether the approval of a company's shareholders was solicited substantially in accordance with the rules and regulations in effect under Section 14(a). Compliance with the proxy rules is a question of fact which can be determined best by the parties concerned and their counsel, in light of all relevant facts.

[134] It should be noted that, even assuming compliance with the informational requirement at the next annual meeting of security holders, the exemption provided by the rule would only be available with respect to those options granted since the preceding annual meeting. See Rule 16b–3(a)(2).

[135] The rule makes it clear that this requirement is met if the information is mailed to the last known addresses of persons who are record holders within 30 days prior to mailing.

[136] Four copies of the written information forwarded to security holders must be filed with, or mailed to, the Commission not later than the date on which it is first sent to security holders.

[137] Letter re *Combined International Corporation* dated August 15, 1980 and *Natomas Company* dated February 21, 1980.

(98) *Question:* Where a plan provides for the granting of awards, and such awards are granted before obtaining the approval of security holders required by Rule 16b-3, is the exemption provided by the rule still available?

Answer: Yes. So long as (1) the grant of the award is conditioned upon subsequent shareholder approval; (2) the recipient has no right to sell or transfer the award; and (3) the plan otherwise conforms to the requirements of Rule 16b-3. In these circumstances, it is the staff's view that the exemption provided by the rule would be available in connection with the acquisition of the awards and any vesting of shares which may occur under the plan, but only to the extent allowed by Rule 16b-3(a)(2) (i.e., for those awards granted and any shares vested since the preceding annual meeting).[138]

Illustration: The plan is a new part of the company's key employee stock incentive program and was created by the board of directors in order to provide for the issuance of shares as awards to officers who have a direct responsibility for a long-term growth of earnings. Although the plan has not been approved by shareholders, "conditional awards" have been granted since the last annual meeting, and the recipients of such awards have no right to sell, assign, transfer, pledge or place any encumbrance on the awards or the underlying shares. Ownership of the shares will not vest until the lapse of certain restrictions which govern the award. The plan otherwise meets the conditions of Rule 16b-3.

Interpretation: Assuming shareholder approval of the plan at the next annual meeting, the grant of the conditional awards, as well as any acquisitions of shares pursuant to such awards, will be exempt from the operation of Section 16(b) by virtue of Rule 16b-3.

(99) *Question:* Would the existence of a plan provision which allows the board of directors to amend or modify the plan, without necessarily seeking shareholder approval, automatically result in the loss of the exemption?

Answer: No. However, any amendment to the plan which (a) materially increases the number of shares which may be awarded under the plan, (b) materially increases the benefits accruing to participants in the plan, or (c) materially modifies the requirements for eligibility for participation in the plan, must be approved by the shareholders in order to insure the continued availability of Rule 16b-3.

(100) *Question:* Rule 16b-3(a)(2)(ii) also requires the approval of security holders for certain material amendments or modifications made to plans which have already received approval. Would the following amendments require approval under Rule 16b-3(a)(2)(ii):

(a) An amendment which would provide for the grant of stock appreciation rights [139] or limited rights;[140]

(b) An amendment increasing the number of shares of stock subject to exercise pursuant to a stock appreciation right;[141]

(c) An amendment permitting officers and directors to participate in the plan;

(d) An amendment waiving a two-year eligibility requirement for participation, which significantly increases the number of participants in the plan, including officers and directors;

(e) An amendment substantially increasing the number of shares that may be issued under the plan?

Answer: Yes. With respect to (a) and (b), the staff is of the view that SARs confer benefits upon participants that are material in nature. Accordingly, these two amendments would materially increase the benefits accruing to participants under the plan, and would require shareholder approval.[142]

Approval would also be required in connection with the adoption of amendments (c) and (d) since they materially modify the eligibility requirements for participation in the plan within the meaning of the rule.[143]

Finally, with respect to amendment (e), a significant increase in the number of shares issuable under the plan would ordinarily require the approval of security holders. In this situation, however, the determination of materiality is especially dependent upon the nature and scope of the particular plan, and decisions must be based on the specific facts of each case.

(101) *Question:* Of the following plan amendments, which ones would require shareholder approval in order to assure the continuing availability of Rule 16b-3?

(a) Extension of the period for the exercise of stock options from three months to three years following termination of employment, provided that such exercise is still within the original expiration date of such option;[144]

(b) Elimination of a restriction against participation in a plan for those employees who have reached age 65, in accordance with the provisions of the Employee Retirement Income Security Act;

(c) An increase in company contributions to at least 27 percent of the amount contributed by the participant, rather than at least 20 percent;

(d) A reduction in the amount of company contributions; [145]

(e) A provision for the acceptance of already owned stock in payment for the exercise price of a stock option;

(f) The use of plan contributions to buy company stock directly from the company instead of in the open market; [146]

(g) A revision which provides that cash instead of stock will be paid in settlement of SARS; [147]

(h) The elimination of a provision which requires an insider to select his contribution rate at least six months in advance of his enrollment in the plan; [148]

(i) The establishment of an additional fund in which a participant would have the option of directing all or a part of his contribution;

[138] Letter re *Wickes Companies, Inc.* dated July 14, 1980; *Arkansas Louisiana Gas Co.* dated August 16, 1977; and *Burndy Corporation* dated December 9, 1975.

[139] See letter re *Anheuser-Busch Companies, Inc.* dated February 20, 1981.

[140] A "limited right" is essentially an SAR which may be exercised in the event of a tender or exchange offer by someone other than the issuer. See letter re *Hospital Corporation of America* dated May 23, 1980.

[141] For example, under many plans, SARs may not be exercised for more than 50 percent of the shares to which the related option is exercisable. Thus, if an option is exercisable for 100 shares, the optionee may only exercise the SAR as to 50 shares. If he exercises the SAR for the maximum 50 shares, the shares remaining under option are reduced by a corresponding amount. Amendment (b) would permit SARs to be exercised for a greater number of shares, e.g., 75 percent rather than 50 percent. A basic purpose of the SAR is to furnish a source of cash for the purchase of option shares to officers and directors of the company who are constrained by the operation of Section 16(b) from selling other shares in order to finance the exercise of an option.

[142] It should be noted, however, that an amendment establishing "limited rights" would not be considered material if the plan already provided for the grant of stock appreciation rights. Letter re *Champion International Corporation* dated August 13, 1979.

[143] The staff has taken the position that the waiver of an eligibility requirement designed to benefit only non-insider employees which does not materially increase the cost of the plan to the company need not be submitted to shareholders under paragraph (a)(2) of Rule 16b-3. See letter re *FMC Corporation* dated March 10, 1981.

[144] See letters re *NCR Corporation* dated June 10, 1980 and *The Carnation Company* dated March 5, 1980.

[145] See letter re *E. H. Crump Companies, Inc.* dated January 14, 1980.

[146] See letter re *Transcontinental Gas Pipe Line Corporation* dated November 5, 1975.

[147] See letter re *Crompton & Knowles Corporation* dated July 7, 1977.

[148] See letter re *Dean Witter & Co., Inc.* dated November 1, 1975.

(j) A provision giving participants the right to make contributions of up to 12 percent of their compensation instead of 6 percent, with company contributions limited to the 6 percent provided by the original plan;

(k) A provision allowing participants to transfer their interest in the plan from one fund to another fund; [149]

(l) A provision permitting participants who make partial withdrawals from a plan to continue their contributions to the plan without penalty; [150]

(m) A provision permitting a retiring participant to defer distribution for up to 5 years and then receive distribution in 15 annual installments; [151]

Answer: None of the foregoing amendments require shareholder approval. It is the staff's view that the amendments are not material for purposes of Rule 16b-3(a)(2) since they would not result in any additional remuneration for directors and officers not already contemplated by the plans, nor would they materially increase the number of eligible participants, or substantially increase the number of securities issuable under such plans.

(102) *Question:* Is shareholder approval required under Rule 16b-3(a) for amendments to a stock option plan and related stock option agreements, whose sole purpose is to permit options granted and to be granted under the plan to be treated as "incentive stock options" for federal tax purposes? The amendments would provide that: (1) the aggregate fair market value of the stock underlying the options granted to a participant may not exceed in any calendar year $100,000 plus certain carryovers; and (2) no incentive stock options may be exercised by a participant while any previously granted incentive stock options are outstanding.

Answer: No.[152] The adoption of such amendments may result in certain federal income tax benefits to plan participants and may have some adverse federal income tax consequences on the company. Historically, however, the staff has not considered the tax implications of employee benefit plans in determining the applicability of the shareholder approval requirement of Rule 16b-3(a). The staff does not generally regard such benefits or detriments to be controlling in assessing the need for shareholder approval under the rule. It is possible, of course, that under some circumstances benefits or detriments resulting from tax or other legislation might rise to a level of significance requiring shareholder approval.

3. *Disinterested Administrators:* Paragraph (b) of Rule 16b-3 sets forth a second condition for the availability of the rule with respect to the participation of officers and directors in various benifit plans. Paragraph (b) generally requires that the selection of any director or officer to whom stock may be allocated, or to whom stock options or stock appreciation rights may be granted, as well as the number of shares subject to such options or rights, must be determined by disinterested administrators. In the case of director participants, this discretion must be exercised by a disinterested board of directors or a disinterested committee as defined in the rule.[153] In the case of officers who are not directors, the award discretion must be in the hands of the board of directors or a committee of three or more directors.

(103) *Question:* Where a plan is open to all directors, officers and employees and the number of shares allocable to such participants is not left to the discretion of any person, is rule 16b-3(b) applicable?

Answer: No. The requirement for disinterested administrators is not applicable where the plan is open to all and no person has discretion as to the number of shares a participant will receive.[154]

Illustration: The purpose of the employee benefit plan of a company is to provide eligible employees a means of purchasing shares of company common stock in the open market, through regular payroll deductions of up to a maximum of 6 percent of bi-weekly compensation. The company will contribute an amount equal to 25 percent of each participating employee's actual payroll deduction. Participation in the plan is entirely voluntary, and all regular full time employees who have been employed by the company for at least two years are eligible to participate.

Interpretation: This plan need not satisfy the requirements of Rule 16b-3(b) in order for participants to rely on the exemption provided by the rule, since participation is essentially open to all employees, and the number of shares allocable to participants is not within the discretion of any person.

(104) *Question:* Assume that the plan described in Question 103 is open only to key employees and does not satisfy the requirements of either 16b-3(b)(1)(i) or (b)(1)(ii) [155], would the exemption provided by the rule still be available if the plan permitted participants to select between investments (such as a choice of either company stock or government obligations) and to direct a percentage of their contribution according to that choice?

Answer: Yes. Rule 16b-3(1)(iii) exempts the acquisition of shares under a plan without the need for disinterested administrators, if the plan sets forth the maximum number of shares which directors may acquire pursuant to the plan, and the terms and times at which such stock may be acquired. In the instant question, although a participant may have discretion to determine how much to contribute to the plan and how much of his individual account shall be invested in the company's stock, the plan establishes fixed limitations upon his discretion by establishing a maximum percentage of compensation which he may contribute, i.e., 6 percent.[156] Thus, it would appear that that plan meets the provisions of Rule 16b-3(b)(1)(iii)(A).[157]

---

[149] See letter re *TRW, Inc.* dated June 28, 1977.

[150] See letter re *InterNorth, Inc.* dated July 14, 1980.

[151] See letter re *General Foods Corporation* dated May 29, 1980.

[152] It should be noted that Rule 16b-3 does not exempt the "pyramiding" of shares under employee stock option plans. See discussion regarding pyramiding in the answer to Question 92, *supra*.

[153] Rule 16b-3(d)(3) defines "disinterested person," as used in paragraphs (b) and (c) of the rule, to mean "an administrator of a plan who is not at the time he exercises discretion in administering the plan eligible and has not at any time within one year prior thereto been eligible for selection as a person to whom stock may be allocated or to who stock options or stock appreciation rights may be granted pursuant to the plan or any other plan of the issuer or any of its affiliates entitling the participants therein to acquire stock, stock options or stock appreciation rights of the issuer or any of its affiliates."

[154] See letters re *Hexcel Corporation* dated July 3, 1980 and *Fed-Mart Corporation* dated December 8, 1972.

[155] Paragraphs (b)(1)(i) and (b)(1)(ii) of Rule 16b-3 relate to the requirement that a plan be administered by disinterested persons with respect to participation of directors in the plan.

[156] See, generally, letters re *ROCKCOR, Inc.* dated July 22, 1981; *Homestake Mining Company* dated June 20, 1974; and *Amerada Hess Corporation* dated March 30, 1972.

[157] Rule 16b-3(b)(1) provides:

(1) With respect to participation of directors:

(i) By the board of directors of the issuer, a majority of which board and a majority of the directors acting in the matter are disinterested persons;

(ii) By, or only in accordance with the recommendation of, a committee of three or more persons having full authority to act in the matter, all of the members of which committee are disinterested persons; or

(iii) Otherwise in accordance with the plan, if the plan:

(A) specifies the number or maximum number of shares of stock which directors may acquire or which may be subject to stock options or stock appreciation rights granted to directors pursuant to the plan and the terms upon which and the times at which, or the periods within which, such stock may be acquired or such options or rights may be acquired and exercised; or

Continued

(105) *Question:* If the selection of director participants who are to receive stock under a plan is made by a committee, one of whose members is not "disinterested" within the meaning of Rule 16b-3(d)(3), would this fact destroy the availability of the exemption?

Answer: Yes. Subparagraph (b)(1)(ii) of the rule requires that if discretion with respect to participation by directors is exercised by a committee, then all the members of such committee must be disinterested persons.[158]

Illustration: An award plan, a written document which meets the definition of a plan as stated in Rule 16b-3(d), was approved by a majority of the stockholders of the company. The plan is administered by a committee of four persons, all of whom are directors. Three of the committee members are disinterested persons as that term is defined by Rule 16b-3(d)(3). However, the fourth member of the committee has been granted awards under the plan.

Interpretation: Inasmuch as one of the members of the committee does not appear to be a disinterested person, the plan does not meet the conditions of the rule and, therefore, the exemption provided by the rule is not available.

(106) *Question:* Where Rule 16b-3(b) is applicable, would a committee member be considered "disinterested" in the following circumstances?

(a) He participates in another employee benefit plan of the issuer which is open to all and whose eligibility and allocation criteria are fixed and uniform for all employees;

(b) He participates in another plan of the issuer under which the selection of persons who will receive awards is within the discretion of others;

(c) He is granted options, independent of any plan, but subject to approval of shareholders.

Answer: The committee member would be deemed "disinterested" in situations (a) and (c), but not in situation (b). In this regard, it should be noted that a disinterested person under the rule must not have "been eligible for selection as a person to whom stock may be allocated or to whom stock options or stock appreciation rights may be granted pursuant to the plan or any other plan of the issuer * * *" In situation (a), the other plan does not involve any selection or allocation which is subject to the discretion of any person, and thus participation in such plan by the committee member would not disqualify him from serving as an administrator under any other plan. Similarly, since the options in situation (c) are granted outside of any plan, and are subject to shareholder approval, the grant of such options to the committee member will not affect his status as a disinterested person within the meaning of Rule 16b-3(b).

With respect to situation (b), the committee member is not disinterested since he is eligible for selection to receive stock pursuant to another plan.

Illustration (1): The various stock option plans of the company are administered by a stock option committee composed of three directors, none of whom is eligible to participate in such plans. Two of the committee members, however, are eligible and do participate in the company's employee stock ownership plan.

The stock ownership plan provides for the inclusion of all employees with one year of service who have reached the age of 21. Contributions to the plan are used to purchase the company stock. Allocations of employee contributions under the plan are based upon a participant's percentage of the total compensation received by all participants. However, the amount contributed to a participant's account is limited to the lesser of 25 percent of his compensation or a specified dollar amount which varies with the cost of living. Both committee members are restricted by this dollar amount limitation.

Interpretation: Since the eligibility and allocation criteria under the stock ownership plan are fixed and uniform for all employees, and since all employees are able to participate in the plan under those criteria, the participation by the two committee members does not disqualify them under Rule 16b-3(d)(3) from serving as administrators of the company's various stock option plans.[159]

Illustration (2): The option plan of a company provides for the granting of non-transferable stock options. Persons chosen to receive options are designated by an option plan committee composed of three persons selected by the board of directors to administer the plan. The committee members are ineligible to receive options under the plan.

The company also has a stock purchase plan for certain, but not all, full-time salaried employees, including the three persons who serve on the option plan committee. The stock purchase plan permits the regular acquisition of company shares through employer-employee contributions in fixed amounts. The stock purchase plan is administered by a separate committee of three persons, other than those who administer the option plan, who are selected by board. The stock purchase plan committee has the power to determine which groups of employees are eligible to participate.

Interpretation. Because the purchase plan gives its own administrative committee the power to select certain groups for participation in the plan, the members of the option plan committee would not be disinterested administrators within the meaning of Rule 16b-3.[160]

(107) *Question:* Is paragraph (b)(2)(i) of the rule [161] satisfied even if one or more members of a committee of three directors is not a disinterested person?

Answer: Yes.[162]

(108) *Question:* Prior to registration under Section 12 of the Exchange Act, a company adopts an employee stock option plan which does not meet the disinterested administrator standard of paragraph (b) of Rule 16b-3. The company grants options pursuant to the plan, and shortly thereafter registers its common stock under the Exchange Act. The stock option plan is then conformed to Rule 16b-3. Is the rule available for those persons who received options under the non-complying plan?

(B) sets forth, by formula or otherwise, effective and determinable limitations with respect to the foregoing based upon earnings of the issuer, dividends paid, compensation received by participants, option prices, market value of shares, outstanding shares or percentages thereof outstanding from time-to-time or similar factors.

[158] This answer assumes that the plan does not satisfy the alternative provisions of Rule 16b-3(b)(1)(iii).

[159] Letter re *American Financial Corporation* dated June 23, 1977.

[160] Letter re *R. B. Jones Corporation* dated July 20, 1972.

[161] Rule 16b-3(b)(2) provides:

2. With respect to the participation of officers who are not directors:

(i) By the board of directors of the issuer or a committee of three or more directors;

(ii) By, or only in accordance with the recommendation, of a committee of three or more persons having full authority to act in the matter, all of the members of which committee are disinterested persons; or

(iii) otherwise in accordance with the plan, if the plan

(A) specifies the number or maximum number of shares of stock which officers may acquire or which may be subject to stock options or stock appreciation rights granted to officers pursuant to the plan and the terms upon which, and the times at which, or the period within which, such stock may be acquired or such options or rights may be acquired and exercised; or

(B) sets forth, by formula or otherwise, effective and determinable limitations with respect to the foregoing based upon earnings of the issuer, dividends paid, compensation received by participants, option prices, market values of shares, outstanding shares or percentages thereof outstanding from time-to-time or similar factors.

[162] Letters re *Faberge, Inc.* dated December 8, 1972 and *National Medical Enterprises, Inc.* dated October 22, 1980.

Answer: Yes. The Commission, in Release No. 34–7559 (March 22, 1965) [30 FR 4127], added a new subparagraph to the rule which provided that the disinterested administrator requirements of Rule 16b–3(b) would not apply with respect to any option granted or any other equity security acquired prior to the date of the first registration of an equity security.[163]

4. *Plan Limitations.* Paragraph (c) of Rule 16b-3 requires that a plan limit the amount of stock which may be issued thereunder or the dollar amount of such stock.

(109) *Question:* Would a plan be deemed to meet the requirements of paragraph (c) if it requires that both participant and employer contributions be limited to a fixed percentage of annual compensation?

Answer: Yes. The language of Rule 16b–3(c) indicates that the plan will qualify under this provision if it limits the maximum number of shares which may be allocated under the plan, or the aggregate dollar amount of such shares. These limitations may be set in terms of fixed dollar amounts, maximum number of shares, or by formulas based upon earnings, dividends, compensation received by participants, or similar factors.

Illustration: The employee benefit plan of a company provides that any salaried employee is eligible to participate, except those employees subject to certain collective bargaining agreements. A participating employee may contribute up to 12 percent of his basic salary by regular payroll deductions, of which up to 6 percent will be matched by company contributions of 50 percent. A participant may direct the trustee to invest his contributions in one of two investment alternatives.

Interpretation: Because of the 6 percent ceiling on company contributions, the plan effectively limits the aggregate dollar amount and the aggregate number of shares that may be acquired by a participant, and therefore the plan meets the requirement of Rule 16b–3(c).[164]

5. *Definition of Plan.* Paragraph (d) of Rule 16b–3 defines three terms that are used repeatedly throughout the rule, "plan," "exercise of an option, warrant or right" and "disinterested person." The last two terms have already been considered in connection with the discussion of the introductory paragraph, and paragraph (b) of the rule. The definition of the term "plan" will be considered here.

(110) *Question:* The definition of the term "plan" seems to include a broad spectrum of remunerative arrangements. Does the term include a bonus share provision in a personal employment agreement that has been approved by a company's board of directors as well as its shareholders?

Answer: No. Although the definition of the term "plan," as set forth in paragraph (d)(1) of the rule, is very broad, it is basically intended to include only those plans which apply uniformly to a class of persons. Since a bonus share provision in a personal employment contract is negotiated between the company and the employee individually, it would not be considered a "plan" within the meaning of Rule 16b–3.

(111) *Question:* Is an employee stock purchase plan which otherwise satisfies the requirements of Rule 16b–3(d)(1), although not specifically mentioned therein, deemed to be a "plan" within the meaning of that provision?

Answer: Yes.

(112) *Question:* Are the provisions of Rule 16b–3(d)(1)(i), which require that a plan set forth either the price or the method used for determining the price at which securities may be offered to participants, satisfied in the following circumstances:

(a) The plan provides that the price shall be determined by the board of directors and "may be less than, equal to, or greater than the fair market value of the common stock on the date the option is granted."

(b) The plan provides that the price shall be determined by the board of directors but that it will "not be less than 50 percent of the fair market value of the underlying shares of common stock on the date the option is granted."

(c) The plan provides that bonus stock issued thereunder shall be subject to "such conditions and restrictions as the board in its discretion may provide, except that bonus stock will be issued for no consideration."

(d) The plan provides that "shares of common stock issued under the plan may be issued for any lawful consideration as determined by the board."

(e) The plan provides that the "option price for the common stock to be issued under the plan shall be a price to be determined by the board upon the date of the grant, not less, however, than a price equal to the $1 par value of the stock?"

Answer: Although the price or the method for determining the price is not specifically set forth in any of the foregoing situations, it is the Division's view that the provisions in situations (b) and (c) would be deemed to satisfy Rule 16b–3(d)(1)(i).

Situation (b) utilizes a general, but meaningful guide which is not likely to be abused. Situation (c) simply indicates, in the case of a bonus stock award, that no price or additional consideration will be demanded of the participant. Situations (a), (d) and (e) are different, however. In those examples, the provisions for determining the price are so vague as to be uninformative. Since they do not set forth the offering price of the securities to participants, or a reasonably specific method by which the price may be determined, the staff believes that these provisions do not meet the standard of Rule 16b–3(d)(1)(i).[165]

(113) *Question:* Is the exemption provided by Rule 16b–3 available under a plan which permits options to be transferred?

Answer: No. As specifically stated in paragraph (d)(1)(ii) of the rule, any option issued under the plan must not be transferrable other than by will or inheritance.

6. *Cash Settlements of Stock Appreciation Rights:* Paragraph (e) of Rule 16b–3 exempts any transaction involving the receipt of cash in complete or partial settlement of a stock appreciation right from the operation of Section 16(b), if all of the conditions of paragraph (e) have been satisfied.[166]

(114) *Question:* Is stock received in full or partial settlement of a stock appreciation right exempt from Section 16(b) liability by virtue of Rule 16b–3?

Answer: No. Rule 16b–3 does not provide any exemption for stock received in settlement of a stock

[163] The effect of this exclusion from the requirements of paragraph (b) of Rule 16b–3, assuming the other relevant conditions of the rule are satisfied, is to make the protection of the rule available for certain acquisitions occurring under a plan, prior to Section 12 registration, to the extent that such acquisitions might be deemed purchases for purposes of Section 16(b). See *Adler v. Klawans, supra; Blau v. Allen, supra;* and *Feder v. Martin Marietta Corp., supra.*

[164] Letters re *Kennecott Paper Corporation* dated October 16, 1978 and *Gifford-Hill & Company, Inc.* dated October 1, 1975.

[165] Many plans provide a form of price range as to the formula for determining the price to participants. The suitability of such a formula in terms of the requirement of Rule 16b–3(d)(1)(i) must be established by an examination of the particular facts. In general, if the plan provision establishes a minimum price which is less than 50 percent of the market value of the security, the Division takes the position that such a formula is too vague to satisfy the standard of the rule.

[166] That is, the settlement of a stock appreciation right for cash will not be deemed to involve a simultaneous purchase and sale of the related stock. See footnote 108, *supra.* In addition, as stated in the introductory paragraph of Rule 16b–3 "* * * the acquisition, expiration, cancellation or surrender to the issuer of a * * * stock appreciation right * * *" is also exempt if the plan meets the conditions of the rule.

appreciation right, just as it does not exempt stock acquired upon the exercise of a stock option.[167]

(115) *Question:* A company has in effect a stock option—stock appreciation rights plan which satisfies the conditions of Rule 16b-3, except for paragraph (e) of the rule relating to cash settlement of stock appreciation rights. Would the following types of settlement under the plan be exempt from the operation of Section 16(b) by the rule?

(a) The plan provides that, should a participant be entitled to receive a fractional share, a cash payment will be made in lieu thereof;

(b) The plan provides that, upon exercise of an option and receipt of the appropriate number of shares, the company will pay to the optionee in cash an amount which approximates the federal income tax incurred;

(c) The plan provides that, upon the exercise of an SAR for stock, the appreciated value of the shares subject to the right will be reduced by the amount of tax incurred by the participant—the company would then pay such amount to the appropriate tax authorities for the account of the participant;

(d) The plan permits grants in the form of "equity units" which are essentially the equivalent of stock appreciation rights, except that increases in book value rather than market value determine the amount of cash the participant will receive;

(e) The plan permits a disinterested committee, in its sole discretion, upon or without the request of a holder, to cancel all or a portion of an option then subject to exercise by the holder, and either pay the holder in cash or issue stock. The committee authorizes full payment in cash upon exercise of a stock option;

(f) The cash settlement of a stock appreciation right.

Answer: All of the above cash payments would have to comply with the provisions of Rule 16b-3(e) in order for the exemption to be available for such cash payments. However, while paragraph (e) of Rule 16b-3 is intended to provide a safe harbor for cash settlements of stock appreciation rights, compliance with the provisions of paragraph (e) is optional on the part of the issuer, and a decision not to comply with the requirements of paragraph (e) would mean only that cash received by participants in full or partial settlement of a stock appreciation right would not be exempted from the operation of Section 16(b) by virtue of Rule 16b-3. Non-compliance with paragraph (e) would have no effect on settlements of stock appreciation rights in stock, nor would it affect the availability of the exemptive relief offered by any other provision of Rule 16b-3 for securities acquired pursuant to a plan that otherwise meets the conditions of the rule.

(116) *Question:* Are cash payments to a director in settlement of a stock appreciation right still exempt if the issuer has failed to meet certain of its periodic reporting obligations under Section 13 of the Exchange Act?

Answer: No. Under paragraph (e)(1) of the rule, the issuer must have filed all reports required under Section 13 for at least one year immediately prior to the settlement of a stock appreciation right. In addition, the issuer must regularly release, on a quarterly and annual basis, summary statements of sales and earnings. These two conditions are intended to provide some degree of assurance that comprehensive information about the issuer will be published and available on a regular basis.

(117) *Question:* Paragraph (e)(2) of rule 16b-3 prohibits the exercise of a stock appreciation right or any related stock option during the first six months of their respective terms. An officer receives a stock option and related stock appreciation rights and he exercises the first installment of the option in less than six months, which results in the surrender and cancellation of those stock appreciation rights relating to that portion of the option exercised. Does this destroy the exemption for cash exercises of the remaining stock appreciation rights?

Answer: No. This situation does not conflict with the requirements of paragraph (e)(2) of Rule 16b-3, insofar as the unexercised stock appreciation rights remaining. The reference to a "related stock option" means the particular share option to which an SAR relates, and not to any other options, whether or not exercised, which may have been a part of the same grant or award.[168]

(118) *Question:* Are the requirements of paragraph (e)(2) satisfied where stock appreciation rights are subsequently granted to holders of long-term stock options and then such rights are exercised within 6 months of the grant?

Answer: No. A basic purpose of this provision is to deter the use of inside information by requiring a six month hiatus between the date of grant and the date of exercise. Accordingly, both the stock appreciation rights and the options must be outstanding for at least six months prior to exercise in order to meet the requirement of Rule 16b-3(e)(2).[169]

(119) *Question:* If a plan provides that stock appreciation rights are exercisable within six months of grant, would this feature automatically destroy reliance upon Rule 16b-3(e)?

Answer: No. In Securities Exchange Act Release 34-13659 (June 22, 1977) [42 FR 33283] the Commission stated that it had revised subparagraph (e)(2) of the rule to provide that neither the stock appreciation right nor any related stock option *"shall have been exercised* during the first six months of their respective terms * * *" Thus, so long as the rights have not actually been exercised during the first six months of their term, the condition set forth in Rule 16b-3(e)(2) will have been satisfied.

(120) *Question:* When stock appreciation rights are granted conditioned upon subsequent shareholder approval, does the six month term of Rule 16b-3(e)(2) commence upon the date of the conditional grant or upon the date of shareholder approval?

Answer: The term of the stock appreciation rights would begin immediately upon their grant, assuming that shareholders in fact approve the plan.[170]

(121) *Question:* Assume that a plan does not meet the administration requirements of Rule 16b-3(e)(3) at the time stock appreciation rights are granted. The company then forms a disinterested committee to administer the plan. The committee proceeds, in its discretion, to confirm the earlier grants

[167] See Rule 16b-3(e)(5). In general, the granting of stock options and stock appreciation rights under a complying plan will have the following ramifications for the insider:

(1) The acquisition of both stock appreciation rights and related stock options is exempt under Rule 16b-3, as is the acquisition of independent stock options;

(2) The acquisition of stock upon exercise of a stock appreciation right or a stock option is a purchase not exempt under Rule 16b-3;

(3) The complete or partial cash settlement of a stock appreciation right is exempt under Rule 16b-3; and

(4) The acquisition of immediately exercisable stock appreciation rights, related stock options and independent stock options is not reportable under Section 16(a) by reason of Rule 16a-6. However, the acquisition of stock upon the exercise of such rights and options is reportable.

[168] See letter re *General Electric Company* dated February 3, 1978.

[169] It should be noted, however, that subsequent amendments to a plan to provide for the settlement of stock appreciation rights in cash would not start a new six month period. That is, the term of the stock appreciation right would still be deemed to have commenced on the date it was originally granted. Letter re *Savin Business Machines Corp.* dated January 6, 1978.

[170] Letters re *R. R. Donnelly & Sons Co.* dated December 12, 1979 and *Columbia Pictures Industries, Inc.* dated August 4, 1977.

of stock appreciation rights and advises holders not to exercise such rights or the related options for six months following committee confirmation. Does this form of compliance satisfy the requirements of paragraph (e)(3) of the rule in this situation?

Answer: Yes.[171]

(122) *Question:* Is the requirement of Rule 16b-3(e)(3)(i), that the plan be "administered by * * * a committee of three or more persons, all of whom are disinterested persons" satisfied, if the disinterested committee does not have the authority to select all of the persons who may participate but does have the sole authority to approve the form in which all stock appreciation rights granted under the plan will be paid?

Answer: No. Since the disinterested committee does not have full authority with respect to one of the fundamental powers of administration, i.e., the right to select all participants, the staff does not believe that the requirement of Rule 16b-3(e)(3)(i) has been satisfied.[172]

(123) *Question:* Where the board of directors or committee administering the plan has sole discretion to determine the form in which payment is to be made upon exercise of a stock appreciation right, has such board or committee acted in accordance with the provisions of Rule 16b-3(e)(3)(ii) in the following situations:

(a) The committee has adopted a general determination that all payments upon the exercise of a stock appreciation right are to be made 50 percent in the form of shares of company stock and the balance in the form of cash;

(b) The committee has amended the plan to provide that holders of stock appreciation rights will receive upon exercise (i) payment only in shares of common stock where such rights are exercised outside of the window period,[173] and (ii) payment only in cash where such rights are exercised during the window period;

(c) The committee has adopted a general determination that payments upon the exercise of stock appreciation rights are to be made entirely in the form of cash, if such exercise is made in conjunction with the exercise of a stock option, in accordance with a formula prescribed by the committee;

(d) The committee has adopted a general determination that it will approve any election made by a participant?

Answer: The board or committee has satisfied its responsibilities in situations (a), (b) and (c) but not in situation (d). The purpose of this provision is to insure that the disinterested administrators will have final authority and control over the form in which payment of the stock appreciation right will be made. Situation (d) represents an abdication of this authority which is inconsistent with the requirements of Rule 16b-3(e)(3)(ii).

(124) *Question:* If a plan provides that stock appreciation rights are exercisable only for cash, must the board or committee administering the plan approve the payment of such cash?

Answer: No.

(125) *Question:* Assuming that the exception [174] to the window period provision of Rule 16b-3(e)(3)(iii) is not applicable, does the window period restriction apply where (1) the form of settlement of a stock appreciation right is within the complete discretion of the committee administering the plan; and (2) the participant has the option to elect cash in lieu of the stock to which he would otherwise be entitled?

Answer: Yes, in both situations. The purpose of Rule 16b-3(e)(3)(iii) is to make clear that, in those circumstances where reliance is to be placed on the safe harbor provided by Rule 16b-3(e), the window period requirement is applicable not only to any *election* by a plan participant as to the form of payment of a stock appreciation right which may involve cash, but also to any *exercise* by a participant of a stock appreciation right for cash. Thus, as in situation (1), even though a participant may have no *election* as to the form of payment of a stock appreciation right, the window period requirement would still be applicable to any *exercise* of such right by a participant for cash.[175]

With respect to situation (2), by permitting participants to determine whether they will accept cash in lieu of stock in settlement of a stock appreciation right, the company is in effect providing such participant with an election as to the form of payment. Viewed in this light, the determination must be made in accordance with paragraph (e)(3) of the rule and the window period requirement applies.[176]

(126) *Question:* Must the plan administrator's decision to consent to or disapprove the election of a participant be made during the ten day window period?

Answer: No. This decision can be made at any time after the participant's election.

(127) *Question:* In order to eliminate differences in compensation for officers and directors who exercise stock appreciation rights for cash at different times during the same window period, a plan provides that the highest market price of the company's common stock during any particular window period shall be the cash settlement price for that window period. Does such a provision meet the requirements of Rule 16b-3(e)(3)(iii)?

Answer: Yes.[177]

(128) *Question:* Is the window period requirement of Rule 16b-3(e)(3)(iii) applicable to the automatic exercise of SARs?

Answer: No. The exception to the window period requirement provides that exercises of SARs which occur on fixed or automatic maturity dates shall not be subject to the requirements of Rule 16b-3(e)(3)(iii), if the date of exercise is at least six months beyond the date of grant of the SAR and is outside the control of the participant. Under these circumstances the insider has no volition, and the automatic exercise does not provide real opportunity for the misuse of confidential information.

Illustration: Under the terms of a plan, SARs are granted to participants concurrently with the grant of stock options. Recipients are permitted to exercise the SARs only during a widow period, as defined in Rule 16b-3(e)(3)(iii). The plan also provides that the SARs will be automatically exercised upon the expiration of the related option.

---

[171] Letter re *Standard Oil Company (Indiana)* dated February 19, 1981.

[172] Although interested directors can administer a benefit plan without jeopardizing the availability of Rule 16b-3 as long as the plan meets the requirements of paragraph (b)(1)(iii) of the rule, the specific exemption for cash settlements of SARs is dependent upon disinterested administrators. See letter re *Exxon Corporation* dated December 1, 1977.

[173] The term "window period" is used to describe the period of 10 business days in each quarter during which elections for cash settlement of stock appreciation rights must be made by participants. Under Rule 16b-3(e)(3)(iii), the window period commences on the third business day following the date of release of the specified quarterly and annual financial information and ends on the twelfth business day following such release.

[174] The window period provisions of Rule 16b-3(e)(3)(iii) do not apply to any exercise where the date of the exercise (1) is automatic or fixed in advance under the plan; (2) is at least six months beyond the date of grant of the stock appreciation right; and (3) is outside the control of the participant.

[175] In Securities Exchange Act Release No. 13659 (June 22, 1977) [42 FR 33283] the Commission stated "Henceforth, the exemption provided by the rule for cash settlements of stock appreciation rights will not be available unless all exercises of such rights for cash (other than those occurring on certain fixed or automatic majority dates) are made during a specified ten-day period each quarter following the release of financial information by the issuer."

[176] See letters re *Houdaille Industries, Inc.* dated May 8, 1978 and *Crompton & Knowles Corporation* dated July 7, 1977.

[177] See letter re *Texasgulf, Inc.* dated March 30, 1981.

Interpretation: Assuming the three provisions of the exception to Rule 16b-3(e)(3)(iii) are satisfied, the window period requirement would not be applicable to the automatic exercise of SARs.[178]

(129) *Question:* Must the exercise of "limited rights"[179] take place during a window period?

Answer: No. Since the period for exercise of limited rights is fixed in advance, and since such rights can only be exercised in very special circumstances which are beyond the control of the participant, their exercise comes within the exception provided by Rule 16b-3(e)(3)(iii), and the window period restriction is not applicable.

(130) *Question:* Pursuant to the provisions of a plan, SARs may be exercised for cash within a specified short period of time after the company enters into a definitive agreement for the merger, consolidation or sale of its assets. Should such exercises take place during a window period in order for the insider to properly rely on Rule 16b-3(e)?

Answer: Yes. Unlike "limited rights," mergers and other types of reorganizations as well as the transfer of company assets are not outside the control of directors and officers since such persons might be included in the negotiation and approval of the transaction. Thus, the exception to Rule 16b-3(e)(3)(iii) is not applicable.[180]

(131) *Question:* Assume that the date of exercise of a stock appreciation right meets the conditions of subparagraphs (e)(3)(iii) (A), (B) and (C). Must an election by the holder to receive cash in settlement of the right be made during a window period?

Answer: Yes. Rule 16b-3(e)(3)(iii) makes it clear that, where a participant has the right to elect cash as the form of payment of an SAR, such election must be made during a window period. Although the window period requirements of paragraph (e)(3)(iii) do not apply with respect to the *exercise* by the participant of a stock appreciation right for cash where the date of exercise meets the conditions of subparagraphs (A), (B) and (C), there is no parallel exception for an *election* by the participant to receive cash in payment of a stock appreciation right.[181]

D. Rule 16b-4 [17 CFR 240.16b-4]

Rule 16b-4 exempts from Section 16(b) any transaction of purchase and sale of a security made by a holding company registered under the Public Utility Holding Company Act of 1935, or by any subsidiary of such company, where both the purchase and the sale have been approved or permitted by the Commission under the Holding Company Act.

(132) *Question:* Is a formal order of the Commission required to assure the availability of Rule 16b-4?

Answer: No. The intent of the rule is simply to provide relief from the operation of Section 16(b) for those transactions by registered public utility holding companies which have been approved or permitted by the Commission pursuant to the applicable provisions of the Holding Company Act and the rules and regulations thereunder.

E. Rule 16b-5 [17 CFR 240-16b-5]

Rule 16b-5 exempts from the operation of Section 16(b) certain highly specialized transactions involving the acquisition of an equity security of an issuer through the redemption of a security of another issuer.

(133) *Question:* Are all acquisitions resulting from redemption exempt from section 16(b) of the Exchange Act pursuant to the provisions of this rule?

Answer: No. The rule is inapplicable to the acquisition of convertible securities or rights. Further, the application of the rule is severely limited by its terms to redemption transactions which consist exclusively of the exchange of one security for another, where both the old and the new security are substantially and in practical effects equivalents, and the redemption does not involve the payment of any additional consideration for the new security. Such a redemption does not result in any real change in the rights of the beneficial owner of the old security, although it does change the form of his holdings.[182]

Illustration: An issuer decides to establish a stock bonus type of employee benefit plan. For various reasons, it organizes an affiliated holding company to implement the plan. The assets of the holding company consist solely of stock of the issuer contributed to fund the plan. The stock bonus awards to participants are made using holding company stock, which is redeemable at any time for stock of the issuer on the basis of a predetermined ratio.

Interpretation: Rule 16b-5 exempts from Section 16(b) of the Exchange Act the acquisition of shares of the issuer received by a participant in such a redemption, so long as the participant has made no purchases of the same class of issuer security within six months before or after the redemption transaction.[183]

(134) *Question:* Does Rule 16b-5 exempt the purchase and sale of securities of the same classes as those involved in the redemption, when such transactions occur immediately before and after the redemption?

Answer: No. As stated in Securities Exchange Act Release No. 4495 (September 19, 1950) [15 FR 6477], proposing the rule for comment, Rule 16b-5 does not exempt any transaction other than the redemption. Thus, if there should be a separate purchase and sale (or sale and purchase) of either the old or the new security within any six month period, or if there should be a purchase of one and a sale of the other (or a sale of one and a purchase of the other), within any six month period, the insider would be subject to recovery under Section 16(b). Paragraph (c) of the rule is simply designed to facilitate the recovery of profit, by requiring an issuer to recognize formally the similarity between the two securities through appropriate corporate action, such as the adoption of a by-law or a resolution of the board of directors.

F Rule 16b-6 [17 CFR 240.16b-6]

Paragraphs (a) and (b) of Rule 16b-6 recognize that where securities are acquired through the exercise of a long-term option (one held more than six months), not all of the gain inherent in the exercise of the long-term option need be attributed to the insider for purposes of computing the profit recoverable under Section 16(b), since at least a portion of such profit may derive from appreciation which occured prior to the relevant six month period. The rule establishes this apportionment of short and long-term profit to maintain the basic policy of Section 16(b) against short-swing trading by insiders and, at the same time, to avoid recapture of the long-term gain inherent in the exercise of the option as not comprehended within the purposes of the section. Accordingly, when gain is being calculated under Section 16(b) with respect to a purchase resulting from the exercise of a long-term option and a sale

[178] See letter re *The May Department Stores Company* dates April 10, 1978.

[179] See footnote 140, *supra*, for a general definition of "limited rights."

[180] See letter re *Garfinckle, Brooks Brothers, Miller & Rhoads, Inc.* dated June 19, 1981.

[181] See letter re *Intertherm, Inc.* dated July 16, 1979.

[182] As a result, the beneficial owner must file the report required by Section 16(a) when the redemption takes place.

[183] See 2 L. Loss, Securities Regulation 1118 (2d ed. 1961).

within six months, the rule limits the issuer's recovery to the difference between the proceeds of the sale and the lowest market price of the security within six months before or after the date of the sale. In addition, paragraph (c) of Rule 16b-6 provides a complete exemption from Section 16(b) for the disposition of securities purchased in a transaction specified in paragraph (a) of the rule, provided such disposition is made in connection with a plan or agreement for a merger, consolidation, reclassification or sale of assets. It must be emphasized that paragraphs (a) and (b) simply limit the extent of Section 16(b) liability; paragraph (c), where applicable, actually exempts the transaction of disposition.

(135) *Question:* In computing the amount of profit that will inure to the issuer in a transaction which falls under Rule 16b-6(a), is the option exercise price considered the cost of the purchase, to be matched against the price received on a sale within six months of that purchase? [184]

Answer: No. The use of the option exercise price as the purchase cost would effectively deprive the insider of the long term appreciation in the value of his option, represented by the long-term increase in the value of the underlying stock. The Commission believes that the capture of this unrelated long-term profit is not comprehended within the purposes of Section 16(b). Consequently, in 1950, the Commission promulgated Rule 16b-6 [185] to preserve for the insider the gain attributable to the long-term portion of the option and still permit recovery of the profit surrounding the short-swing transaction itself.[186]

Illustration: On October 1, 1976, C, an insider of XYZ Corporation, is granted an option to buy XYZ common stock at $10.00 per share, the market value on the date of grant. On June 1, 1977, C exercises his option to buy XYZ at $10.00 per share. The market value of XYZ on the date of exercise is $15.00 per share. On September 1, 1977, C sells XYZ stock at $20.00 per share. Absent Rule 16b-6, C may be required to surrender the difference between the purchase price and the sale price: $20.00—$10.00, or $10.00 per share. Assume that the market price for XYZ common stock from March 1, 1977 to March 1, 1978 ranged as follows:

March 1, 1977	$13.50
April 1, 1977	14.00
May 1, 1977	14.00
June 1, 1977	15.00
July 1, 1977	16.00
August 1, 1977	17.00
September 1, 1977	20.00
October 1, 1977	20.00
November 1, 1977	19.00
December 1, 1977	19.50
January 1, 1978	18.00
February 1, 1978	15.00
March 1, 1978	16.00

Under Rule 16b-6, C would be required to surrender the difference between the sale price, $20.00, and the lowest price at which XYZ traded within six months before or after the sale which would be the price on March 1, 1977, or $13.50 per share. Thus, the recoverable profit computed with the benefit of the rule would be only $6.50 per share.

The same result obtains under Rule 16b-6 where the option to buy is exercised by an insider within six months after a sale of an equity security.[187] The maximum recovery based on matching the purchase upon exercise of the option, with a prior sale occurring within six months of such exercise, would be the difference between the sale price and the lowest price at which the stock traded within six months before or after the sale.

(136) *Question:* Where an insider purchases stock through the exercise of a long-term option and immediately sells such stock within six months at a price below the exercise price, is Rule 16b-6 applicable?

Answer: No. Since the insider did not realize any profit on the transaction, he has no liability under Section 16(b).

(137) *Question:* Is the exercise of a warrant or stock incentive right the exercise of a "similar right" within the meaning of Rule 16b-6?

Answer: Yes.

Illustration: An insider of a company exercises warrants granted to him by the company over two years ago. Within six months of the exercise, the insider exchanges all his shares of the company for shares of its parent pursuant to the terms of a reorganization agreement.[188] The exercise of the warrants for common stock and the subsequent exchange of the shares received upon such exercise would appear to involve a purchase and sale subject to Section 16(b).

Interpretation: While there would be a purchase and a sale for purposes of Section 16(b), Rule 16b-6(c) would appear to be applicable. As a consequence, the disposition of the securities in accordance with the terms of the reorganization would be exempt from the operation of Section 16(b).[189]

(138) *Question:* Is Rule 16b-6(c) applicable to mergers in which shareholders receive cash or a combination of cash and securities?

Answer: Yes. Rule 16b-6(c) provides insiders an exemption from the operation of Section 16(b) for the disposition of an insider's securities, purchased pursuant to a long-term option or right, or acquired pursuant to a long-term employment contract, as specified in paragraph (a) of the rule, provided that the disposition is pursuant to a plan or agreement for a merger, consolidation, reclassification or sale of assets. The exemption is not lost if cash is paid in lieu of securities, or in combination with securities.[190]

Illustration: Company A has entered into an agreement and plan of merger whereby it will merge into a wholly-owned subsidiary of Company B. On the effective date of the merger, each outstanding share of common stock of Company A will be converted into the right to receive $50 in cash, and Company A will become a wholly-owned subsidiary of Company B. An executive officer of Company A intends to exercise options which he has held for more than six months and then surrender the Company A shares received upon exercise for the $50 per share cash payment.

Interpretation: Rule 16b-6(c) exempts the disposition of the option shares from the operation of Section 16(b).

(139) *Question:* An officer owns shares of his company, as well as options to acquire additional shares. Both his shares and options have been held for more than six months. In connection with a merger, or one of the other transactions described in

[184] *Smolowe v. Delendo Corporation, supra.*

[185] Securities Exchange Act Release No. 4509 (October 24, 1950) [15 FR 7357].

[186] Letter re *New England Nuclear Corporation* dated September 18, 1972.

[187] Rule 16b-6 does not extend to options to *sell* securities.

[188] It should be noted that if an insider desires to realize the long term appreciation in the value of his option (or similar right) without risk of controversy concerning his liability to surrender profits under Section 16(b), his safe course is to exercise the option and hold for at least six months the security thereby acquired. Where this is done the insider will not be affected by the method in which the Commission and the courts may compute realized profit, since the transaction in question would fall outside the scope of Section 16(b). Nevertheless, *the insider who does sell within six months after acquiring a security pursuant to an option (or similar right) is not acting unlawfully;* Congress did not intend to impose such a drastic sanction in the event of such a sale, but merely to remove the profit incentive to entering into short-swing trading transactions. (Emphasis added) Securities Exchange Act Release No. 4509 (October 24, 1950) [15 FR 7357]. Of course, trading on the basis of inside information may be a violation of other provisions of the federal securities laws.

[189] Letter re *Spectronics, Inc.* dated August 18, 1978.

[190] See letter re *American Credit Corporation* dated November 24, 1978 and letter to *Gary A. Herman* dated May 18, 1976.

paragraph (c) of Rule 16b-6, the officer exercises his options and surrenders the newly acquired option shares together with his previously held shares. Will the acquisition of the option shares be matched against the disposition of his other shares in the merger, resulting in potential Section 16(b) liability, despite the exemption provided by Rule 16b-6?

Answer: No. There has been concern that insiders in such a situation are confronted with a dilemma, since the purchase of shares under the option could in theory be matched with the sale of already owned shares in the merger giving rise to liability under Section 16(b).[191] The staff believes that this approach would unfairly penalize holders of long-term options and frustrate the purpose of paragraph (c) of the rule. Accordingly, in light of the rationale underlying paragraph (c), the staff is of the view that the acquisition of shares pursuant to the exercise of a long-term option just prior to a merger need not be matched against the disposition of other shares in the merger.

(140) *Question:* Are the provisions of Rule 16b-6 available where a company extends the life of its outstanding options prior to entering into a merger or other transaction of the type described in paragraph (c) of the rule?

Answer: Yes. The extension of an option does not commence a new six month holding period for purposes of Rule 16b-6.

Illustration: On May 1, Company X extends for one year the expiration date of employee stock options held by certain of its executive officers, some of which had been held for only five months at the time of the extension. On May 30, Company X begins merger discussions with Company Z, and on June 30 an agreement in principle is reached. The merger takes place on July 14.

Interpretation: Rule 16b-6 would be available to the officers of Company X with respect to all options held for more than six months at the time of the merger.

(141) *Question:* Would the exemption provided by Rule 16b-6(c) be available for the purchase of unexercised stock options in connection with a cash merger? In connection with a sale of assets for cash and securities?

Answer: Yes, assuming all the provisions of the rule are satisfied.

Illustration (1): Company A proposes a complete liquidation and dissolution. Pursuant to the plan, Company A will sell all of its assets to Company B in exchange for cash and securities in an amount equal to $26 per outstanding share of Company A. In accordance with the terms of the applicable agreements, Company A has the right to purchase those stock options which have been held by its officers and directors for more than six months, but have not been exercised, for a cash price equal to the difference between $26 and the option exercise price.

Interpretation: Rule 16b-6(c) is applicable to the purchase of these stock options.[192]

Illustration (2): Following a successful tender offer, the purchaser informs the issuer that it proposes to merge the issuer with a wholly-owned subsidiary of the purchaser, on terms providing that each remaining share of the issuer's common stock will be entitled to a cash payment per share in an amount equal to the tender offer price. The merger will bind all stockholders of the issuer except for the exercise of appraisal rights by dissenting shareholders. The issuer has stock options outstanding under several employee benefit plans. The applicable agreements provide for the cancellation of the exercisable options on the date of the merger and a cash payment to the optionees of the option spread.

Interpretation: The cash settlement of the stock options in this manner is eligible for the protection afforded by Rule 16b-6(c).[193]

G. Rule 16b-7 [17 CFR 240.16b-7]

Rule 16b-7 exempts from the operation of Section 16(b) the acquisition and disposition of securities in certain specified types of mergers and consolidations.[194]

In Securities Exchange Act Release No. 4696 (April 3, 1952) [17 FR 3177], the Commission emphasized the danger of the possibility of misuse of inside information in connection with mergers and consolidations.

The policy of Section 16(b) to discourage short-swing trading by insiders seems highly relevant to purchases or sales within six months of a merger if the merger involves a significant change in the character of the enterprise carried on by an issuer which is subject to Section 16(b). Thus a purchase on the eve of the merger may well be motivated by advance information and the receipt by merger of a new security having different economic characteristics from that purchased involves elements of realization of a short term profit. In addition to preventing abuse of inside information, requiring an insider to surrender any profit resulting from a purchase or sale within six months of a merger is related to the policy of Section 16(b) to eliminate motives for manipulative activity. The significance of a merger may be greatly exaggerated by rumor, particularly in periods of unusual speculative activity in the security markets. If insiders were free to take advantage of such a situation to unload at temporarily inflated prices securities received in the merger, the opportunity and motive for manipulative activity might well be greater than the ordinary short-swing purchases and sales where both are cash transactions.[195]

The Commission recognized, however, that not every transaction of this nature involves a serious potential for the abuse of inside information. As a consequence, Rule 16b-7 was adopted to exempt transactions of exchange involved in the merger or consolidation of companies where 85 percent or more of all of the assets or securities of one of the companies involved is owned by the other company. As Release No. 34-4996 points out, the exemption is based on the premise that such transactions are of relatively minor importance to the stockholders of a particular company and do not present significant opportunities to insiders to profit by advance information concerning the merger. Indeed, they do not significantly alter in an economic sense the type of security which the insider held prior to the transaction.[196]

(142) *Question:* Although not specifically mentioned, does Rule 16b-7 apply to transactions structured as (1)

[191] Letters re *The Flintkote Company* dated February 7, 1980 and *Investors Diversified Services, Inc.* dated March 21, 1979.

[192] Letter re *National Liberty Corporation* dated December 12, 1980.

[193] Letter to *Melvin L. Bedrick* dated September 20, 1979.

[194] While Rule 16b-6(c) provides an exemption from the operation of Section 16(b) only for the disposition of certain securities pursuant to a plan or agreement for merger, consolidation, reclassification or sale of assets, Rule 16b-7, on the other hand, exempts transactions of acquisition and disposition in connection with specified types of mergers and consolidations.

[195] See also Securities Exchange Act Release No. 4717 (June 9, 1952) [17 FR 5501], and Brief for SEC as *amicus curiae*, page 8, *Blau v. Hodgkinson*, 100 F. Supp. 361 (S.D.N.Y. 1951).

[196] The rule is typically relied upon in situations where a company is reincorporating in a different state or reorganizing its corporate structure. For example, Company T, a Texas insurance company, seeks to become a general business corporation. To accomplish this in conformity with Texas law, Company T proposes to transfer all of its assets and liabilities to New T, a Texas general business corporation, to be organized as a wholly-owned subsidiary of Company T, and then merge into an insurance subsidiary of New T. Pursuant to the merger, each share of T common will be exchanged on a share-for-share basis for equivalent New T securities, with the result being that the present T shareholders will become New T shareholders. The proposed transaction will have no effect on the consolidated financial statements, the present composition of management, nor will it affect the rights of present shareholders and, accordingly, Rule 16b-7 is available. Letters re *American General Insurance Company* dated March 11, 1980; *Anheuser-Busch, Incorporated* dated March 16, 1979. See also letters to *Eugene R. Sullivan* dated October 10 and December 11, 1978.

statutory exchanges; (2) liquidations; or (3) reclassifications?

Answer: The staff is of the view that, for purposes of Rule 16b-7, a statutory exchange may be the substantive equivalent of a merger, consolidation or sale of assets. Therefore, the acquisition and disposition of stock in a statutory exchange would be exempt under Rule 16b-7, assuming all of the conditions of the rule are satisfied.[197] A liquidation, on the other hand, is not covered by Rule 16b-7, since the liquidation in substance and purpose bears little resemblance to the types of transactions specified in the rule.[198] Rule 16b-7 does not require that the security received in exchange be similar to that surrendered, and the rule can apply to transactions involving reclassifications.

Illustration (1): Company B is a savings and loan association organized in the State of Virginia. Company A, a wholly-owned subsidiary of Company B, was incorporated under the laws of Virginia for the sole purpose of acquiring all the outstanding shares of capital stock of Company B. The purpose was to create a holding company which would be able to acquire other savings and loan institutions in Virginia. Under Virginia law, Company B is not permitted to acquire stock of other savings and loan associations. As a result of the exchange, Company B became a wholly-owned subsidiary of Company A, and the former Company B shareholders became the owners of all the outstanding shares of Company A. This transaction was implemented pursuant to statutory procedures under Virginia law.

Interpretation: The acquisition by Company B stockholders of common stock of Company A and the corresponding disposition of the Company B stock in exchange fall within the terms of Rule 16b-7.

Illustration (2): Company X is a holding company whose principal asset is 100,000 shares of Company Y common stock, roughly 6 percent of the total number of shares of such stock issued and outstanding. Company X proposes to liquidate so that its shareholders will hold the stock of Company Y directly. Pursuant to the liquidation plan, shareholders of Company X will exchange their shares of Company X for those of Company Y on a pro rata basis.

Interpretation: The acquisition and disposition of such shares is not exempt under Rule 16b-7. This transaction is not substantially similar to a merger or consolidation, nor does it meet the standards of paragraph (a) of the rule which provides that the acquisition and disposition of securities in connection with a merger or consolidation is exempt from Section 16(b) where 85 percent or more of the assets or securities of all other companies involved in the transaction is owned by another party to the transaction.

(143) *Question:* Does the 85 percent ownership requirement of the rule apply to indirect as well as to direct ownership of the companies involved in a transaction?

Answer: Yes. It is the staff's view that the rule does encompass indirect ownership, so long as the transaction in question does not result in a significant change in the character or structure of the company.[199]

Illustration: Company A proposes to enter into a transaction with its wholly-owned subsidiary, Company B, whereby Company B would become the parent of Company A through a tax free exchange of shares. The tax free exchange would be accomplished by a statutory merger of a wholly-owned shell subsidiary of Company B into Company A, with Company A the surviving corporation. Prior to the merger, Company A will own 100 percent of the equity securities of the shell subsidiary which will be merged into Company A. Thus, Rule 16b-7 would be available only if the 85 percent requirement was interpreted to include indirect as well as direct ownership, since Company A will merge into a wholly-owned subsidiary of Company B rather than Company B itself.

Interpretation: Rule 16b-7 would be applicable because Company B, on a consolidated basis, will represent the same business entity as the present Company A, will be managed by the same officers and directors, and will have the same charter and by-laws as Company A. Accordingly, the merger will not result in "any significant change in the character or structure of the company."[200]

(144) *Question:* Would the purchase and sale of securities of any company involved in a merger which met the requirements of Rule 16b-7, within six months of such merger, destroy the exemption otherwise afforded by the rule?

Answer: If the non-merger transactions are exempt under any other rule adopted under Section 16(b), the exemption provided by Rule 16b-7 could still be relied upon. However, as stated in paragraph (c) of the rule, if an insider has made additional non-exempt purchases and sales within six months of the merger or consolidation, the exemption shall be unavailable to the extent of such purchases and sales.

Illustration: An officer purchases 100 shares of his company's common stock in the open market on June 1 and sells 100 shares on August 1. No exemption from Section 16(b) is available for these transactions. During the interim, the company reincorporates by merger. Although Rule 16b-7 is available for the officer's participation in the merger transaction, paragraph (c) of the rule diminishes his protection to the extent of his non-exempt purchase and sale.

H. Rule 16b-8 [17 CFR 240.16b-8]

Rule 16b-8 exempts from the operation of Section 16(b) any acquisition or disposition of an equity security involved in the deposit or withdrawal of such security under a voting trust or deposit agreement.

(145) *Question:* Is the exemption provided by Rule 16b-8 available to an insider who purchases securities of the class deposited and, within six months thereafter, sells certificates of deposit representing such securities?

Answer: The rule provides that the exemption is not available to the extent that there has been a purchase or sale of securities of the class deposited and a sale or purchase of certificates representing such securities within a period of less than six months. The intent of this provision is to exempt only transactions of withdrawal or deposit in the voting trust itself. The protection afforded by the rule is diminished and, perhaps, lost to the extent that the insider also has transactions of purchase and sale, or sale and purchase, in either the certificates of deposit or the underlying equity security within six months of the date of the deposit or withdrawal in the voting trust.

I. Rule 16b-9 [17 CFR 240.16b-9]

Rule 16b-9 generally provides that the conversion of one equity security into another equity security shall not constitute either a sale of the security converted or a purchase of the security acquired upon conversion for purposes of Section 16(b).

(146) *Question:* Would the fact that the security received upon conversion does not have substantially the same rights and privileges as the convertible security affect the availability of the exemption?

---

[197] Letter re *Heritage Financial Corp.* dated September 19, 1978.

[198] Letter re *Petro-Lewis Corporation* dated July 9, 1979.

[199] Letter re *Southern Natural Gas Company* dated May 11, 1973; letter to *Ed Kaufman* dated May 25, 1973.

[200] Securities Exchange Act Release No. 4717 (June 9, 1952) [17 FR 5501].

Answer: No.

(147) *Question:* An insider holds convertible debentures for more than six months. He then converts the debentures into common stock and immediately sells some additional shares of common stock. Assuming he has no other relevant transactions, is rule 16b-9 available for his conversion?

Answer: Yes. The proviso to the rule states that the rule is not available to the extent that there are independent purchases and sales of the securities concerned within a period of less than six months, which period includes the date of conversion. Since the insider did not engage in any other relevant transactions within the six month period, the exemption is available.

Illustration: An insider of Company X acquires notes convertible into Company X common stock in a private placement. He intends to convert these notes one year later. The conversion will be effected at a time when he will not have purchased or sold any other equity securities of the company within the preceding six months. However, he intends to sell Company X common stock immediately after the conversion.

Interpretation: Rule 16b-9 is available, hence the acquisition of the common stock upon the conversion of the notes would not be deemed a purchase for purposes of Section 16(b).[201]

(148) *Question:* Is Rule 16b-9 available if, pursuant to the terms of the conversion right, the holder must make an additional cash payment in order to receive the new security?

Answer: Usually. In connection with the exercise of a conversion right, it is sometimes necessary to make a payment in addition to the surrender of the convertible security or, alternatively, surrender of the convertible security may result in the delivery of cash or other property in addition to the security received on conversion. Where such extra payments or receipts are not substantial in relation to the value of the securities involved, they do not affect the availability of the exemption. Thus, the exemption would still be available so long as not more than 15 percent of the value of the security received in exchange consisted of cash or property other than the convertible security.[202]

(149) *Question:* Would the application of anti-dilution provisions which might affect the conversion price of a convertible security, be considered a change in the conversion privilege for purposes of Rule 16b-9(a)(1)?

Answer: No.

Illustration: In accordance with a loan agreement, Company A issued and sold to Company B a $2,000,000 principal amount, convertible subordinated note. The note is convertible into shares of Company A common stock. The agreement requires Company A to make periodic pre-payments on the principal amount of the note. The agreement also provides for the adjustment of the conversion price of the note to prevent dilution of the conversion privilege and protect the proportional equity interest of the note holder. Any changes in the conversion price resulting from the operation of the anti-dilution provisions would occur solely because of actions taken by Company A and would not involve any further actions by, or negotiations with, the note holder.

Interpretation: Any change in the conversion price of the note, by operation of the anti-dilution provisions, would not be considered a change in the conversion privilege of the note for purposes of clause (1) of the proviso to paragraph (a) of Rule 16b-9.[203]

J. Rule 16b-10 [17 CFR 240.16b-10]

Rule 16b-10 exempts from Section 16(b) of the Exchange Act certain acquisitions of securities from an issuer received in exchanges made pursuant to the provisions of the Interstate Commerce Act. In order for the exemption to be available, the person acquiring the new security must be subject to one or more of the provisions of Part I of the Interstate Commerce Act and meet the other conditions set forth in the rule. The exemption was intended to provide a measure of protection for mandatory exchange transactions in connection with the reorganization of railroads and other carriers.

(150) *Question:* Is Rule 16b-10 available for the disposition of stock made in accordance with an order or condition imposed by the Interstate Commerce Commission?

Answer: No. The exemption covers only the acquisition of securities received in the mandatory exchange.

K. Rule 16b-11 [17 CFR 240.16b-11]

Rule 16b-11 exempts from Section 16(b) certain transactions involving the sale of short-term subscription rights distributed *pro rata* by an issuer to its security holders.

(151) *Question:* Does Rule 16b-11 exempt: (1) purchases of subscription rights for cash or other consideration; (2) sales of subscription rights which were purchased for cash or other consideration; or (3) the purchase of securities upon the exercise of subscription rights?

Answer: No. By its terms, the exemption is only available for the sale of subscription rights which were acquired from the issuer without the payment of consideration.

Illustration: A company proposes to file a registration statement under the Securities Act of 1933, pursuant to which it will offer to the holders of its common stock the right to subscribe for additional shares of common stock. The rights will be evidenced by transferable subscription warrants which will be distributed to stockholders *pro rata*, without the payment of any consideration, and will expire 30 days after issuance.

Interpretation: The sale of such rights by an insider would be exempt under Rule 16b-11.[204]

By the Commission.

George A. Fitzsimmons,

Secretary.

September 23, 1981.

[FR Doc. 81-28620 Filed 9-30-81; 8:45 am]

BILLING CODE 8010-01-M

[201] Letter re *Oxoco* dated September 15, 1977.

[202] It should be noted that this exemption is construed to exclude the exercise of options, warrants or rights. See *Brenner v. Johnson*, 328 F.Supp. 149 (E.D. Wis. 1971), *mod.*, 467 F.2d 1080 (7th Cir. 1972).

[203] Letter re *Portec, Inc.* dated June 14, 1976.

[204] The exemption does not apply to the sale of subscription rights by a person who has purchased subscription rights for cash or other consideration, within the six-month period preceding or following such sale, to the extent of any such purchase. See paragraph (c) of Rule 16b-11.

---

17 CFR Parts 285, 286 and 287

[Release Nos. 33-6347, 34-18116, BWA-4, IAD-3; AD-3]

Primary Offerings by Multinational Banks

AGENCY: Securities and Exchange Commission.

ACTION: Final rules.

SUMMARY: The Commission is amending three virtually identical exemptive regulations for primary distribution of securities issued by the International Bank for Reconstruction and Development, the Inter-American Development Bank, and the Asian Development Bank. The amendments permit these banks to sell their securities immediately upon filing certain information with the Commission instead of waiting a period of seven days.

EFFECTIVE DATE: October 1, 1981.

FOR FURTHER INFORMATION CONTACT:

Carl T. Bodolus (202) 272-3246, or Ronald Adee (202) 272-3250, Office of International Corporate Finance, Division of Corporation Finance, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: On June 25, 1981, there was published in the Federal Register (46 FR 32879) a notice of proposed rulemaking relating to the sale of securities issued by the International Bank for Reconstruction and Development, the Inter-American Development Bank, and the Asian Development Bank. Interested parties were given the opportunity to submit comments until July 24, 1981.

No unfavorable comments have been received, and the proposed amendments are hereby adopted without change and are set forth below.

George A. Fitzsimmons,
Secretary.
September 24, 1981.

PART 285—RULES AND REGULATIONS PURSUANT TO SECTION 15(A) OF THE BRETTON WOODS AGREEMENTS ACT

PART 286—GENERAL RULES AND REGULATIONS PURSUANT TO SECTION 11(A) OF THE INTER-AMERICAN DEVELOPMENT BANK ACT

PART 287—GENERAL RULES AND REGULATIONS PURSUANT TO SECTION 11(A) OF THE ASIAN DEVELOPMENT BANK ACT

Accordingly, 17 CFR 285.3, 286.3, and 287.3 are revised to read as follows:

§ —.3 Reports with respect to proposed distribution of primary obligations.

The Bank shall file with the Commission, on or prior to the date on which it sells any of its primary obligations in connection with a distribution of such obligations in the United States, a report containing the information and documents specified in Schedule A below. The term "sell" as used in this section and in Schedule A means the making of a completed sale or a firm commitment to sell.

Authority

These amendments are pursuant to Section 15(a) of the Bretton Woods Agreements Act, Section 11(a) of the Inter-American Development Bank Act, Section 11(a) of the Asian Development Bank Act, and Section 19(a) of the Securities Act of 1933.

[Sec. 15(a), 63 Stat. 298, 22 U.S.C. 286k-1(a); Sec. 11(a), 73 Stat. 301, 22 U.S.C. 283h(a); Sec. 11(a), 80 Stat. 73, 22 U.S.C. 285h(a); Sec. 19(a), 48 Stat. 85, 15 U.S.C. 77s(a)]

[FR Doc. 81-28549 Filed 9-30-81; 8:45 am]
BILLING CODE 8010-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 274

[Docket No. RM81-44; Order No. 176]

Identification of Jurisdictional Agencies

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) amends 18 CFR 274.501, which identifies the State and Federal agencies from which well category determinations must be obtained under the Natural Gas Policy Act of 1978 (NGPA) (15 U.S.C. 3301-3432). Section 503 of the NGPA provides that Federal and State agencies having regulatory jurisdiction with respect to the production of natural gas are authorized to make the initial determinations that gas qualifies under sections 102, 103, 107, and 108. Section 274.501 of the Commission's regulations lists the names and addresses of the appropriate jurisdictional agencies. The United States Department of Energy, the United States Geological Survey and the North Dakota Geological Survey have notified the Commission of a change in jurisdiction over specific natural gas production. The Commission now amends § 274.501(a)(2) to reflect those changes.

DATES: Effective date: September 23, 1981.

FOR FURTHER INFORMATION CONTACT: Thomas Hirsch, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, (202) 357-8511.

SUPPLEMENTARY INFORMATION:

Issued: September 23, 1981.

By this rule, the Federal Energy Regulatory Commission (Commission) amends § 274.501, which identifies the State and Federal agencies from which well category determinations must be obtained under the Natural Gas Policy Act of 1978 (NGPA) (15 U.S.C. 3301-3432). Section 503 of the NGPA provides that Federal and State agencies having regulatory jurisdiction with respect to the production of natural gas are authorized to make the initial determinations that gas qualifies under sections 102, 103, 107, and 108. Section 274.501 lists the names and addresses of the appropriate jurisdictional agencies. When a jurisdictional agency notifies the Commission of a change of jurisdiction over specific natural gas production, the change is reflected in § 274.501(a)(2) to provide current information to the public. The Commission now amends § 274.501(a)(2) to reflect changes submitted by the United States Department of Energy (DOE), the United States Geological Survey (USGS) and the North Dakota Geological Survey.

On March 28, 1980, the Commission received notice from DOE [1] that it was responsible for making well category determinations on certain Naval Petroleum Reserves.[2] On September 15, 1980, the Commission received notice from the USGS that its Central Region of the USGS Conservation Division located in Denver, Colorado, was the jurisdictional agency for Federal and Indian lands in the states of Colorado, Iowa, Kansas, Missouri, Nebraska and Utah. Also, on June 18, 1981, the North Dakota Geological Survey notified the Commission that effective July 1, 1981, the Industrial Commission would be the jurisdictional agency for lands other than federal lands for the state of North Dakota. Section 274.501(a)(2) is amended herein to reflect these changes.

Publication of a notice of proposed rulemaking and opportunity for public comment under section 553 (b) and (c) of the Administrative Procedure Act (5 U.S.C. 553) is unnecessary because the amendments simply inform the public of the identity and location of jurisdictional agencies. For the same reason, the 30 day publication prior to the effective date, otherwise required under section 553(d), is also unnecessary.

(Natural Gas Act, as amended, 15 U.S.C. 717-717w; Department of Energy Organization Act, 42 U.S.C. 7101-7352; Natural Gas Policy Act of 1978, 15 U.S.C. 3301-3432; Administrative Procedure Act, 5 U.S.C. 553)

For reasons stated herein, Part 274 of Subchapter H, Title 18, Code of Federal Regulations, is amended as set forth below, effective September 23, 1981.

By the Commission.

Kenneth F. Plumb,
Secretary.

[1] See section 307 of DOE Organization Act. The Department of Energy's report of determination process, filed under § 274.105(a) was received by the Commission on March 28, 1980, and notice of receipt of the report was issued on May 1, 1980.

[2] Naval Petroleum Reserve No. 1 (Elk Hills, California), Naval Petroleum Reserve No. 2 (Buena Vista, California), Naval Petroleum Reserve No. 3 (Teapot Dome, Wyoming).

PART 274—DETERMINATIONS BY JURISDICTIONAL AGENCIES

Section 274.501(a)(2) is amended by adding a jurisdictional agency for federal lands in Iowa and Missouri and by revising the list of jurisdictional agencies for California, Colorado, Kansas, Nebraska, North Dakota, Utah and Wyoming to read as follows:

§ 274.501 Jurisdictional agency.

(a) Definitions * * *

* * * * *

(2) * * *

State in which well is located	Jurisdictional agency for wells on—	
	Federal lands	Other lands
* * * * *		
California	(Except for Naval Petroleum Reserve No. 1 (Elk Hills) and Naval Petroleum Reserve No. 2 (Buena Vista)), Area Oil & Gas Supervisor, 160 Federal Building, 1340 West 6th Street, Los Angeles, CA 90017; or (Only Naval Petroleum Reserve No. 1 (Elk Hills) and Naval Petroleum Reserve No. 2 (Buena Vista)), Assistant Secretary for Environmental Protection, Safety and Emergency Preparedness, DOE, 1000 Independence Ave. SW, Room 4G 084, Washington, D.C. 20585.	Department of Conservation, Division of Oil & Gas, 1416 Ninth St., Rm. 1316, Sacramento, CA 95814.
Colorado	DCM—Oil and Gas Conservation Div., USGS Box 25046, DECF, MS 609, Denver, CO 80225	Oil & Gas Conservation Commission, 1313 Sherman Street, Rm. 721, Denver, CO 80203.
* * * * *		
Iowa	DCM—Oil and Gas Conservation Div., USGS Box 25046, DFC, MS 609, Denver, CO 80225	
* * * * *		
Kansas	DCM—Oil and Gas Conservation Div., USGS Box 25046, DFC, MS 609, Denver, CO 80225	Corporation Commission, State Office Building, Topeka, KS 66612.
* * * * *		
Missouri	DCM—Oil and Gas Conservation Div., USGS Box 25046, DFC, MS 609, Denver, CO 80225	
* * * * *		
Nebraska	DCM—Oil and Gas Conservation Div., USGS Box 25046, DFC, MS 609, Denver, CO 80225	Oil & Gas Conservation Commission, Box 399, Sidney, NE 69162.
* * * * *		
North Dakota	Area Oil & Gas Supervisor, P.O. Box 2589, 20002 Federal Bldg. & Post Office, Casper, WY 82602	Industrial Commission, Commission State Office Building, 900 East Boulevard, Bismarck, ND 58505.
* * * * *		
Utah	DCM—Oil and Gas Conservation Div., USGS Box 25046, DFC, MS 609, Denver, CO 80225	Division of Oil, Gas and Mining, Utah Department of Natural Resources, 1588 West North Temple, Salt Lake City, Utah 84116.
* * * * *		
Wyoming	(Except for Naval Petroleum Reserve No. 3 (Teapot Dome)), Area Oil & Gas Supervisor, P.O. Box 2859, 2000 Federal Bldg. & Post Office, Casper, WY 82602; or (Only Naval Petroleum Reserve No. 3 (Teapot Dome)), Assistant Secretary for Environmental Protection, Safety and Emergency Preparedness, DOE, 1000 Independence Ave. SW, Room 4G 084, Washington, D.C. 20585.	Oil & Gas Conservation Commission, Box 2640, Casper, WY 82602.

[FR Doc. 81-28593 Filed 9-30-81; 8:45 am]
BILLING CODE 6450-85-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 4

[T.D. 81-256]

Vessels in Foreign and Domestic Trades

AGENCY: Customs Service, Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations to add Greece to the list of nations which permit vessels of the United States to transport certain articles specified in section 27, Merchant Marine Act of 1920, as amended, between their ports. The Department of State has furnished satisfactory evidence that Greece places no restrictions on the transportation of the specified articles by vessels of the United States between ports in that country. This amendment provides reciprocal privileges for vessels registered in Greece.

EFFECTIVE DATE: June 12, 1981.

FOR FURTHER INFORMATION CONTACT: Michael K. Tomenga, Carriers, Drawback and Bonds Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202-566-5706).

SUPPLEMENTARY INFORMATION:

Background

Section 27, Merchant Marine Act of 1920, as amended (46 U.S.C. 883) (the "Act"), provides generally that no merchandise shall be transported by water, or by land and water, between points in the United States except in vessels built in and documented under the laws of the United States and owned by U.S. citizens. However, the Act, as amended by Pub. L. 90-474 (82 Stat. 700; T.D. 68-227), provides that upon a finding by the Secretary of the Treasury, pursuant to information obtained and furnished by the Secretary of State that a foreign nation does not restrict the transportation of certain articles between its ports by vessels of the United States, reciprocal privileges will be accorded to vessels of that nation, and the prohibition against the transportation of those articles between points in the United States will not apply to its vessels.

Section 4.93(b)(1), Customs Regulations (19 CFR 4.93(b)(1)), lists those nations found to extend reciprocal privileges to vessels of the United States for the transportation of empty cargo vans, empty lift vans, and empty shipping tanks. Section 4.93(b)(2), Customs Regulations (19 CFR 4.93(b)(2)), lists those nations found to grant reciprocal privileges to vessels of the United States for the transportation of equipment for use with cargo vans, lift vans, or shipping tanks; empty barges specifically designed for carriage aboard a vessel and certain equipment for use with such barges; certain empty instruments of international traffic; and certain stevedoring equipment and material.

Greece is included in the list in § 4.93(b)(1), Customs Regulations, of those nations found to extend reciprocal privileges to vessels of the United States for the transportation of empty cargo vans, empty lift vans, and empty shipping tanks.

On June 12, 1981, the Department of State advised the Secretary of the Treasury that Greece places no restrictions on the transportation of the other articles listed in the Act by vessels of the United States between ports in Greece.

Finding

On the basis of the information received from the Secretary of State, as described above, I find that the Government of Greece places no restrictions on the transportation of the other articles specified in section 27 of the Merchant Marine Act of 1920, as amended, by vessels of the United States between ports in Greece. Therefore, reciprocal privileges are accorded to vessels registered in Greece as of June 12, 1981.

PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

Amendment to the Regulations

§ 4.93 [Amended]

To reflect the reciprocal privileges granted to vessels registered in Greece, § 4.93(b)(2), Customs Regulations (19 CFR 4.93(b)(2)), is amended by inserting "Greece" in appropriate alphabetical order in the list of nations under this section.

(Sec. 27, 41 Stat. 999, as amended, sec. 14, 67 Stat. 516, Pub. L. 90-474, 82 Stat. 700 (5 U.S.C. 301, 19 U.S.C. 1322(a), 46 U.S.C. 883))

Inapplicability of Public Notice and Delayed Effective Date Requirements

Because this is a minor amendment in which the public is not particularly interested and there is a statutory basis for the described extension of reciprocal privileges, notice and public procedure pursuant to 5 U.S.C. 553(b)(B) are unnecessary. In accordance with 5 U.S.C. 553(d)(1), a delayed effective date is not required because this amendment grants an exemption.

Inapplicability of Regulatory Flexibility Act

This document is not subject to the provisions of sections 603 and 604 of Title 5, United States Code, as added by section 3 of Pub. L. 96-354, the "Regulatory Flexibility Act." That Act does not apply to any regulation such as this for which a notice of proposed rulemaking is not required by the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) or any other statute.

Executive Order 12291

This amendment does not meet the criteria for a major regulation as defined in section 1(b) of E.O. 12291. Accordingly, a regulatory impact analysis is not required.

Drafting Information

The principal author of this document was Barbara E. Whiting, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices of the Customs Service and the Departments of State and the Treasury participated in its development.

Dated: September 3, 1981.

John P. Simpson,

Acting Assistant Secretary of the Treasury.

[FR Doc. 81-28391 Filed 9-30-81; 8:45 am]

BILLING CODE 4810-22-M

DEPARTMENT OF JUSTICE

Attorney General

28 CFR Part 40

[Order No. 957-81]

Standards for Inmate Grievance Procedures

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: The "Civil Rights of Institutionalized Persons Act," Pub. L. 96-247, requires that the Attorney General promulgate minimum standards for inmate grievance procedures and establish a method of certifying such procedures. The following document fulfills these requirements. Specifically, this document amends Part 40 of Title 28, Code of Federal Regulations by revising Subpart A ("Minimum Standards for Inmate Grievance Procedures") and by adding a new Subpart B ("Procedures for Obtaining Certification of a Grievance Procedure"). This document is intended to provide the public with notice of the rule in this area, not just changes from prior policy.

EFFECTIVE DATE: November 1, 1981.

ADDRESS: Office of General Counsel, Room 760, 320 1st Street NW., Washington, D.C. 20534.

FOR FURTHER INFORMATION CONTACT: Mike Pearlman, Office of General Counsel, Bureau of Prisons, Room 760, 320 1st Street, NW., Washington, D.C. 20534 (202) 724-3062.

SUPPLEMENTARY INFORMATION: The Civil Rights of Institutionalized Persons Act, Pub. L. 96-247, 94 Stat. 349 (the "Act"), grants the Attorney General of the United States authority to initiate and to intervene in civil actions against states and their political subdivisions to protect the federal rights of institutionalized persons. It also

promotes the protection of constitutional rights of adults in correctional facilities by encouraging the development and implementation of administrative mechanisms for the resolution of prisoner grievances within institutions.

The Act requires that the Attorney General develop standards for prisoner grievance mechanisms in adult correctional and detention facilities and procedures to certify grievance mechanisms which meet those standards. States and their political subdivisions voluntarily may submit plans for grievance mechanisms to the Attorney General for such certification. A court may continue, for a period of up to 90 days, a case filed pursuant to 42 U.S.C. 1983 by an adult confined in a correctional or detention facility in order to require that adult to exhaust administrative remedies that the Attorney General or the court determines are in substantial compliance with the standards promulgated by the Attorney General. Such continuances should only occur if the issues raised in the action pursuant to 42 U.S.C. 1983 reasonably can be expected to be resolved by the grievance mechanism.

Section 7 of the Act, to be codified at 42 U.S.C. 1997e, requires that the standards for grievance mechanisms provide for an advisory role for employees and inmates in the formulation, implementation, and operation of the mechanism; specific time limits for written replies to grievances including explanations of decisions; priority processing of emergency grievances; safeguards to prevent reprisals against grievants; and independent review of grievance decisions "by a person or other entity not under the direct supervision or direct control of the institution."

Proposed standards on this rule were initially published November 28, 1980 (45 FR 79095 et seq.). Following receipt of comments, a final rule was published January 16, 1981 (46 FR 3843 et seq.). Pursuant to the provisions of the Act, the standards set forth in the final rule became effective March 9, 1981, thirty legislative days after final publication. By Order dated March 6, 1981 (46 FR 16100), however, the effective date of those parts of the rule that established methods of certification of inmate grievance procedures and an Office of Inmate Grievance Procedure Certification were deferred until March 30, 1981. In the same Order, the Attorney General gave notice of his intent to review and, if necessary, to revise the part of the rule that became effective March 9, 1981. Subsequently, by Order dated March 30, 1981 (46 FR 19935), the Attorney General again deferred, until June 30, 1981, the effective date of both Subpart B, which established methods of certification, and 0.18 which established an Office of Inmate Grievance Procedure Certification.

Following further review, the Attorney General, as stated in his March 6, 1981 Order, determined that the rule on Standards for Inmate Grievance Procedures should be republished as a proposed rule. Accordingly, by Order dated July 10, 1981 (46 FR 36843), the Attorney General removed 28 CFR Part 40, Subpart B and § 0.18 to Part 0 of Title 28, Code of Federal Regulations. This action was taken to prevent the confusion which would result from permitting the Department's regulations on methods of certification to go into effect while new procedures were simultaneously being proposed.

The Department of Justice republished its proposed Standards for Inmate Grievance Procedures July 16, 1981 (46 FR 36865 et seq.). That document contained a revision of Subpart A (Minimum Standards for Inmate Grievance Procedures) and a new Subpart B (Procedures for Obtaining Certification of a Grievance Procedure). Interested persons were invited to submit comments on the propose rule and public comments were received from various sources. On the basis of comments received, some changes have been made in the final rule. Members of the public may submit further comments concerning this rule by writing the previously cited address. These comments will be considered but will receive no further response in the Federal Register.

After review of the law and regulations, the Attorney General certifies that this final rule, for the purpose of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), will not have a significant impact on a substantial number of small entities. Further, the Attorney General has determined that the proposed standards do not constitute a "major rule" within the meaning of Executive Order 12291.

Summary of Changes/Comments

1. § *40.1*—Proposed § 40.17 is renumbered § 40.1. Comments requested clarification on whether the rule applies to pretrial inmates, as the definition of "inmate" in § 40.1(e) states "who has been convicted of a crime", while the definition of "institution" includes "pretrial detention facility". A comment favored including pretrial inmates within the scope of this rule; however, section 7 of the Act, specifies "an adult convicted of a crime confined in any jail, prison, or other correctional facility". To clarify this, the definition of "institution" is revised to specify that the Standards apply to institutions which house adult inmates. "Inmate" is defined in § 40.1(e) as "an individual confined in an institution for adults, who has been convicted of a crime". Any state, at its option, may elect to apply the standards to persons in pretrial status whether they are detained in a separate institution or in the same institution as adult inmates.

2. § *40.2*—Comments on this section objected to the provision that inmates be afforded an advisory role in the formulation and implementation of a grievance procedure. One comment stated that prisoners in county jails are in custody for short periods of time and are poor advisors because they are "inexperienced and unaware of the problems of the jail". Another commenter suggests the use of ex-offenders as advisors. Another commenter believed that the system itself provides an advisory role in both the implementation and reviewing phases of the procedure, as the inmate can call attention to procedural shortcomings through use of the system itself. Another commenter suggested that the rule lends a greater level of specificity to inmate advisory roles than is desirable or practicable. The commenter favors inmate/employee advisory roles through regular monthly "forum" meetings, which focus on numerous subjects, including the grievance procedure. Section 7(b)(2)(A) of the Act requires that employees and inmates have an advisory role in the formulation, implementation, and operation of the system. Correctional authorities have latitude in selecting a method to ensure that the advisory role is provided. This method may include periodic "forum" meetings, written notices with solicitation of comments, advisory committees, etc. While jail prisoners may be inexperienced and unaware of the problems of the jail, the Act requires an "advisory role" only, and gives correctional authorities latitude to determine the method of participation and the feasibility of suggestions.

3. § *40.3*—Comments objected to the provision that the written grievance procedure be distributed to all employees and inmates in the institution. One commenter stated that implementation of this provision would require "large expenditures of precious few dollars and staff time to make available to each and every new employe and inmate a copy of the entire and, presumbly, lengthy procedure."

Another commenter stated that some institutional employees have no direct contact with or responsibility for inmates and therefore would have no substantive need for an individual copy of the procedure.

Although it is essential that all inmates and staff know that the procedure exists, the value of individual copies for every person is not clear. The cost factor and the administrative burden are not inconsequential, especially in facilities where large numbers of inmates are detained for relatively short periods of time. Accordingly, the final rule is revised to require the written grievance procedure to be "available" to all employees and inmates of the institution. This provision may be met by posting copies of the written procedure on inmate and staff bulletin boards, in inmate law libraries, ect. The rule also requires that each new inmate and employee receive both a written notification (possibly as part of an institution handbook) and an oral explanation (possibly as part of the institution orientation program) of the procedure.

We do not agree with a comment that this section needs to recognize that participating employees and inmates equally need training. Section 40.11(b) of the certification procedure clearly states that staff and inmates are to be afforded instructional materials.

4. § *40.5*—A commenter suggests that it would be unwise to allow a staff/inmate committee to review *all* complaints against staff and inmates since some complaints require absolute confidentiality, while other complaints result in the head of the institution having his actions or decisions reviewed by a group of subordinates. This section does not establish one required method for review of grievances, but only requires that the grievance procedure apply to a broad range of complaints and state specifically the type of complaints covered and excluded. There is no requirement that grievances be reviewed by a committee, as suggested by the commenter. An applicant may exclude from review by inmates participating in an advisory role, a grievance which is not against general policy and which poses a threat to institution security (for example, a serious allegation against an employee which may affect the security of the institution). As to the comment that the head of the institution may have his actions or decisions reviewed by subordinates, we point out that inmate/staff participation is advisory only, but this review can be useful in assessing how policy is perceived.

5. § *40.7*—A commenter suggests that § 40.7(a) encourage attempts at informal resolution of a grievance before formal filing to ensure that an inmate makes an initial effort to solve the problem with the appropriate person(s). Prior to the commenter's initiation of an informal resolution procedure, inmates "were ignoring the usual way of doing business which resulted in an extraordinarily high volume of appeals entering the system". An informal resolution process is highly desirable, and § 40.7(a) is revised accordingly.

The majority of all comments received related to § 40.7(b) and concerned the provision for inmate and employee participation in the operation of the system. The words "and use" were removed from the first sentence because inmate and employee participation is intended to promote the credibility of the system, but not to promote the use of the procedure. In response to concern that the third sentence of proposed § 40.7(b) was vague and difficult to understand, that sentence was redrafted to more clearly state its intent. Most comments opposed the concept of inmate participation. Commenters stated that such a provision creates a specific hardship on management, that the matter should be left to the discretion of prison officials (dependent on the situation at a given institution), that it may potentially impact on institution security, that it may subject inmate participants to exertion of pressure, criticisms and perhaps retaliatory actions from others, and that inmates may be perceived by other inmates to exercise a leadership role (thereby constituting a security risk). Several commenters pointed out specific problems which would be encountered with a jail population. One commenter said that inmates in their jail have an average stay of 62 days, and that the longer term inmates are "hard core, repeat offenders," with "no real interest in the efficient lawful operation of the jail" Another commenter pointed out that the short stay would make selection and evaluation of inmates for an advisory position "difficult and meaningless"

Several commenters favored inmate participation but believe that the proposed rule fails to accurately meet the Act's requirement for employees and inmates to be afforded an advisory role in the formulation, implementation, and operation of the system. One commenter suggests that the proposed rule "permits prisoner participation far short of that required under any reasonable interpretation of the statutory language." Another commenter objects to the limitation of inmate participation to general policy matters, as distinguished from specific actions or incidents relating to individual inmates.

The Act and its legislative history require an advisory role for employees and inmates in the formulation, implementation, and operation of the system. The Act also recognizes the need to solicit and incorporate the suggestions of correctional experts, as it requires that the Attorney General shall "after consultation with persons, State and local agencies, and organizations with background and expertise in the area of corrections, promulgate minimum standards * * *". The rule as written accommodates the legitimate security concerns of correctional persons and complies with the minimum requirements of the Act. One commenter believed the language is insufficient, that the rule should provide guidance more specific than the statute. The rule is considerably more detailed than the statute. The rule language sets the framework and the tone for what is expected, and the applicant has discretion to determine how best to fulfill the requirement. Different approaches may be considered. If the method chosen is not sufficient, the Attorney General will not award certification.

In respect to comments that there is no support in the Act or its legislative history for limiting inmate participation to grievances on general policy matters, the Act does not require that inmates and staff advise on all grievances, and it calls for the establishment of minimum standards after consultation with corrections authorities. Because some commenters believe the inmates' advisory role in resolution should be restricted to no more than general policy matters, and because most commenters believe it is unwise and even dangerous to place one inmate in an apparent or quasi decision-making role in the specific grievance of another, we believe it is unwise to require as a minimum standard a more extensive advisory role for inmates than required in the present rule. These rules set minimum standards which applicants may then expand if they wish. For example, inmate participation may be solicited in a grievance concerning an institution's administrative detention policy. For reasons addressed by most correctional authorities, however, inmate participation in a grievance concerning another inmate's placement in detention is considered inappropriate, as it may permit one inmate to unreasonably intrude on the privacy of another, it may affect institution security, it may subject

inmate participants to undue pressure and retaliation, and it may invite corruption. While two commenters believe that limiting inmate participation to grievances of general policy would diminish the inmates' perception of the system's credibility, the majority of comments on that issue are best described by one comment that inmate trust and inmate belief in the credibility of the system are not a function of inmate participation, since that participation in any event is advisory, but depend on how well correctional officials, who are and must be the final decision-makers, operate the system.

We disagree with a comment that this section conflicts with Standard 1.11 (which requires "an advisory role for inmates and staff in the formulation, implementation and general policy operation of the system") of the Department of Justice Federal Standards for Prisons and Jails. Section 40.7(b) clearly reflects the same principle, that the advisory role on operation need only relate to general policy questions.

Several commenters addressed the method of inmate participation and many were under the impression that grievance hearings or some form of inmate-employee grievance resolution committee are required. To resolve this misconception, a new sentence has been added to make it clear that these methods of resolving grievances are permitted but not required. The method of participation is intentionally left unspecified so that correctional authorities may consider the applicable constraints and factors which exist at their institutions. The need for this latitude is demonstrated by one state correctional official who reported that while several institutions in his state have been able to operate inmate councils in "an effective and non-disruptive manner", at least two institutions "have recently experienced disruptions caused by misguided and pressured inmate council members" In addition to inmate councils, other examples of inmate participation include the solicitation of written comments on the posted abstract of policy grievances, advisory committee discussions, and inmate/staff town meetings.

We disagree with a comment that inmate review of the effectiveness and credibility of the grievance procedure be at the discretion of the institution if inmates and employees are allowed to actively participate in disposition of grievances challenging policy and practices. Inmate assessment of the procedure, regardless of their participation in the system, is beneficial in both learning how the system is perceived, and in making the effort to strengthen the effectiveness and credibility of the mechanics of the system. Inmate participation "before the adjudication of the grievance" in § 40.7(b) means before the first formal level of adjudication, and is amended accordingly.

No change is contemplated in response to a comment that § 40.7(c) should specifically state that the institution establish a procedure for investigating the allegations and establishing the facts of each grievance. The title of § 40.7(c), "Investigation and consideration", clearly indicates an investigation is to occur, and such a rule would simply belabor the obvious. Nor do we believe it necessary to revise this section to specify that no direct party to the grievance should be involved. The existing language is intended to exclude persons who, although not directly involved, may have been indirectly involved in the subject of the grievance (for example, a witness to an act which is the subject of the grievance). It is not intended, as suggested by a commenter, to preclude the Warden from responding to a grievance about an institutional policy promulgated by the Warden.

We disagree with a comment to § 40.7(d) that the rule should require that the grievant file a reasoned, written statement as to why he wishes to appeal further. The commenter objected to a common practice whereby a grievant appeals, stating only "appeal further" While some states may wish to require further specificity, as to the exact substance of an appeal, this is a matter better left to the applicant's discretion than to this rule. Another comment to this section states that the rule does not identify decision levels. This is intentional to give each applicant latitude to establish its own levels of decision and review in compliance with § 40.7(f). With respect to a comment that suggests deletion of the phrase "if available", we note that administrative appeal is not available after the final stage.

Comments on § 40.7(e) objected to the requirement that grievances must be processed from initiation to final disposition in less than 90 days, unless the grievant agrees in writing to an extension. While some grievances may require in excess of 90 days, for resolution (for example, on a policy issue), the Act in § 7(a)(1), permits continuance for exhaustion for no more than 90 days. To clarify, § 40.7(e) substitutes the phrase "within 90 days" for "in less than 90 days"

Two commenters to § 40.7(f) favored the provision that the required review be conducted by a person or other entity not under the supervision or control of the correctional agency. Such a requirement, however, would clearly go beyond the provision of the Act which requires "independent review * * * by a person or other entity not under the direct supervision or direct control of the institution". Further, there are strong arguments for not having review outside of the agency. The existing rule language does not prohibit review by an authority outside the correctional agency but leaves this determination to individual applicants.

We do not agree with another comment to § 40.7(f) that inmates will always exercise this review provision or that the correctional system itself cannot effectively serves as an objective third party. Experience with, and knowledge of existing grievance procedures clearly indicate that inmates don't automatically exercise their right to appeal nor do appeal responses within the correctional system routinely show a lack of objectivity.

A commenter to both § 40.7(f) and § 40.8 asked who had responsibility to select or appoint a person or persons outside of the institution to serve as the reviewing official. Such a selection is presumed to be made by the applicant.

6. § *40.8*—Several commenters to § 40.8 objected to the need for an emergency procedure. One commenter believed that the use "of multi-level grievance procedure requiring inmate, employee and outside participation is inefficient for this purpose." The commenter favored the development of an alternative approach, for example, directing the grievance to the appropriate administrator. Another commenter believes that an emergency provision "unnecessarily complicates the entire process", stating that failure to act promptly will undermine the validity of the system and be detrimental to the correctional institution. The language of the Act requires the development of a procedure for "priority processing of grievances which are of an emergency nature". While an individual is encouraged to go to the "appropriate administrator" prior to filing a grievance, the rule does provide an inmate an alternative course of action in the event that the emergency situation is not expeditiously handled. Another comment assumes the need to initially refer the emergency complaint to a grievance committee, but there is nothing in the Act which requires that a committee exist for any reason in the grievance procedure. The rule allows for

an emergency appeal directly to the decision level of the grievance process. In the event that the grievance does not warrant an emergency review, it may be returned to the inmate for routine submission.

There is merit to comments that the grievance procedure needs to provide guidance in determining emergency matters to be reviewed. The proposed language requiring specificity, however, is unnecessary and may result in applicants inadvertently omitting subjects which may constitute an emergency. The basis for emergency review is described in the existing rule language as a matter which could "subject the inmate to a substantial risk of personal injury, or cause other serious and irreparable harm to the inmate." Accordingly, the final rule deletes language requiring that the grievance procedure state specifically the matters to be reviewed.

7 § *40.9*—In response to comments, § 40.9 is revised. The final rule is expanded to prohibit reprisals against anyone for their good faith use of or good faith participation in the grievance procedure. This revision satisfies public comments that employees be included within the provisions of this section. The "good faith" condition is added as a result of comments, and changes the rule so that appropriate disciplinary action is not precluded in cases of deliberate, malicious filings. We consider it impractical and unnecessary to adopt a suggestion that the rule require an applicant to specify steps that will be taken to prevent and redress reprisals, and the penalties for engaging in reprisals, though individual applicants are free to do so. Reprisals are a form of employee misconduct which is governed, as to procedures and sanctions, by provisions other than the grievance procedure.

8. § *40.10*—We do not agree with a comment to § 40.10(a) that the minimal reporting and recording system for grievance matters is meaningless. The requested information can be provided in a single-line log, card, or data entry per case; which easily provides a general overview of the system's operation.

Commenters to § 40.10(b) opposed the provisions on confidentiality. One commenter stated that staff may need to review grievances for many non-clerical reasons, including certain transfer decisions (a grievance could have been filed against placement in a particular institution), to determine whether an inmate has exhausted administrative remedies, etc. Another commenter stated that § 40.9, by prohibiting reprisals, clearly prohibits misuse of the grievance information. Recognizing these concerns, the final rule incorporates the substance of a comment that the records regarding the participation of an inmate in the grievance procedures shall be considered confidential and shall be handled under the same procedures used to protect other confidential case records.

9. § *40.11 (Proposed)*—Several commenters objected to the annual comprehensive evaluation required by § 40.11. Commenters believed that it places an unjustified burden upon small entities and that the necessary resources (staff and hardware) will not be available. Another commenter believes that it is impossible to report accurately the costs generated or saved by compliance with 42 U.S.C. 1997e "due to the myriad of other factors affecting the cost associated with the correctional system."

In assessing these comments and after a review of the Act, it has been determined that inclusion of § 40.11 is neither necessary nor cost-effective, and that it would be of questionable value. Accordingly, proposed § 40.11 is deleted from the final rule. Section 40.10(a) requires maintenance of records and establishes the minimum information that is to be retained. Additional information and/or evaluation may be maintained at the discretion of the applicant.

One commenter to this section indicates that there is a need to continually monitor the program, preferably by a person or entity within the agency that is outside the chain of command of the institution. While an applicant may wish to establish a separate monitoring procedure, we believe that the appeal process can be adequately monitored by that entity designated to be the final level of appeal. We do not believe it necessary for the rule to require a separate provision for monitoring.

Based on the deletion of proposed § 40.11, proposed §§ 40.12–23 become final §§ 40.11–22.

10. § *40.11*—We do not believe, as suggested by a commenter, that the absence of a separate office for grievance certification will adversely affect the certification process. While a separate office might have some useful aspects, administrative costs do not warrant its establishment now. If the need exists at some future date, consideration can then be given to the establishment of a separate office for certification.

There is no requirement in the proposed rule that each inmate or employee receive training in the operation of the grievance system. As specified in § 40.3, each inmate and employee is to be afforded written notification of and is to be orally advised of the existence of the procedure. The training required in the latter part of final § 40.11(b) is only for those persons who are directly involved in the operation of the system. "If any" was added to recognize that special training for inmates may not be necessary for some methods of advisory inmate participation.

11. § *40.12*—A commenter objected to proposed § 40.13 (now final § 40.12), stating that the published notice requirement is a waste of tax dollars and that it is vague in respect to what is required. In response to this comment, the publication requirement has been replaced by a requirement that an applicant post notice of its intent to apply for certification in prominent places in each affected institution and provide a similar notice to the U.S. District Court(s) with jurisdiction over the institution(s). Proposed § 40.12(h) has been deleted because its requirements are not applicable under the terms of the final rule.

12. § *40.13*—A commenter believes that proposed § 40.14 (now final § 40.13) is vague and, in conjunction with the notice provision, that it creates a situation whereby the applicant is placed in the "middle of a political controversy with those 'groups and persons' which have developed and attempted to promulgate philosophies of corrections for and against the rights of incarcerated persons". The commenter believes that the net effect of these requirements is to discourage rather than encourage state applicants. A final objection is based on the view that since the Federal District Court with jurisdiction over 42 U.S.C. 1983 actions can determine if a 90-day continuation is in order, the requirements of final § 40.12 are cumbersome and that the requirements of final § 40.13 are subjecting the state applicant to political pressures.

It is not the intent of the proposed rule to create the situation identified by this commenter. The posting of the notice and inviting of comments provide interested persons with the knowledge that an application for certification is to be filed. The Attorney General's review of the comments received is limited to the certification process, and is not intended, nor expected, to create a "political controversy".

A commenter requests clarification on what constitutes a reasonable amount of time for a response by the Attorney General. The rule requires that a

response be prepared as promptly as the circumstances permit. It is not now possible to set a specific time frame, since the number and complexity of the applications and the volume of information to be reviewed are unknown.

13. § *40.20*—The word "whether" is changed to "if" in the last sentence of § 40.20 to make it clear that the Attorney General need notify an applicant only if a proposed change would result in suspension of certification.

14. § *40.22*—It is not appropriate to add the phrase, as suggested by a commenter, that "these standards create no legally enforceable rights or expectations of any kind." In suggesting this language the commenter refers to the revised Preamble (see 46 FR 39515–16) to the Federal Standards for Prisons and Jails. The Federal Standards for Prisons and Jails were not statutorily created as is the case with this present publication. As for this grievance procedure, certification of the procedure will give a U.S. Court the authority to continue an inmate's claim under 42 U.S.C. 1983 for 90 days in order to exhaust these administrative remedies.

15. *Additional comments*—Several commenters objected to the grievance procedures in their entirety. One commenter believed that the proposed procedure "is a series of mistakes", that it is "far too burdensome on a jail administration" Other comments suggested that the Commission on Accreditation for Corrections Standards serve as the definitive set of standards for jails, with one commenter stating that imposing additional standards only serves to impose an additional level of regulations that is unnecessary. We believe these Standards, as revised, are adaptable to jail situations (with frequent turnover of population) if an applicant chooses to apply them to jails. We concur with the statements supporting definitive standards for corrections; we do not believe that these standards for grievance procedures conflict with those published by the Commission on Accreditation for Corrections. Rather, the rule deals with a certification process for the grievance procedure, and describes what the system should include in order for the Attorney General to award certification.

Another comment suggested that the grievance standards need to retain flexibility to accommodate the "healthy diversity" that exists among various states. We agree, and believe that this is accomplished in the existing standards, which set guidelines, but leave specific procedures to each applicant. These revised standards recognize, as suggested in a comment, the "assumption that state correction officials by and large seek to discharge their duties with the utmost good faith * * *"

A suggestion that the Commentary published in the January 1981 final rule be retained is not adopted, as this information is believed extraneous to the substance of the rule. Another commenter suggested that the implementation of this grievance procedure would be better served if federal assistance were granted. Federal assistance is a separate issue, not required to be addressed by the Act in these standards. These rules have been adopted on the basic assumption that each state should develop its own grievance procedure. Federal assistance in the form of consultation, as opposed to monetary support, is available upon request. In response to a final comment, the rule does not require periodic review by the Attorney General. It is expected that reviews will be conducted as the need arises, based on specific requests or information.

For the reasons set forth in the preamble and under the authority of Pub. L. 96–247, 94 Stat. 349 (42 U.S.C. 1997) the Attorney General amends Part 40 of Title 28, Code of Federal Regulations by revising Subpart A and by adding a new Subpart B.

40 CFR is amended by revising Subpart A and by adding a new Subpart B to read as follows:

PART 40—STANDARDS FOR INMATE GRIEVANCE PROCEDURES

Subpart A—Minimum Standards for Inmate Grievance Procedures

Sec.
40.1 Definitions.
40.2 Adoption of procedures.
40.3 Communication of procedures.
40.4 Accessibility.
40.5 Applicability.
40.6 Remedies.
40.7 Operation and decision.
40.8 Emergency procedure.
40.9 Reprisals.
40.10 Records—nature; confidentiality.

Subpart B—Procedures for Obtaining Certification of a Grievance Procedure

40.11 Submissions by applicant.
40.12 Notice of intent to apply for certification.
40.13 Review by the Attorney General.
40.14 Conditional certification.
40.15 Full certification.
40.16 Denial of certification.
40.17 Reapplication after denial of certification.
40.18 Suspension of certification.
40.19 Withdrawal of certification.
40.20 Contemplated change in certified procedure.
40.21 Notification of court.
40.22 Significance of certification.

Authority: Pub. L. 96–247, 94 Stat. 349 (42 U.S.C. 1997).

Subpart A—Minimum Standards for Inmate Grievance Procedures

§ 40.1 Definitions.

For the purposes of this part—

(a) "Act" means the Civil Rights of Institutionalized Persons Act, Pub. L. 96–247, 94 Stat. 349 (42 U.S.C. 1997).

(b) "Applicant" means a state or political subdivision of a state that submits to the Attorney General a request for certification of a grievance procedure.

(c) "Attorney General" means the Attorney General of the United States or the Attorney General's designees.

(d) "Grievance" means a written complaint by an inmate on the inmate's own behalf regarding a policy applicable within an institution, a condition in an institution, an action involving an inmate of an institution, or an incident occurring within an institution. The term "grievance" does not include a complaint relating to a parole decision.

(e) "Inmate" means an individual confined in an institution for adults, who has been convicted of a crime.

(f) "Institution" means a jail, prison, or other correctional facility, or pretrial detention facility that houses adult inmates and is owned, operated, or managed by or provides services on behalf of a State or political subdivision of a State.

(g) "State" means a State of the United States, the District of Columbia, the commonwealth of Puerto Rico, or any of the territories and possessions of the United States.

(h) "Substantial compliance" means that there is no omission of any essential part from compliance, that any omission consists only of an unimportant defect or omission, and that there has been a firm effort to comply fully with the standards.

§ 40.2 Adoption of procedures.

Each applicant seeking certification of its grievance procedure for purposes of the Act shall adopt a written grievance procedure. Inmates and employees shall be afforded an advisory role in the formulation and implementation of a grievance procedure adopted after the effective date of these regulations, and shall be afforded an advisory role in reviewing the compliance with the standards set forth herein of a grievance procedure adopted prior to the effective date of these regulations.

§ 40.3 - Communication of procedures.

The written grievance procedure shall be readily available to all employees and inmates of the institution. Additionally, each inmate and employee shall, upon arrival at the institution, receive written notification and an oral explanation of the procedure, including the opportunity to have questions regarding the procedure answered orally. The written procedure shall be available in any language spoken by a significant portion of the institution's population, and appropriate provisions shall be made for those not speaking those languages, as well as for the impaired and the handicapped.

§ 40.4 Accessibility.

Each inmate shall be entitled to invoke the grievance procedure regardless of any disciplinary, classification, or other administrative or legislative decision to which the inmate may be subject. The institution shall ensure that the procedure is accessible to impaired and handicapped inmates.

§ 40.5 Applicability.

The grievance procedure shall be applicable to a broad range of complaints and shall state specifically the types of complaints covered and excluded. At a minimum, the grievance procedure shall permit complaints by inmates regarding policies and conditions within the jurisdiction of the institution or the correctional agency that affect them personally, as well as actions by employees and inmates, and incidents occurring within the institution that affect them personally. The grievance procedure shall not be used as a disciplinary procedure.

§ 40.6 Remedies.

The grievance procedure shall afford a successful grievant a meaningful remedy. Although available remedies may vary among institutions, a reasonable range of meaningful remedies in each institution is necessary.

§ 40.7 Operation and decision.

(a) *Initiation.* The institution may require an inmate to attempt informal resolution before the inmate files a grievance under this procedure. The procedure for initiating a grievance shall be simple and include the use of a standard form. Necessary materials shall be freely available to all inmates and assistance shall be readily available for inmates who cannot complete the forms themselves. Forms shall not demand unnecessary technical compliance with formal structure or detail, but shall encourage a simple and straightforward statement of the inmate's grievance.

(b) *Inmate and employee participation.* The institution shall provide a role for employees and inmates in the operation of the system in such a manner as to promote the credibility of the grievance procedure. At a minimum, some employees and inmates shall be permitted to participate in an advisory capacity in the disposition of grievances challenging general policy and practices and to review the effectiveness and credibility of the grievance procedure. In any instance in which inmates and employees are afforded an advisory role in the disposition of an individual grievance, the opportunity for such participation shall occur before the initial adjudication of the grievance. Such participation may be limited to advisory comment on policy questions which are raised or implicated in a grievance, without identification of individual names or specific facts. No inmate shall participate in the resolution of any other inmate's grievance over the objection of the grievant. In-person hearings and formally established inmate-employee committees are permitted, but are not required as part of the grievance procedure.

(c) *Investigation and consideration.* No inmate or employee who appears to be involved in the matter shall participate in any capacity in the resolution of the grievance.

(d) *Reasoned, written responses.* Each grievance shall be answered in writing at each level of decision and review. The response shall state the reasons for the decision reached and shall include a statement that the inmate is entitled to further review, if such is available, and shall contain simple directions for obtaining such review.

(e) *Fixed time limits.* Responses shall be made within fixed time limits at each level of decision. Time limits may vary between institutions, but expeditious processing of grievances at each level of decision is essential to prevent grievances from becoming moot. In all instances grievances must be processed from initiation to final disposition within 90 days, unless the grievant agrees in writing to an extension for a fixed period. Expiration of a time limit at any stage of the process shall entitle the grievant to move to the next stage of the process, unless the grievant has agreed in writing to an extension of the time for a response.

(f) *Review.* The grievant shall be entitled to review by a person or other entity, not under the institution's supervision or control, of the disposition of all grievances, including alleged reprisals by an employee against an inmate. A request for review shall be allowed automatically without interference by administrators or employees of the institution and such review shall be conducted without influence or interference by administrators or employees of the institution.

§ 40.8 Emergency procedure.

The grievance procedure shall contain special provision for responding to grievances of an emergency nature. Emergency grievances shall be defined, at a minimum, as matters regarding which disposition according to the regular time limits would subject the inmate to a substantial risk of personal injury, or cause other serious and irreparable harm to the inmate. Emergency grievances shall be forwarded immediately, without substantive review, to the level at which corrective action can be taken. The procedure for resolving emergency grievances shall provide for expedited responses at evey level of decision. The emergency procedure shall also include review by a person or entity not under the supervision or control of the institution.

§ 40.9 Reprisals.

The grievance procedure shall prohibit reprisals. "Reprisal" means any action or threat of action against anyone for the good faith use of or good faith participation in the grievance procedure. The written procedure shall include asurance that good faith use of or good faith participation in the grievance mechanism will not result in formal or informal reprisal. An inmate shall be entitled to pursue through the grievance procedure a complaint that a reprisal occurred.

§ 40.10 Records—nature; confidentiality.

(a) *Nature.* Records regarding the filing and disposition of grievances shall be collected and maintained systematically by the institution. Such records shall be preserved for at least three years following final disposition of the grievance. At a minimum, such records shall include aggregate information regarding the numbers, types and dispositions of grievances, as well as individual records of the date of and the reasons for each disposition at each stage of the procedure.

(b) *Confidentiality.* Records regarding the participation of an individual in the grievance proceedings shall be considered confidential and shall be handled under the same procedures used to protect other confidential case

records. Consistent with ensuring confidentiality, staff who are participating in the disposition of a grievance shall have access to records essential to the resolution of the grievance.

Subpart B—Procedures for Obtaining Certification of a Grievance Procedure

§ 40.11 Submissions by applicant.

An application for certification shall be submitted to the Office of the Associate Attorney General, Department of Justice, Main Justice Building, Washington, D.C. 20530, and shall contain the following:

(a) *Written statement.* A written statement describing the grievance procedure, including a brief description of the institution or institutions covered by the procedure, with accompanying plans for or evidence of implementation in each institution.

(b) *Instructional materials.* A copy of the instructional materials for inmates and employees regarding use of the grievance procedure together with a description of the manner in which such materials are distributed; a description of the oral explanation of the grievance procedure, including the circumstances under which it is delivered, and a description of the training, if any, provided to employees and inmates in the skills necessary to operate the grievance procedure.

(c) *Form.* A copy of the form used by inmates to initiate a grievance and to obtain review of the disposition of a grievance.

(d) *Information regarding past performance.* For a procedure that has operated for more than one year at the time of the application, the applicant shall submit information regarding the number and types of grievances filed over the preceding year, the disposition of the grievances with sample responses from each level of decision, the remedies granted, evidence of compliance with time limits at each level of decision, and a description of the role of inmates and employees in the formulation, implementation, and operation of the grievance procedure.

(e) *Plan for collecting information.* For a procedure that has operated for less than one year at the time of the application, the applicant shall submit a plan for collecting the information described in paragraph (d) of this section.

(f) *Assurance of confidentiality.* A description of the steps taken to ensure the confidentiality of records of individual use of or participation in the grievance procedure.

(g) *Evaluation.* A description of the plans for periodic evaluation of the grievance procedure, including identification of the group, individuals or individual who will conduct the evaluation and identification of the person or entity not under the control or supervision of the institution who will review the evaluation, together with two copies of the most recent evaluation, if one has been performed.

§ 40.12 Notice of intent to apply for certification.

The applicant shall post notice of its intent to request certification in prominent places in each institution to be covered by the procedure and shall provide similar written notice to the U.S. District Court(s) having jurisdiction over each institution to be covered by the procedure. The notices shall invite comments regarding the grievance procedure and direct them to the Attorney General.

§ 40.13 Review by the Attorney General.

The Attorney General shall review and respond to each application as promptly as the circumstances, including the need for independent investigation and consideration of the comments of agencies, and interested groups and persons, permit.

§ 40.14 Conditional certification.

If, in the judgment of the Attorney General, a grievance procedure that has been in existence less than one year is at the time of application in substantial compliance with the standards promulgated herein, the Attorney General shall grant conditional certification for one year or until the applicant satisfies the requirements of § 40.15, whichever period is shorter.

§ 40.15 Full certification.

If, in the judgment of the Attorney General, a grievance procedure that has been in existence longer than one year at the time of application is in substantial compliance with the standards promulgated herein, full certification shall be granted. Such certification shall remain in effect unless and until the Attorney General finds reasonable cause to believe that the grievance procedure is no longer in substantial compliance with the minimum standards and so notifies the applicant in writing.

§ 40.16 Denial of certification.

If the Attorney General finds that the grievance procedure is not in substantial compliance with the standards promulgated herein, the Attorney General shall deny certification and inform the applicant in writing of the area or areas in which the grievance procedure or the application is deemed inadequate.

§ 40.17 Reapplication after denial of certification.

An applicant denied certification may resubmit an application for certification at any time after the inadequacy in the application or the grievance procedure is corrected.

§ 40.18 Suspension of certification.

(a) *Reasonable belief of non-compliance.* If the Attorney General has reasonable grounds to believe that a previously certified grievance procedure may no longer be in substantial compliance with the minimum standards, the Attorney General shall suspend certification. The suspension shall continue until such time as the deficiency is corrected, in which case certification shall be reinstated, or until the Attorney General determines that substantial compliance no longer exists, in which case, except as provided in paragraph (b) of this section, the Attorney General shall withdraw certification pursuant to § 40.19 of this part.

(b) *Defect may be readily remedied; good faith effort.* If the Attorney General determines that a grievance procedure is no longer in substantial compliance with the minimum standards, but has reason to believe that the defect may be readily corrected and that good faith efforts are underway to correct it, the Attorney General may suspend certification until the grievance procedure returns to compliance with the minimum standards.

(c) *Recertification after suspension pursuant to paragraph (a).* The Attorney General shall reinstate the certification of an appliant whose certification was suspended pursuant to paragraph (a) of this section upon a demonstration in writing by the applicant that the specific deficiency on which the suspension was based has been corrected or that the information that caused the Attorney General to suspend certification was erroneous.

(d) *Recertification after suspension pursuant to paragraph (b).* The Attorney General shall reinstate the certification of an applicant whose certification has been suspended pursuant to paragraph (b) upon a demonstration in writing that the deficiency on which the suspension was based has been corrected.

(e) *Notification in writing of suspension or reinstatement.* The Attorney General shall notify an applicant in writing that certification

has been suspended or reinstated and state the reasons for the action.

§ 40.19 Withdrawal of certification.

(a) *Finding of non-compliance.* If the Attorney General finds that a grievance procedure is no longer in substantial compliance with the minimum standards, the Attorney General shall withdraw certification, unless the Attorney General concludes that suspension of certification under § 40.18(b) of this part is appropriate.

(b) *Notification in writing of withdrawal of certification.* The Attorney General shall notify an applicant in writing that certification has been withdrawn and state the reasons for the action.

(c) *Recertification after withdrawal.* An applicant whose certification has been withdrawn and who wishes to receive recertification shall submit a new application for certification.

§ 40.20 Contemplated change in certified procedure.

A proposed change in a certified procedure must be submitted to the Attorney General thirty days in advance of its proposed effective date. The Attorney General shall review such proposed change and notify the applicant in writing before the effective date of the proposed change if such change will result in suspension or withdrawal of the certification of the grievance procedure.

§ 40.21 Notification of court.

The Attorney General shall notify in writing the Chief Judges of the United States Court of Appeals and of the United States District Court(s) within whose jurisdiction the applicant is located of the certification, suspension of certification, withdrawal of certification and recertification of the applicant's grievance procedure. The Attorney General shall also notify the court of the certification status of any grievance procedure at the request of the court or any party in an action by an adult inmate pursuant to 42 U.S.C. 1983.

§ 40.22 Significance of certification.

Certification of a grievance procedure by the Attorney General shall signify only that on the basis of the information submitted, the Attorney General believes the grievance procedure is in substantial compliance with the minimum standards. Certification shall not indicate approval of the use or application of the grievance procedure in a particular case.

Dated: September 25, 1981.

William French Smith,

Attorney General.

[FR Doc. 81-28587 Filed 9-30-81; 8:45 am]

BILLING CODE 4410-01-M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1601

Procedural Regulations on Filing and Deferral of Charges of Discrimination; Correction

AGENCY: Equal Employment Opportunity Commission.

ACTION: Final rule; correction.

SUMMARY: This document corrects two typographical errors contained in the final regulation on filing and deferral of charges of discrimination which was published August 26, 1981 (46 FR 43037).

FOR FURTHER INFORMATION CONTACT: Thomas J. Schlageter, (202) 653-5490, Legal Counsel Division, EEOC, 2401 E Street, N.W., Washington, D.C. 20506.

Signed at Washington, D.C. this 22d day of September 1981.

For the Commission.

J. Clay Smith, Jr.,

Acting Chairman, Equal Employment Opportunity Commission.

In FR Doc. 81-24877, appearing at page 43037 in the August 26, 1981 issue of the Federal Register, the word "and" and the figure "30" should be "an" and "300" respectively in sections 1601.13(a)(2) and 1601.13(b)(2)(ii). Accordingly, the Equal Employment Opportunity Commission is correcting 29 CFR 1601.13(a)(2) and 1601.13(b)(2)(ii) to read as follows:

§ 1601.13 Filing; deferrals to State and local agencies.

* * * * *

(a) * * *

(2) A jurisdiction having a 706 Agency without subject matter jurisdiction over a charge (e.g., an agency which does not cover sex discrimination or does not cover nonprofit organizations) * * *

(b) * * *

(2) * * *

(ii) If the 706 Agency proceedings have terminated, the charge may be timely filed with the Commission within 30 days of receipt of notice that the 706 Agency proceedings have been terminated or within 300 days from the date of the alleged violation, whichever is earlier.

* * * * *

FR Doc. 81-28553 Filed 9-30-81; 8:45 am]

BILLING CODE 6570-06-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 185

[DoD Directive 3025.10] [1]

Military Support of Civil Defense

AGENCY: Office of the Secretary of Defense, DoD.

ACTION: Final rule.

SUMMARY: This rule is being reissued to incorporate relevant provisions of Executive Order 12148, "Federal Emergency Management," July 20, 1979, as amended, and to provide guidance to all DoD components for DoD support of the national civil defense program under the proponency of the Federal Emergency Management Agency (FEMA). The reissuance establishes revised DoD policies and responsibilities for military support of civil defense under a national emergency involving an attack, or a condition that might precede an attack, on the United States.

EFFECTIVE DATE: July 22, 1981.

FOR FURTHER INFORMATION CONTACT: Colonel Conrad C. Gonzales, USAF, Office of the Deputy Under Secretary of Defense (Policy), Directorate for Emergency Planning, Washington, D.C. 20301, telephone 202-694-4534.

SUPPLEMENTARY INFORMATION: In FR Doc. 65-3852, appearing in the Federal Register (30 FR 4753) on April 14, 1965, the Secretary of Defense published this rule under Part 220 of this title, which was later redesignated Part 185 (33 FR 6913, May 8, 1968). The source document of this revised Part 185, DoD Directive 3025.10, July 22, 1981, was signed by Frank C. Carlucci, Deputy Secretary of Defense.

Accordingly, 32 CFR is being amended by revising Part 185, reading as follows:

PART 185—MILITARY SUPPORT OF CIVIL DEFENSE

Sec.
185.1 Reissuance and purpose.
185.2 Applicability and scope.
185.3 Definitions.
185.4 Policy.
185.5 Responsibilities.
185.6 Financing.

Authority: The Federal Civil Defense Act of 1950 (64 Stat. 1245-1257), as amended; E.O. 12148, July 20, 1979, as amended.

[1] Copies may be obtained, if needed, from the U.S. Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, PA 19120. Attention: Code 301.

§ 185.1 Reissuance and purpose.

This Part is reissued to establish DoD policies and responsibilities for DoD support of the national civil defense program under the proponency of the Federal Emergency Management Agency (FEMA), in compliance with the Federal Civil Defense Act of 1950, as amended and Executive Order 12148, "Federal Emergency Management," July 20, 1979, as amended; and defines policy for the military support of civil defense under a national emergency involving an attack, or a condition that might precede an attack, on the United States.

§ 185.2 Applicability and scope.

(a) The provisions of this Part apply to the Office of the Secretary of Defense, the Military Departments and their Reserve and National Guard components, the Organization of the Joint Chiefs of Staff (OJCS), the Unified and Specified Commands, and the Defense Agencies (hereafter called "DoD Components"). The term "Military Service," as used herein, refers to the Army, Navy, Air Force, Marine Corps, and Coast Guard.

(b) The provisions of this Part shall govern military support of civil defense actions by all DoD Components in the 50 states, the District of Columbia, Puerto Rico, and the territories and possessions of the United States.

§ 185.3 Definitions.

(a) *Military Support of Civil Defense.* Those military activities and measures taken by DoD Components to assist the civilian population and designed to minimize the effects upon the civilian population caused or which would be caused by an enemy attack upon the United States, its territories and possessions; deal with the immediate emergency conditions which would be created by any such attack; and effect emergency repairs to or the emergency restoration of vital utilities and facilities destroyed or damaged by any such attack. When directed by the Secretary of Defense to implement military support of civil defense plans, military support of civil defense actions shall encompass those responsibilities and functions identified in DoD Directives 3025.1[1], "Use of Military Resources During Peacetime Civil Emergencies within the United States, its Territories and Possessions," May 23, 1980 and 32 CFR Part 215.

(b) *Military Resources.* Military and civilian personnel of the active and reserve components, facilities, equipment and supplies under the control of DoD Components, and services performed by DoD Components, to include airlift and other transportation services.

(c) *Civil Defense Emergency.* A national emergency resulting from devastation created by an enemy attack and requiring emergency operations during and following an attack. This emergency may also be proclaimed by appropriate authority in anticipation of an attack.

Note.—This is distinct from "Civil Emergency" and "Civil Disturbance," as defined in DoD directives 3025.1[1], and 32 CFR Part 215.

(d) *Automatic Response.* Actions taken independently by a military commander before implementation of military support of civil defense plans and in anticipation of or during a civil defense emergency and to save lives or prevent human suffering.

(e) *Crisis Relocation.* The orderly relocation of the population of metropolitan and other risk areas during a period of acute international crisis to low-risk areas to reduce vulnerability to the effect of nuclear, biological, chemical or conventional weapons attack. For the commander of a military installation or facility, a similar relocation of military forces and other personnel from the installation or facility.

§ 185.4 Policy.

(a) The national civil defense program is an intergral part of national security and is an essential element of the deterrent posture of the United States. Accordingly, subject to the priorities prescribed in § 185.4(b) military support of civil defense is an appropriate mission for DoD Components. The JCS shall have overall responsibility for providing military support of civil defense. In performing this mission, the JCS are authorized to call upon the Military Services and the Defense Agencies to make available military resoures needed for the performance of this mission.

(b) In event of nuclear, biological, chemical, or conventional weapon attack on the United States, its territories and possessions, the degree of military involvement in military support of civil defense will depend upon the commitment of military resources to military operations, the extent of damage sustained in the civilian community, and the status and disposition of active and reserve component forces. In all cases, however, military operations shall have first priority. Other missions that will have precedence over military support of civil defense include continuity of Federal Government operations, military personnel and property survival, and rehabilitation of military facilities that support the war-waging capacity of the armed forces.

(c) Accomplishment of the military support of civil defense misssion requires coordination between the Department of Defense and the Federal Emergency Management Agency at the national and regional levels. DoD commanders charged with planning and execution responsibilities shall coordinate plans and procedures with FEMA regional offices. In the event of conflicting demands on DoD resources, appropriate DoD Components shall seek clarification through military command channels.

(d) Subject to JCS approval, the Military Services and Defense Agencies shall make available to state or local authorities during a civil defense emergency those resources not otherwise committed to current or planned military operations or to other priority missions cited in § 185.4(b) in accordance with the policies enumerated below.

(1) Planning for military support of civil defense shall contain provisions for emergency preparations in crisis situations and be directed toward the most disastrous damage anticipated from an attack under minimum warning.

(2) The executive agent functions assigned to the Secretary of the Army by DoD Directive 3025.1[1] and 23 CFR Part 215 shall be suspended or terminated in accordance with procedures established by the Secretary of Defense for enemy attack situations. In such a case, responsibility for these functions shall be transferred to the JCS for accomplishment by commanders responsive to the JCS.

(3) Military support of civil defense shall complement and not be a substitute for civil participation in civil defense operations. Military plans and plans developed by civil authority shall recognize that civil resources must be the first used to support civil requirements and that military resources must be used only when available and within resource capability to supplement the civil resources. DoD-expendable materials used by the Military Services and Defense Agencies for military support of civil defense missions shall be resupplied through civil resource claimancy procedures and channels in accordance with DoD Directive 5030.45[1], "Department of Defense Representation of Federal Emergency Management Agency (FEMA) Regional Preparedness Committees," (Under Revision).

[1] See footnote page 1.

(4) Subject to the priorities prescribed in § 185.4(b), military forces, active and reserve, and the National Guard when federalized, shall be considered potentially available to provide military support of civil defense to civil authorities during a civil defense emergency. The actual use of military resources will also be determined by casualties and damage incurred by the military during an attack.

(5) The Commander-in-Chief, U.S. Readiness Command (USCINCRED) has military support of civil defense planning and execution responsibilities for the continental United States (CONUS). Within the 48 contiguous states and the District of Columbia, each Military Department shall periodically or upon request provide to USCINCRED, through appropriate headquarters designated by the parent Military Service, listings of all military forces and DoD Components located in CONUS. Forces shall be listed in order of priority of probable availability to provide military support of civil defense based on their military missions, their locations, and their capabilities as follows:

(i) *Priority I.* Those forces with a high probability of availability.

(ii) *Priority II.* Those forces with a lower probability of availability.

(iii) *Priority III.* Those forces least likely to be available because of high priority combat and combat support missions.

(6) For Alaska, Hawaii, Puerto Rico, and U.S. territories and possessions, the commander of the appropriate Unified Command or the commander designated by the JCS has military support of civil defense planning and execution responsibility for his respective areas. These commanders shall maintain a listing of forces as described in § 185.4(d)(5).

(7) Priorities of availability of forces shall be reflected in appropriate military support of civil defense plans. All forces listed shall be prepared and ready to execute the tasks contemplated. Those forces furnished to perform military support of civil defense in CONUS may be withdrawn by the military commanders of the parent Military Service for operational missions contingent upon notification of USCINCRED. For other areas, similar notification is required with the commander of the appropriate Unified Command or other commander designated by the JCS.

(8) A military commander, in making military resources available to civil authorities for military support of civil defense, is subject to no authority other than that established in the military chain of command.

(e) Military support of civil defense includes the following:

(1) Coordination with FEMA of plans and procedures for providing military support of civil defense to the civil sector.

(2) Use, under the direction of USCINCRED, of the existing military command structure in CONUS to plan for and execute military support of civil defense, using the Adjutants General and their headquarters.

(3) Use of appropriate commands in Alaska, Hawaii, Puerto Rico, and U.S. territories and possessions, as designated by JCS, to plan for and conduct military support of civil defense using the Adjutants General and their headquarters.

(4) Designation and training of personnel of alternate headquarters in conformity with continuity of operations plans, to assume responsibility in the event the principal headquarters is inoperative.

(5) Allocating time to the training of military forces in the basic functions of military support of civil defense, consistent with the need for those forces first to achieve an adequate level of readiness to perform their primary wartime mission. The present emergency-related DoD and FEMA facilities and courses shall be used to accomplish that training.

(6) Law enforcement:

(i) In those areas in which martial law has been proclaimed, military resources may be used for local law enforcement. Normally a state of martial law will be proclaimed by the President. However, in the absence of such action by the President, a senior military commander may impose martial law in an area of his command where there has been a complete breakdown in the exercise of government functions by local civilian authorities. Military assumption of judicial, law enforcement, and administrative functions of local government will be based on necessity that is actual and present, and the performance of these functions will continue only so long as necessity of that extreme nature requires interim military intervention. Civil administration will be restored as soon as civil authorities are able to resume their local government roles.

(ii) In the absence of martial law the performance of law enforcement functions by the military will be limited to those actions that are necessary to prevent loss of life and the wanton destruction of property. Intervention by the military for these purposes is permissible only when a serious breakdown in law and order has occurred or is imminent and only when appropriate civilian authorities have requested military assistance. Such assistance will be terminated as soon as civilian authorities are able to resume their responsibilities in these respects.

(7) Making provisions for commanders at appropriate echelons to provide within the commander's capability immediate and independent automatic response support to requests from civil authorities. This include developing and maintaining plans and capabilities to assist civilian authorities in restoring federal, state and local civil operations. Such interim emergency assistance shall be in coordination with and supplementary to the capabilities of state and local governments and other nonmilitary organizations, and shall be concerned with assistance which includes but is not limited to:

(i) Restoration of facilities and utilities, including transportation, communications, power, fuel, water, and other essential facilities.

(ii) Emergency clearance of debris and rubble, including explosive ordnance from streets, highways, rail centers, dock facilities, airports, shelters, and other areas, to permit rescue or movement of people, access to and recovery of critical resources, and emergency repair or reconstruction of facilities.

(iii) Fire protection.

(iv) Rescue, evacuation, and emergency medical treatment or hospitalization of casualties, recovery of critical medical supplies, and safeguarding of public health. This may involve sorting and treating casualties and preventive measures to control the incidence and spread of infectious diseases.

(v) Recovery, identification, registration, and disposition of deceased personnel.

(vi) Radiation monitoring and decontamination, as well as chemical and biological monitoring, to include identifying contaminated areas, and reporting information through the national warning system. Initial decontamination will be directed primarily at personnel and vital facilities.

(vii) Movement control, to include plans and procedures for essential movements.

(viii) Issue of food, essential supplies, and materiel, to include collection, safeguarding, and issue of critical items.

(ix) Emergency provision of personnel, equipment, and facilities for food preparation, should mass or community subsistence support be required.

(x) Damage assessment.

(xi) Provision of interim communications, using available mobile military equipment to provide command and control.

§ 185.5 Responsibilities.

(a) On behalf of the Secretary of Defense, the *Under Secretary of Defense for Policy* shall provide policy guidance on matters associated with military support of civil defense.

(b) The *Joint Chiefs of Staff* shall:

(1) Advise the Secretary of Defense and Under Secretary of Defense for Policy on policies, responsibilities, and programs relating to military support of civil defense as a contingency mission of all military forces, and provide recommendations on allocating military resources for military support of civil defense as numerated in § 185.4(e).

(2) In consultation with the Director, FEMA, and the Military Services, issue instructions for the conduct of military support of civil defense to Commanders of Unified Commands and other designated commanders. Such instructions shall provide for establishment of liaison with FEMA.

(3) Ensure compatibility of military support of civil defense plans with other military plans.

(c) The *Secretary of the Army* shall:

(1) Provide for the execution of the tasks in § 185.4(e) in accordance with approved guidance.

(2) Provide for a reporting system to USCINCRED to identify all Department of the Army forces by CONUS Army area according to priority of probable availability, in accordance with § 185.4 (c) through (e); determine specific availability of forces following an actual attack; and, for CONUS, designate commands to assist in preattack planning and provide for control of Department of the Army forces made available for military support to civil defense. The reporting system shall be developed in accordance with the provisions of DoD Directive 5000.11 [1], "Data Elements and Data Codes Standardization Program," December 7, 1964, and DoD Directive 500.19 [1], "Policies for the Management and Control of Information Requirements," March 12, 1976. Data elements and codes shall be registered with the Office of the Assistant Secretary of Defense (Comptroller) (OASD)(C)), Attention: Director for Management Information Control and Administration (DMIC&A).

(3) Assure readiness of active and reserve units of the Army to execute plans for military support of civil defense.

(4) Provide explosive ordnance disposal service and planning assistance to civil authorities in the development and operation of any military support of civil defense explosive ordnance disposal program.

(5) Assist the Department of the Air Force, to the extent that conditions and resources available permit, in executing postattack aerial reconaissance within the CONUS for nuclear damage assessment purposes.

(d) The *Secretary of the Navy* shall:

(1) Provide for the execution of tasks enumerated in § 185.4(e), in accordance with approved guidance.

(2) Provide for a reporting system to USCINCRED to identify all Department of the Navy forces by CONUS Army area according to priority of probable availability, in accordance with § 185.4 (c) through (e), determine specific availability of forces following an actual attack; and, for CONUS, designate commands to assist in preattack planning and provide for control of Department of the Navy forces made available for military support of civil defense. The reporting system shall be developed in accordance with the provisions of DoD Directive 5000.11 [1], and DoD Directive 5000.19 [1] Data elements and codes shall be registered with DMIC&A, OASD(C).

(3) Assure readiness of active and reserve units of the Navy and Marine Corps to execute plans for military support of civil defense.

(4) Assist the Department of the Air Force, to the extent that conditions and available resources permit, in executing postattack aerial reconnaissance within the CONUS for nuclear damage assessment purposes.

(5) Maintain liaison and coordinate planning with the U.S. Coast Guard regarding the participation of Coast Guard forces in military support of civil defense.

(6) Furnish technical training in explosive ordnance disposal, and provide underwater explosive ordnance and nuclear material disposal service for coastal areas to and including the high water mark for enclosed bodies of water and for rivers or canals and at all Navy and Marine Corps installations; provide for disposal of explosive ordnance or nuclear materials aboard naval aircraft.

(e) The *Secretary of the Air Force* shall:

(1) Provide for the execution of the tasks enumerated in § 185.4(e) in accordance with approved guidance.

(2) Provide for a reporting system to USCINCRED to identify all Department of the Air Force forces by CONUS Army area according to priority of probable availability, in accordance with § 185.4 (c) through (e); determine specific availability of forces following an actual attack; and, for CONUS, designate commands to assist in preattack planning and to provide for control of Department of the Air Force forces made available for military support of civil defense. The reporting system shall be developed in accordance with the provisions of DoD Directive 5000.11 [1], and DoD Directive 5000.19 [1]. Data elements and codes shall be registered with DMIC&A, OASD(C).

(3) Assure readiness of active and reserve units of the Air Force to execute plans for military support of civil defense.

(4) Furnish appropriate assistance to units of Civil Air Patrol engaged in missions related to military support of civil defense.

(5) Conduct postattack aerial photo reconnaissance missions for damage assessment purposes. Information derived therefrom shall be made available to civil defense authorities as expeditiously as possible, in accordance with standing arrangements and procedures.

(6) Provide explosive ordnance disposal service on Air Force installations for disposal of explosive ordnance or nuclear materials in the physical possession of the Air Force at the time of any incidents or accidents.

(f) The *Directors of the Defense Agencies* shall provide advice and assistance on matters within their spheres of competence to the JCS in the discharge of the responsibilities enumerated in § 185.5(b), provide advice and assistance and make available resources not otherwise committed to the Military Departments in the discharge of their responsibilities enumerated in § 185.5 (c) through (e).

§ 185.6 Financing.

Financial planning under this Directive shall assume that in the event of a declared civil defense emergency, actions will be taken by military authorities on the basis of the President's constitutional war powers.

M. S. Healy,

OSD Federal Register Liaison Officer, Washington Headquarters Services, Department of Defense.

September 25, 1981.

[FR Doc. 81-28535 Filed 9-30-81; 8:45 am]

BILLING CODE 3810-01-M

[1] See footnote page 1.

[1] See footnote page 1.

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 110

[CGD3-80-4A]

Anchorage Regulations; New London Harbor, Connecticut

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This rule implements the request of the Commander, U.S. Navy Submarine Squadron Two and the Southeastern Connecticut Chamber of Commerce to eliminate the naval anchorage restriction applying to Anchorage A in New London Harbor, New London, Connecticut. The anchorage is no longer needed as a designated naval anchorage. The effect of this rule will be an increase in the availability of general anchorage grounds in New London Harbor, thereby relieving crowding in general anchorages adjacent to Anchorage A. Editorial changes are also being made to appropriately designate descriptive latitudes and longitudes as "north" and "west" respectively.

EFFECTIVE DATE: This amendment becomes effective on November 2, 1981.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Michael S. Macie, Project Officer, Port Safety Branch, Third Coast Guard District (mps), Building 108, Room 106, Governors Island, New York, NY 10004 (Tel: 212-668-7179).

SUPPLEMENTARY INFORMATION: On January 29, 1981 the Coast Guard published a notice of proposed rulemaking for these regulations in the Federal Register (46 FR 9659-9660). Interested persons were requested to submit comments and no comments were received.

In addition, the Federal Register notice of January 29, 1981 contained two minor errors as follows. (1) Two different docket numbers were given, one in the heading (CGD81-012) and another in the text (CCGD3-80-4A). The correct docket number (CGD3-80-4A) appears at the beginning of this notice of the final rule. (2) AT § 110.147(a)(2), line 7, of the proposed rule, the distance of "2,480" yards following the bearing of 009° was omitted. It has been placed within this final rule. Neither of these errors substantially affected the proposal or this final rule.

DRAFTING INFORMATION: The principal persons involved in drafting this final rule are Lieutenant Commander Michael S. Macie, Project Officer, Port Safety Branch, Third Coast Guard District, and Lieutenant Robert Bruce, Project Attorney, Third Coast Guard District - Legal Office.

SUMMARY OF FINAL EVALUATION: The proposed change of this anchorage from naval to general use was reviewed by the Third Coast Guard District Planning Staff under the provisions of the "Procedures for Considering Environmental Impacts" (COMDTINST 16475.1) and was found not to require an environmental assessment.

The proposed regulation was also found to be nonsignificant in accordance with the guidelines set forth in the "Policies and Procedures for Simplification, Analysis and Review of Regulations" (DOT Order 2100.5 of 22 May 1980). An economic evaluation of the proposal has not been conducted since its impact is expected to be minimal. The change in designated use of this anchorage is not a matter on which there is substantial public interest or controversy, nor does it involve impacts on competition, business, State or local government, or the regulations of other programs and agencies.

Moreover, this rule is not a major rule as defined by Executive Order 12291 of February 17, 1981. This rule, once implemented, will not affect the economy to any measurable degree, result in any increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions, or result in any adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Finally, it is hereby certified that this rule will not have any economic impact on a substantial number of small entities, as described in the Regulatory Flexibility Act (Pub. L. 96-354; 5 U.S.C. 601, et seq.). This certification is made in accordance with section 605 of Title 5 of the United States Code.

PART 110—ANCHORAGE REGULATIONS

Final Regulations: In consideration of the foregoing, § 110.147 of Title 33, Code of Federal Regulations, is amended to read as follows:

§ 110.147 New London Harbor, Conn.

(a) *The anchorage grounds—(1) Anchorage A.* In the Thames River east of Shaw Cove, bounded by lines connecting points which are the following bearings and distances from Monument, Groton (latitude 41°21'18" N., longitude 72°04'48" W.): 243°, 1,400 yards; 246°, 925 yards; 217°, 1,380 yards; and 235°, 1,450 yards.

(2) *Anchorage B.* In the Thames River southward of New London, bounded by lines connecting points which are the following bearings and distances from New London Harbor Light (latitude 41°18'59" N., longitude 72°05'25" W.): 002°, 2,460 yards; 009°, 2,480 yards; 026°, 1,175 yards; and 008°, 1,075 yards.

(3) *Anchorage C.* In the Thames River southward of New London Harbor, bounded by lines connecting a point bearing 100°, 450 yards from New London Harbor Light, a point bearing 270°, 575 yards from New London Ledge Light (latitude 41°18'21" N., longitude 72°04'41" W.), and a point bearing 270°, 1,450 yards from New London Ledge Light.

(4) *Anchorage D.* In Long Island Sound approximately two miles west-southwest of New London Ledge Light, bounded by lines connecting points which are the following bearings and distances from New London Ledge Light: 246°, 2.6 miles; 247°, 2.1 miles; 233°, 2.1 miles; and 235°, 2.6 miles.

(b) *The regulations.*—(1) Anchorage A is for barges and small vessels drawing less than 12 feet.

(2) Except in emergencies, vessels shall not anchor in New London Harbor or the approaches thereto outside the anchorages defined in paragraph (a) of this section unless authorized to do so by the Captain of the Port.

(33 U.S.C. 471; 49 U.S.C. 1655(g)(1); 49 CFR 1.46(c)(1); 33 CFR 1.05-1(g)(1))

Dated: June 26, 1981.

R. I. Price,

Vice Admiral, U.S. Coast Guard, Commander, Third Coast Guard District.

[FR Doc. 81-22611 Filed 9-30-81; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 110

[CGD3-80-5A]

Special Anchorage Area, Manhasset Bay, New York

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of the Manhasset Isle Civic Association, Inc., Manhasset Isle, Port Washington, New York, the Coast Guard is expanding the special anchorage described in 33 CFR 110.60(h) in Manhasset Bay at Manorhaven, New York. This expansion of the special anchorage is needed to accommodate vessels now anchoring for extended periods of time within the area to be added. The expansion will enhance navigational safety by alerting,

through depiction on appropriate nautical charts, transiting vessels that unlighted vessels or vessels not sounding fog signals may be present in the anchorage.

EFFECTIVE DATE: This amendment becomes effective on November 2, 1981.

FOR FURTHER INFORMATION CONTACT: Commander Peter T. Muth, Chief, Port Safety Branch, Third Coast Guard District, Room 106, Building 108, Governors Island, New York, NY 10004 (Tel: 212-668-7179).

SUPPLEMENTARY INFORMATION: On April 13, 1981, the Coast Guard published a notice of proposed rulemaking in the Federal Register for these regulations (46 FR 21626-7). Interested persons were requested to submit comments and no comments were received.

DRAFTING INFORMATION: The principal persons involved in drafting this final rule are Lieutenant Commander Michael S. Macie, Project Officer, Port Safety Branch, Third Coast Guard District and Lieutenant Ronald Nelson, project Attorney, Legal Division, Third Coast Guard District.

SUMMARY OF FINAL EVALUATION: An environmental review of the proposal had been performed by the Third Coast Guard District Planning staff who determined that this rule will have no significant impact. Preparation of an environmental assessment was not required since the action was found to be categorically excluded in accordance with Section 2.B.3.g. of COMDTINST M16475.1A.

This regulation is considered to be nonsignificant in accordance with guidelines set out in the "Policies and Procedures for Simplification, Analysis and Review of Regulations" (DOT Order 2100.5 of 22 May 1980). An economic evaluation of the rule has not been conducted since its impact is expected to be minimal. The expansion of such a special anchorage is not a matter on which there is substantial public interest or controversy, nor does it involve impacts on competition, businesses, State or local government, or the regulations of other programs and agencies.

Moreover, this final rule is not a major rule as defined by Executive Order 12291 of February 17, 1981. Once enacted, this rule will not affect the economy to any measurable degree, result in any increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions, or result in any adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Likewise, it is hereby certified that this rule will not, when promulgated, have any economic impact on a substantial number of small entities, as described in the Regulatory Flexibility Act (Pub. L. 96-354; 5 U.S.C. 601, et seq.). This certification is made in accordance with section 605 of Title 5 of the United States Code.

PART 110—ANCHORAGE REGULATIONS

FINAL REGULATION: In consideration of the foregoing, the Coast Guard is amending Part 110 of Title 33, Code of Federal Regulations, by revising § 110.60(h) to read as follows:

§ 110.60 Port of New York and Vicinity.

* * * * *

(h) *Manhasset Bay, east area at Manorhaven.* That portion of Long Island Sound Anchorage No. 4 (described in § 110.155) bounded as follows: Beginning at the shoreline at 40°50'18"N, 73°42'51"W; thence 180° to 40°50'05"N, 73°42'51"W; thence 132° to 40°49'58"N, 73°42'41"W; thence 234° to 40°49'48.5"N, 73°42'58"W; thence 090° to 40°49'48.5"N, 73°42'22.5"W; thence 020° to 40°50'01.5"N, 73°42'16"W; thence due north to the point of land at Manorhaven northeasterly of Tom Point; thence southwesterly along the shore to and around Tom Point and north northwesterly along the shore to the point of beginning.

* * * * *

(33 U.S.C. 180; 49 U.S.C. 1655(g)(1)(B); 49 CFR 1.46(c)(2); 33 CFR 1.05-1(g))

Dated: June 26, 1981.

R. I. Price,

Vice Admiral, U.S. Coast Guard Commander, Third Coast Guard District.

[FR Doc. 81-28610 Filed 9-30-81; 8:45 am]

BILLING CODE 4910-14-M

---

33 CFR Part 110

[CGD 79-171]

Establishment of Special Anchorage Area Muskegon Lake East, Muskegon, Michigan

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of the city of Muskegon, Michigan, a Special Anchorage Area is established on eastern Muskegon Lake. This Special Anchorage Area is needed to accommodate the increased number of small craft utilizing Muskegon Lake. This rule would enhance navigational safety by alerting transiting vessels, through depiction on appropriate nautical charts, that unlighted vessels or vessels not sounding fog signals may be present in the anchorage.

EFFECTIVE DATE: This amendment is effective on November 2, 1981.

FOR FURTHER INFORMATION CONTACT: Mr. Daniel W Ziegfield, Office of Marine Environment and Systems (G-WWM), Room 1104, U.S. Coast Guard Headquarters, 2100 Second St. SW, Washington, D.C. 20593, telephone: (202) 755-6146.

SUPPLEMENTARY INFORMATION: On February 19, 1980, the Coast Guard published a proposed rule (45 FR 10815) concerning this amendment. Interested persons were given until April 1, 1980 to submit comments and two comments were received concerning the proposal.

DRAFT EVALUATION: The proposed regulations have been evaluated under E.O. 12291 and the Department of Transportation Order 2100.5, "Policies and Procedures for Simplification, Analysis and Review of Regulations," dated May 22, 1980, and have been determined not to be major and to be nonsignificant. The establishment of an anchorage does not involve impacts on competition, businesses, State or local government, or regulations of other programs and agencies. There is no cost to the public while benefit is conferred upon anchorage users in terms of convenience and exemption from sound and lighting requirements. Because the economic impact is minimal, no evaluation has been prepared.

This rule is exempted from the Regulatory Flexibility Act (Pub. L. 96-354; 5 U.S.C. 601, et seq.) because the proposed rule was published before January 1, 1981. Even if it were not exempted, this rule would not impact on any small entity because the Special Anchorage Area would merely exempt vessels not more than 65 feet in length from displaying anchor lights and sounding fog signals.

DRAFTING INFORMATION: The principal persons involved in drafting this rule are Ensign Rhae A. Giacoma, Project Manager, Office of Marine Environment and Systems; Mr. Daniel W. Ziegfield; and Lieutenant Collin Lau, Project Attorney, Office of the Chief Counsel.

Discussion of Comments

One commenter felt that the establishment of this Special Anchorage Area would interfere with commercial shipping and thereby impair safety on Muskegon Lake. The Coast Guard disagrees. The location of this anchorage area is well removed from

fairways regularly utilized by commercial vessels and the area is located where general navigation will not endanger or be endangered by unlighted vessels, assuming prudent navigation by all concerned. This same commenter also felt that incidents of pollution would increase with the anchoring of vessels in this area. The Coast Guard has no evidence indicating that the establishment of a Special Anchorage increases the likelihood of pollution in the area. Further, vessels using the anchorage area are still required to comply with pollution prevention regulations.

One commenter expressed concern that the anchorage would be located too close to a public launch ramp. It is for the benefit of small pleasure craft that this Special Anchorage Area is established. Being located close to a public launch ramp is viewed by most boaters as a convenience, again assuming prudent navigation by all concerned.

PART 110—ANCHORAGE REGULATIONS

In consideration of the foregoing, Part 110 of Title 33 Code of Federal Regulations is amended by revising § 110.81 to read as follows:

§ 110.81 Muskegon Lake, Michigan.

(a) *Muskegon Lake West.* The waters of the southwest side of Muskegon Lake enclosed by a line beginning at latitude 43°13'24"N., longitude 86°19'18.5"W., thence 145°T to latitude 43°13'07.5"N., longitude 86°19'02.5"W., thence 230°T to latitude 43°13'04"N., longitude 86°19'08.5"W., thence along the shoreline to the point of origin.

(b) *Muskegon Lake East.* The waters of the southeast side of Muskegon Lake enclosed by a line beginning at latitude 43°14'04"N., longitude 86°15'47"W., thence 277°T to latitude 43°14'06.5"N., longitude 86°16'27"W., thence 205°T to the shore; thence along the shoreline to the point of origin.

Note.—Administration of the Special Anchorage Area is exercised by the City of Muskegon pursuant to local ordinances.

(Sec. 1, 28 Stat. 647, as amended, (33 U.S.C. 258); Sec. 6(g)(1)(C), 80 Stat. 937 (49 U.S.C. 1655(g)(1)(C)); 49 CFR 1.46(c)(3))

Dated: August 11, 1981.

W. E. Caldwell,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Environment and Systems.

[FR Doc. 81-28609 Filed 9-30-81; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 117

[CGD 81-024]

Drawbridge Operation Regulations; Bayou Plaquemine Brule, La.

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of the Louisiana Department of Transportation and Development, the Coast Guard is changing the regulations governing the State Route 91 pontoon bridge across Bayou Plaquemine Brule, mile 8.0, at Esterwood, Louisiana. The bridge now is required to open between 5 a.m. and 9 p.m. on signal and between 9 p.m. and 5 a.m. on at least 12 hours advance notice. The change will require the bridge to open between 5 a.m. and 9 p.m. on at least 4 hours advance notice while retaining the 12 hour advance notice requirement for openings between 9 p.m. and 5 a.m. This change is being made because of the limited number of requests for opening the draw. The action will relieve the bridge owner of the burden of having a person constantly available from 5 a.m. to 9 p.m. to open the draw, while still providing for the reasonable needs of navigation.

EFFECTIVE DATE: This amendment is effective on November 2, 1981.

FOR FURTHER INFORMATION CONTACT: Joseph Irico, Chief, Bridge Administration Branch, Eighth Coast Guard District, Hale Boggs Federal Building, 500 Camp Street, New Orleans, Louisiana 70130—(504) 589-2965.

SUPPLEMENTARY INFORMATION: On 25 June 1981, the Coast Guard published a proposed rule (46 FR 32887) concerning this amendment. The Eighth Coast Guard District also published this proposal as a Public Notice dated 9 July 1981. Interested persons were given until 10 August 1981 to submit comments.

DRAFTING INFORMATION: The principal persons involved in drafting this rule are: Joseph Irico, Project Manager, District Operations Division, and Steve Crawford, General Attorney, District Legal Office.

Discussion of Comments

One comment was received, offering no objection.

These final regulations have been reviewed under provisions of Executive Order 12291 and have been determined not to be a major rule. They are considered to be nonsignificant in accordance with guidelines set out in the Policies and Procedures for Simplification, Analysis, and Review of Regulations (DOT Order 2100.5 of 22 May 1980). An economic evaluation has not been conducted since the impact is expected to be minimal for the reasons discussed above.

In accordance with section 605(d) of the Regulatory Flexibility Act (94 Stat. 1164), it is also certified that these rules will not have a significant economic impact on a substantial number of small entities.

PART 117—DRAWBRIDGE OPERATION REGULATIONS

In consideration of the foregoing, Part 117 of Title 33, Code of Federal Regulations, is amended as set forth below.

§ 117.540 [Amended]

1. By removing "Bayou Plaquemine Brule, mile 8.0, S-91 highway drawbridge at Esterwood" from § 117.540(b).

2. By revising paragraph (j)(16) of § 117.245 to read as follows:

§ 117.245 Navigable waters discharging into the Atlantic Ocean south of and including Chesapeake Bay and into the Gulf of Mexico, except the Mississippi River and its tributaries and outlets; bridges where constant attendance of draw tenders is not required.

* * * * *

(j) * * *

* * * * *

(16) Bayou Plaquemine Brule, LA;

(i) S-91 highway drawbridge at Esterwood. The draw shall open on signal if at least four hours notice is given from 5 a.m. to 9 p.m., and if at least 12 hours notice is given from 9 p.m. to 5 a.m.

(ii) Texas and New Orleans Railroad Company bridge near Midland. The draw shall open on signal if at least 24 hours notice is given.

* * * * *

(33 U.S.C. 499, 49 U.S.C. 1655(g)(2), 49 CFR 1.46(c)(5), 33 CFR 1.05-1(g)(3))

Dated: August 24, 1981.

W. H. Stewart,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 81-28608 Filed 9-30-81; 8:45 am]

BILLING CODE 4910-14-M

VETERANS ADMINISTRATION

38 CFR Part 21

Extension of Educational Benefits to Eligible Person

AGENCY: Veterans Administration.

ACTION: Final Regulation.

SUMMARY: This regulation permits a greater extension of educational benefits to an eligible person when his or her eligibility for educational assistance ends, because circumstances change for the veteran on whom eligibility is based. For several years the law has allowed payments of benefits to the end of the course or for 12 weeks, whichever occurs first, when the eligible person who loses eligibility is attending a school that is not organized on a quarter or semester basis. The regulation previously permitted only a 9-week extension. The amended regulation corrects the discrepancy between the law and the regulation.

EFFECTIVE DATE: October 15, 1976.

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer (225), Assistant Director for Policy and Program Administration, Education Service, Department of Veterans Benefits, Veterans Administration, 810 Vermont Avenue, NW, Washington, D.C. 20420 (202-389-2092).

SUPPLEMENTARY INFORMATION: On pages 31022 and 31023 of the Federal Register of June 12, 1981, there was published a notice of intent to amend part 21 to change the rules governing the extension of an eligible person's eligibility period for dependents' educational assistance.

Interested persons were given 30 days in which to submit comments, suggestions or objections regarding the proposal. The Veterans Administration received two letters containing comments. These letters approved the proposal and urged that it be adopted. Accordingly the agency is adopting the proposal without change.

The Administrator hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612. Pursuant to 5 U.S.C. 605(b), this final rule therefore is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604. The reason for this certification is that the rule will regulate only individual Veterans Administration benefit recipients. It will have no significant direct impact on small entities in terms of compliance costs, recordkeeping requirements, or effects on competition.

The Veterans Administration has determined that this regulation is not a major rule as that term is defined by Executive Order 12291, Federal Regulation. The annual effect on the economy will be less than $100 million. It will not result in major increases in costs or prices for anyone. It will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Catalog of Federal Domestic Assistance number for the program affected by this regulation is 64.117

The proposed change to § 21.4135 is deemed proper and is hereby approved.

Approved: September 10, 1981.

Robert P. Nimmo,

Administrator.

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

In § 21.4135, paragraph (o) is revised as follows:

§ 21.4135 Discontinuance dates.

* * * * *

(o) *Veteran no longer rated permanent total disabled; or spouse (trainee) divorced from veteran without fault on his or her part; or serviceman or servicewoman removed from "missing status" listing—chapter 35 (§§ 21.3041 and 21.3046).* (1) End of quarter or semester if school is operated on quarter or semester system.

(2) End of the course or a 12-week period, whichever is earlier, if the school does not operate on a quarter or semester system (38 U.S.C. 1711(b))

* * * * *

[FR Doc. 81-28557 Filed 9-30-81; 8:45 am]

BILLING CODE 8320-01-M

POSTAL SERVICE

39 CFR Part 601

Procurement of Property and Services; Amendments to Postal Contracting Manual

AGENCY: Postal Service.

ACTION: Amendments to the Postal Contracting Manual.

SUMMARY: The Postal Service hereby announces that it has revised the definition of a minority enterprise and is incorporating the revised definition in procurement forms as they are reprinted. The name minority enterprise has been changed to minority business enterprise and the new name is being incorporated into required contract clauses. The Postal Service has also clarified the applicability of the Service Contract Act to multi-year contracts and has revised a form.

EFFECTIVE DATE: September 18, 1981.

FOR FURTHER INFORMATION CONTACT: Eugene A. Keller, (202) 245-4818.

SUPPLEMENTARY INFORMATION: The Postal Contracting Manual, which has been incorporated by reference in the Code of Federal Regulations (See 39 CFR 601.100) has been amended by the issuance of PCM Circular 81-6, Revised, dated September 18, 1981.

In accordance with 39 CFR 601.105, notice of these changes is hereby published in the Federal Register and the text of the changes is filed with the Director, Office of the Federal Register. Subscribers to the basic manual will receive these amendments from the Postal Service. (For other availability of the Postal Contracting Manual, see 39 CFR 601.104.)

Explanation of these amendments to the Postal Contracting Manual follows:

Explanation:

1-701.7 revises the definition of a minority enterprise. The revised name, "minority business enterprise," and definition are being incorporated in procurement forms as they are reprinted. Pending such incorporation, contracting officers must substitute the new definition for the existing definition in Form 7319-C.

1-706 incorporates the revised name, "minority business enterprise," into required clauses. Pending revision of other portions of the Postal Contracting Manual, other references to "minority enterprise" should be understood to refer to "minority business enterprise."

12-905(a) clarifies the applicability of the Service Contract Act to multi-year contracts.

Use the following revised form included in section 16 immediately when applicable:

Form 7336, *Continuation Sheet.*

(5 U.S.C. 552(a), 39 U.S.C. 401, 404, 410, 411)

W. Allen Sanders,

Associate General Counsel, General Law and Administration.

[FR Doc. 81-28101 Filed 9-30-81; 8:45 am]

BILLING CODE 7710-12-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 1E2523/R354; PH-FRL-1946-4]

Chlorpyrifos; Tolerance Established

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a tolerance for the combined residues of the insecticide chlorpyrifos and its metabolite in or on peppers at 1.0 part per million (ppm). This regulation was

requested by the Carmielit-Portnoy Industries, Ltd. This regulation will establish a maximum permissible level for residues of the subject insecticide and its metabolite on peppers.

EFFECTIVE DATE: Effective on: October 1, 1981.

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

FOR FURTHER INFORMATION CONTACT: Jay S. Ellenberger, Product Manager (PM) 12, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 400, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-7024).

SUPPLEMENTARY INFORMATION: EPA issued a notice published in the Federal Register of August 19, 1981 (46 FR 42088) that Carmielit-Portnoy Industries, Ltd., Carmel, Israel, had submitted a pesticide petition (PP 1E2523) to the EPA. The petition proposed the establishment of a tolerance for the combined residues of the insecticide chlorpyrifos [*O,O*-diethyl *O*-(3,5,6-trichloro-2-pyridyl)phosphorothioate] and its metabolite 3,5,6-trichloro-2-pyridinol in or on the raw agricultural commodity peppers at 0.5 part per million (ppm).

The petitioner subsequently amended the petition by increasing the proposed tolerance from 0.5 ppm to 1.0 ppm.

The data submitted in the petition and other relevant material have been evaluated. The toxicological data considered in support of the tolerance included a 2-year rat feeding/oncogenicity study and a dog feeding study with a no-observed-effect level (NOEL) of 0.1 milligram (mg)/kilogram (kg) of body weight (bw) per day; a mouse oncogenicity study which was negative at 15 ppm (highest dose); and a mouse teratology study which was negative at 25 mg/kg. Studies on delayed neurotoxicity and reproduction showed negative potential. Based on the 2-year chronic rat feeding study with an NOEL of 0.1 mg/kg of bw/day, and using a safety factor of 10, the acceptable daily intake (ADI) for humans is 0.01 mg/kg of bw/day.

The theoretical maximum residue contribution (TMRC) in the human diet from this tolerance and previously established tolerances for residues of chlorpyrifos on a variety of raw agricultural commodities at levels ranging from 0.01 ppm to 1.5 ppm does not exceed the ADI.

The metabolism of chlorpyrifos is adequately understood for this use, and an adequate analytical method (gas chromatography) is available for enforcement purposes. No regulatory actions are currently pending against the continued registration of chlorpyrifos, nor are there any other relevant considerations involved in establishing this tolerance.

The pesticide is considered useful for the purpose for which the tolerance is sought, and it is concluded that the tolerance will protect the public health. Therefore, 40 CFR Part 180 is amended as set forth below.

As required by Executive Order 12291, EPA has determined that this rule is not a "Major" rule and therefore does not require a Regulatory Impact Analysis. In addition, the Office of Management and Budget (OMB) has exempted this proposal from the OMB review requirements of Executive Order 12291, pursuant to section 8(b) of that Order.

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

Effective on: October 1, 1981.

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

Dated: September 23, 1981.

James M. Conlon,

Acting Deputy Assistant Administrator for Pesticide Programs.

PART 180—TOLERANCES AND EXEMPTIONS FROM TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW AGRICULTURAL COMMODITIES

Therefore, 40 CFR 180.342 is amended by alphabetically inserting the raw agricultural commodity "peppers" to read as follows:

§ 180.342 Chlorpyrifos; tolerances for residues.

* * * * *

Commodities	Parts per million
* * * * *	
Peppers	1.0
* * * * *	

[FR Doc. 81-28550 Filed 9-30-81; 8:45 am]

BILLING CODE 6560-32-M

[SW-FRL-1945-6]

40 CFR Parts 264 and 265

Financial Requirements Applicable to Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities; Deferral of Effective Date

AGENCY: Environmental Protection Agency.

ACTION: Notice of deferral of effective date.

SUMMARY: On January 12, 1981, the Environmental Protection Agency issued an interim final rule which established financial requirements applicable to owners and operators of hazardous waste treatment, storage, and disposal facilities. Under the financial requirements, owners and operators must (1) provide financial assurance that applicable closure and post-closure requirements will be met, and (2) maintain liability coverage of certain types and amounts during the operating life of the facilities (§§ 264.143, 264.145-151, 265.143, and 265.145-151). On May 18, 1981, the Agency deferred the effective date for these requirements from July 13, 1981, to October 13, 1981, in order to consider revisions to the requirements. This notice further defers the effective date of these requirements from October 13, 1981, to April 13, 1982. This action is being taken since the Agency is planning to make several amendments to the closure and post-closure financial requirements and is considering whether to withdraw the liability requirements in their entirety.

EFFECTIVE DATE: The new effective date for the regulations covered by this notice is April 13, 1982.

FOR FURTHER INFORMATION CONTACT: George A. Garland, Chief, Economic and Policy Analysis Branch, Hazardous and Industrial Waste Division, Office of Solid Waste (WH-565), 401 M Street, S.W., Washington, D.C. 20460, (202) 755-9190.

SUPPLEMENTARY INFORMATION:

Deferral of Effective Date

Financial requirements applicable to owners and operators of hazardous waste treatment, storage, and disposal facilities were promulgated on January 12, 1981, as part of the interim final rule amending 40 CFR Parts 264 (standards to be applied in issuing permits) and 265 (standards for interim status facilities) (46 FR 2802-2897). The regulations require owners and operators of hazardous waste management facilities to: (1) assure closure and post-closure

care and (2) have liability insurance. These standards are part of the hazardous waste regulatory program required by the Resource Conservation and Recovery Act (RCRA).

Based on its analyses and comments from the public, the Agency intends to make several amendments to the closure and post-closure requirements. Due to the complexity of issues and comments raised in response to the January 12, 1981 interim final regulations, the Agency will not be able to promulgate necessary amendments to those regulations before mid-October 1981. The Agency believes that the amendments, which are expected to include the addition of new financial assurance mechanisms and modifications of existing mechanisms, will result in reducing the cost of compliance with the regulation while providing increased environmental and public health protection.

EPA expects that the regulated community will need up to six months to review the amendments and to determine and obtain the most appropriate mechanism to comply with the requirements. Under these circumstances, EPA believes it should defer the effective date for the closure and post-closure requirements until April 13, 1982, and that the deferral should be effective immediately. In light of the present effective date of October 13, 1981, the Agency believes that good cause exists to make this deferral effective immediately. It would be both impracticable and contrary to the public interest not to do so.

In addition, the Agency intends to publish by mid-October 1981 a proposal to eliminate the liability requirements. The Agency expects that it will take about six months to consider comments on the proposal and reach a final decision. Consequently, the effective date for the liability requirements is being similarly deferred until April 13, 1982, because owners and operators should not be required to purchase insurance while the Agency is considering eliminating the requirements. Because the Agency recently decided to propose the elimination of the liability requirements, and in light of the present October 13, 1981 effective date, the Agency believes that good cause exists to make this deferral effective immediately. It would be both impracticable and contrary to the public interest not to do so.

Compliance With Executive Order 12291

Executive Order 12291 (46 FR 13193, February 19, 1981) requires that EPA prepare a Regulatory Impact Analysis for each major rule. The Order defines a "major rule" as any regulation that is likely to result in:

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State, or local agencies or geographic regions; or
- Significant adverse effects on competition, employment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This action is a postponement of the effective date of a regulation and as such has none of the effects noted above. Accordingly, EPA concludes that this action is not a major rule under E.O. 12291. In addition, the Agency has determined that such a postponement is not subject to the Regulatory Flexibility Act.

This notice was submitted to the Office of Management and Budget for review as required by E.O. 12291.

Dated: September 24, 1981.

Anne M. Gorsuch,

Administrator.

[FR Doc. 81-28321 Filed 9-30-81; 8:45 am]

BILLING CODE 6560-30-M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 281

Determination Relative to Certain Non-Subsidized Voyages of Subsidized Operators of Vessels

AGENCY: Maritime Administration, DOT.

ACTION: Notice of Determination by Maritime Administrator.

SUMMARY: This notice is to inform all operators of U.S.-flag ships that the Maritime Administrator has made a determination as provided in 46 CFR 281.11–281.17 that a non-subsidized voyage of a subsidized operator's ship carrying single shipper full load cargoes may be made without consent otherwise required from another U.S.-flag operator offering service on the route, line, or service of the proposed non-subsidized voyage.

EFFECTIVE DATE: October 1, 1981.

ADDRESS: Maritime Administration, Nassif Building, 400 Seventh Street SW., Washington, D.C. 20590.

FOR FURTHER INFORMATION CONTACT: Mr. William B. Ebersold, Director, Office of Trade Studies and Statistics, Main Commerce Building, Washington, D.C. 20230, (202) 377–4758.

SUPPLEMENTARY INFORMATION: Under 46 CFR Part 281, procedures are described for a subsidized operator to obtain authorization for a non-subsidized voyage in §§ 281.11 through 281.17. Among those procedures is the requirement contained in § 281.11(d) to obtain the consent of any other U.S.-flag operator offering service on the route, line, or service of the proposed non-subsidized voyage.

Part 281 was properly promulgated under section 204(b) of the Merchant Marine Act, 1936, as amended, and has not been repealed. The elimination of subsidy recapture provisions from the Act in 1970 did not eliminate all rationale for Part 281. Controls are exercised over non-subsidized operations to ensure that the continuity and quality of subsidized operations will not be adversely affected. Such controls are also intended to safeguard against improper competitive practices and to prevent operations prejudicial to the purposes and policy of the Act. There is thus a need to strike a balance between operating flexibility for the subsidized operator and adverse impact on other U.S.-flag operators.

However, notwithstanding the continuing need for controls, there are certain situations in which it is not considered necessary to require the consent of other U.S.-flag operators. Accordingly, as provided in 46 CFR 281.11(d), the Maritime Administrator has determined the following exceptions to the consent requirements contained in that section:

1. When the non-subsidized voyage is to be made by a vessel not covered by an operating-differential subsidy agreement, the consent requirement will not be applicable and prior approval will not be required for a voyage carrying a full shipload of bulk or bagged agricultural commodities or fertilizers subject to the cargo preference laws of the United States; or any full cargo of other commodities when there is only a single shipper and the vessel is not operated as a common carrier.

2. When the non-subsidized voyage is to be made by a vessel included in an operating-differential subsidy agreement, the consent requirement will not be applicable but prior approval will be required for the types of voyages described above.

(Catalog of Federal Domestic Assistance Program No. 11.504 Operating-Differential Subsidies (ODS))

By Order of the Acting Maritime Administrator.

Dated: September 23, 1981.
Robert J. Patton, Jr.,
Secretary.
[FR Doc. 81-28679 Filed 9-30-81; 8:45 am]
BILLING CODE 3510-15-M

FEDERAL MARITIME COMMISSION

46 CFR Part 510

[General Order 4, Revised; Docket 80-13]

Licensing of Independent Ocean Freight Forwarders

AGENCY: Federal Maritime Commission.

ACTION: Clarification of Stay of Final Rule.

SUMMARY: The Commission's final rules in this proceeding provided in 46 CFR 510.32(j) that the waiver or reduction of forwarding fees was prohibited. The Commission subsequently determined to consider further the proper treatment of such fees when applied to shipments for relief agencies or charitable organizations, and to stay the provision pending final resolution of the matter. This document clarifies that the stay is limited to the rule only as it pertains to relief agencies or charitable organizations.

DATE: The stay is effective September 3, 1981.

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

SUPPLEMENTARY INFORMATION: The Commission published final rules in this proceeding May 1, 1981 (46 FR 24565). These rules contain a provision which prohibits the waiver or reduction of forwarding fees (46 CFR 510.32(j)). The Commission subsequently determined to further consider this provision as it applied to shipments for relief agencies and charitable organizations and determined to stay the provision pending final resolution of the matter. The order effectuating the stay was published September 14, 1981 (46 FR 45612). The language of that order indicates that the entirety of 46 CFR 510.32(j) is stayed. This clarifies that the stay is limited to circumstances involving relief agencies or charitable organizations.

Therefore, it is ordered, That the effect of § 510.32(j) of Title 46 CFR is stayed to the extent that it would prohibit waiver or reduction of forwarding fees for relief agencies or charitable organizations, pending final resolution of the matter.

By the Commission.
Joseph C. Polking,
Assistant Secretary.
[FR Doc. 81-28558 Filed 9-30-81; 8:45 am]
BILLING CODE 6730-01-M

46 CFR Part 524

[General Order 23, Rev. Docket 81-6]

Exemption of Certain Agreements From the Requirements of Section 15, Shipping Act, 1916

AGENCY: Federal Maritime Commission.

ACTION: Final rule.

SUMMARY: This exempts agreements which relate to routine administrative or housekeeping matters from the filing and approval requirements of section 15 of the Shipping Act, 1916. These agreements have previously been routinely approved and appear to have little or no anticompetitive potential. Exemption should lessen the regulatory burden on ocean carriers and encourage the formation of agreements involving routine housekeeping or administrative matters which should promote efficiencies and economies in operation for such carriers.

DATE: Effective November 2, 1981.

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

SUPPLEMENTARY INFORMATION: Section 35 of the Shipping Act, 1916 (the Act) (46 U.S.C. 833a) provides that the Commission, upon application or on its own motion, may by order or rule exempt for the future any class of agreements between persons subject to the Act, or any specified activity of such persons from any requirement of the Act, where it finds that such exemption will not substantially impair effective regulation by the Commission, be unjustly discriminatory, or be detrimental to commerce.

The Commission previously gave notice (46 FR 10178) that it proposed to amend 46 CFR Part 524 to exempt certain agreements from the filing and approval requirements of section 15 of the Act (46 U.S.C. 814). The agreements proposed to be exempted involve non-substantive routine housekeeping or administrative matters. Specifically, this type of agreement: (1) Reflects changes in the name of a port or country currently served; (2) substitutes officers and/or committee assignments; or (3) relates to the procurement, maintenance and sharing of office facilities, furnishings, equipment, supplies and personnel.

Eight responses to the proposed rulemaking were filed on behalf of 31 conferences/rate agreements, one discussion agreement and one independent carrier. All but one commentator support the rule as proposed or with modifications.

Two commentators suggest that the rule's reference to "committee assignments" is unclear and that it should refer to "establishment of committees." The Commission believes the reference to "committee assignments" can be modified to remove any confusion, and this has been accomplished in the final rule. Furthermore, the establishment of a committee by the members of an agreement should be allowed under the rule. Accordingly, the rule has been revised to so allow.

Uncertainty has also been expressed as to whether exempted nonsubstantive provisions must be included in the basic agreement of a conference and filed with the Commission before such provisions may be carried out, and, if so, whether they must be designated in some manner to indicate they have been filed for informational purposes only. The Commission does not believe that such provisions need a special designation to indicate they have been filed for informational purposes. Section 524.3 provides that an informational filing must be made within 30 days of the effective date of the provisions.

The U.S.-Flag Far East Discussion Agreement participants contend that potential adverse effects in the form of undue risks of antitrust exposure outweight any benefits of the proposed exemption. For example, they believe it conceivable that even the exchange of information relating to the sharing of office facilities may give rise to a claim by certain parties of a restraint of trade. They view the filing option as unrealistic and one that would rarely be exercised. This result is anticipated because the U.S.-flag carriers in the several U.S./Far East conferences are minority members, and the majority foreign-flag members may be less concerned about the potential application of U.S. antitrust laws and thus would not vote to file the agreements for the optional approval provided. The Commission is, therefore, urged to continue to require the filing and approval of such agreements and adopt a simplified processing procedure so that they can be handled under delegated authority or approved by notation.

The concern expressed by the U.S.-Flag Far East Discussion Agreement parties does not, in the Commission's opinion, establish a justifiable basis or regulatory need for continued Commission approval of arrangements with *de minimus* anticompetitive impact.[1] Moreover, it is unlikely that coordinated activity under such agreements will result in violations of the antitrust laws. However, if problems arise because of the filing option, this should be brought to the Commission's attention for such further action as may be warranted.

Pursuant to a commentator's suggestion, the Commission will amend Item 3 of the final rule to include provisions for the allocation and assessment of costs and the administration and management activities incidential to agreements providing for the procurement, maintenance or sharing of office facilities, furnishings, equipment and personnel, including employees and contractors.

Certain other suggestions regarding amendments which should also be defined as non-substantive agreements (for example, those involving a change in the name of an agreement or in the names of parties to an agreement, corrections to typographical and grammatical errors, renumbering and relettering of articles and subarticles of agreements, changes in the tables of contents of agreements or changes in the names and/or numbers of any other section 15 agreements or designated provisions thereof referred to in an agreement and changes in the date or amendment number contained in agreements) have been added to the rule.

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Commission certifies that the proposed rulemaking will not have a significant economic impact on a substantial number of small entities. The proposed exemption will not impose any reporting or record-keeping requirements which might result in a compliance or reporting burden on small entities. The exemption will primarily benefit carriers. The shipping public, some of whom fall within the definition of small entities, may enjoy a secondary benefit from this exemption, but it is not foreseen that this benefit will amount to a "significant economic impact," within the meaning of 5 U.S.C. 605(b).

[1] The filing of such agreements will remain optional under the current rule (46 CFR 524.7).

PART 524—EXEMPTION OF CERTAIN AGREEMENTS FROM THE REQUIREMENTS OF SECTION 15, SHIPPING ACT, 1916

Therefore, pursuant to sections 15, 35 and 43 of the Shipping Act, 1916 (46 U.S.C. 814, 833a and 841a) and 5 U.S.C. 553, 46 CFR Part 524 is amended by adding a new paragraph (d) to § 524.2 *Definitions,* as follows:

§ 524.2 Definitions.

* * * * *

(d) A non-substantive agreement is an agreement between common carriers by water acting individually or through approved agreements which:

(1) Reflects changes in the name of any geographic locality stated therein, the name of the agreement or the name of a party to the agreement, the names and/or numbers of any other section 15 agreement, or designated provisions thereof referred to in an agreement, the table of contents of an agreement, the date or amendment number through which agreements state they have been reprinted to incorporate prior revisions thereto or which corrects typographical and grammatical errors in the text of the agreement, renumbers or reletters articles or subarticles of agreements and references thereto in the text,

(2) Reflects changes in the titles or persons or committees designated therein or transfers the functions of such persons or committees to other designated persons or committees or which merely establishes a committee, or

(3) Concerns the procurement, maintenance, or sharing of office facilities, furnishings, equipment, supplies and personnel, including employees and contractors, the allocation and assessment of the costs thereof, or the provisions for the administration and management of such agreements by duly appointed individuals.

Section 524.3 would be amended by adding the following proviso at the end of the existing section which reads:

§ 524.3 Exemption of agreements.

* * * *And provided further,* That a nonsubstantive agreement which modifies an agreement which is subject to the requirements of section 15 shall be filed with the Commission for informational purposes only within 30 days of its effective date.

By the Commission.

Joseph C. Polking,

Assistant Secretary.

[FR Doc. 81-28034 Filed 9-30-81; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[BC Docket No. 81-282; RM-3767]

FM Broadcast Station in Sonora, California; Changes Made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein assigns FM Channel 228A to Sonora, California, in response to a petition filed by Donald E. and Sylvia B. Leutz. The assignment could provide Sonora with a second FM service.

DATE: Effective November 23, 1981.

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

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner, Broadcast Bureau, (202) 632-7792

SUPPLEMENTARY INFORMATION:

In the matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations. (Sonora, California); report and order (Proceeding Terminated).

Adopted: September 17, 1981.

Released: September 24, 1981.

By the Acting Chief, Policy and Rules Division.

1. The Commission has under consideration a *Notice of Proposed Rule Making,* 46 FR 25489, published May 7, 1981, proposing the assignment of FM Channel 228A to Sonora, California, as that community's second FM assignment, in response to a petition filed by Donald E. and Sylvia B. Leutz ("petitioner"). Portugese American Communications Corporation ("PACC"),[1] filed comments in opposition to the proposal. Petitioner filed supporting comments in which it reaffirmed its intent to apply for the channel, if assigned. PACC and petitioner filed reply comments.

2. Sonora (population 3,239),[1] in Tuolumne County (population 33,920), the Sonora Division (population 16,996), is located approximately 184 kilometers (115 miles) east of San Francisco, California.

It is currently served locally by Stations KVML(AM) and KROG(FM) (channel 224A).

[1] PACC is the licensee of Stations KVML and KROG(FM), Sonora, California.

[2] Population figures are extracted from the 1980 U.S. Census.

3. In its opposition comments, PACC states that the petitioner has failed to show that the needs of Sonora are not being met by current services. Further, it claims that Sonora lies within the primary service area of a third station and, therefore, that the amount of quality broadcast service received by the Sonora area is greater than petitioner suggests. PACC claims that Sonora is well served by broadcast and print media, and that any FM assignment in this area should be made instead to Angels Camp (listed in the 1980 Census as Angels) (population 2,302). Furthermore, PACC contends that contrary to petitioner's claim that Sonora receives primary broadcast service only from Stations KVML and KROG, uniquely favorable propagation characteristics prevail in the San Joaquin Valley resulting in communities such as Sonora receiving actual primary service from stations normally beyond such range. Additionally, it states that Sonora lies within the predicted 60 dBu contour of Station KWLF Oakdale. These services, it is claimed, are supplemented by one local newspaper and by a special news section of a Modesto paper devoted to ths San Joaquin-Tuolmne area.

4. It further claims that petitioner has failed to meet certain criteria as set forth in the 1967 *Policy Statement to Govern Requests for Additional FM Assignments,* 8 F.C.C. 2d 79, namely, a convincing showing of need to a community of less than 10,000 and an outline of communities which may suffer preclusion as a result of the proposed assignment. It suggests that any new assignment in the area should be made to Angels Camp since an assignment to Sonora would preclude that community from obtaining any local aural service.

5. In its reply comments, petitioner asserts that a second FM channel assignment to Sonora would serve not only the Sonora Division, but also an additional 16,034 persons residing in the adjacent Twain Harte, Tuolumne and Groveland Divisions. Petitioner states that while its population is small,[3] it is the economic hub of the area, as well as the seat of county government. Its accessible location at the intersection of two state highways is one of the reasons for Sonora's continued economic growth, according to petitioner.

6. Further, petitioner states that an additional FM station in Sonora would serve a potential 5,637 persons residing in the Angels Division of Calaveras County.

7 Petitioner contends that while it can receive signals from other stations in the region, they do not serve the local needs and interests of Sonora. As to PACC's allegation that Sonora lies within the predicted 60 dBu contour of KWLF, Oakdale, petitioner states that a construction permit was granted in 1979, yet construction of that station has yet to commence.

8. Petitioner also states that since the existing Sonora stations (KVML and KROG) are co-owned, and their community affairs programs are duplicated, these stations effectively constitute a single aural service for local news and information. Likewise, it disputes the claim of more than one source of local print media in Tuolumne County. Petitioner states that the San Joaquin/Tuolumne news section of the Modesto paper is not a source of local news as such, and that the paper is edited in Modesto, a distance of more than 50 miles from Sonora.

9. Our *Notice* pointed out that petitioner had indicated that the assignment of Channel 228A to Sonora would cause preclusion on Channels 227, 228A and 230. We requested therein that petitioner supply us with information listing those communities within the precluded areas having populations exceeding 1,000, which have no FM assignments, and state whether alternate FM channels are available to them. In response, petitioner advises that the communities of Groveland (1970 population 884),[4] Jamestown (not listed), Columbia (not listed), Tuolumne (1970 population 1,365), Twain Harte (1970 population 1,484) and Mi-Wuk Village (not listed) would sustain preclusion as a result of the proposed assignment to Sonora, and notes that no alternate channels are available.

10. With respect to the precluded communities of Jamestown, Tuolumne, Twain Harte and Columbia, it is noted that all of these communities are within 10 miles of Sonora. Therefore, an application could be filed for use at any of those communities if assigned to Sonora in accordance with § 73.203(b) of the Commission's Rules. None of these places are large enough, however, to warrant our reserving a channel there for future use at the expense of another city where demand is present. As for Angels Camp (located 10.1 miles from Sonora), § 73.203(b) would permit use of the channel at Angels Camp since we do permit rounding off. See § 73.208(c)(5). Even without this availability, the preclusion impact to Angels Camp would not be considered substantial enough to justify denial of the provision of a second FM service to Sonora. See *Effingham, Illinois,* 48 R.R. 2d 165 (1980).

11. As to PACC's suggestion that any assignment in the area should be made to Angels Camp instead of to Sonora, we do not have a commitment from any party that the channel would be put to use at Angels Camp. In addition, petitioner's response that Angels Camp was not listed as a precluded community in the petition since the use of Channel 228A there was already precluded by the assignment of that channel to Roseville, California, complies with acceptable procedures for preclusion studies.

12. As the PACC's contention that we have ignored our Policy Statement of 1967, this case follows a policy trend established several years ago in which the efficiency of a proposed assignment is evaluated by placing greater weight than we have in the past on the location where demand is present. See, *e.g., El Dorado, Ark.,* Docket 78-143, *Memorandum Opinion and Order* adopted March 16, 1981, Mimeo No. 08208, and cases cited therein; see also *Effingham, Ill., supra.* While many of these cases involve the Commission's population criteria, the situation is even more compelling here where the additional assignment would not exceed the total which we believe is reasonable for a community under 50,000 population.

13. It appears that the undertone of PACC's comments indicate a concern of possible economic impact the proposed assignment could have on its operations. If this is so, that is a matter which could be raised at the application stage where it would be feasible to investigate and consider the merits of various allegations, rather than at the assignment level. *See Beaverton, Michigan,* 44 R.R. 2d 55 (Broadcast Bureau, 1978).

14. Accordingly, since the preclusion impact affects communities for which the channel is available under the 10-mile rule or not otherwise significant and since the assignment will provide a second local FM broadcast voice to serve the local needs, we believe that the public interest would be served by allocating Channel 228A to Sonora, California.

15. In view of the foregoing and pursuant to the authority contained in Sections 4(i), 5(d)(1), 303(g) and (r) and 307(b) of the Communications Act of

[3] Based on 1980 U.S. Census data, Sonora's population has increased 4.3% over the past decade, while that of Tuolumne County showed a gain of 34.6%.

[4] Recent population figures are not available for the precluded communities since they are not incorporated, and therefore not listed in the preliminary 1980 Census.

1934, as amended, and § 0.281 of the Commission's Rules, it is ordered, that effective November 24, 1981, the FM Table of Assignments, § 73.202(b) of the Rules, is amended with regard to the following community:

City	Channel No.
Sonora, Calif.	224A, 228A

16. It is further ordered, That this proceeding is terminated.

17. For further information concerning the above, contact Nancy V Joyner, Broadcast Bureau, (202) 632-7792.

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

Federal Communications Commission.

Martin Blumenthal,

Acting Chief, Policy and Rules Division, Broadcast Bureau.

[FR Doc. 81-28384 Filed 9-30-81; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[BC Docket No. 81-334; RM-3750]

FM Broadcast Station in Atoka, Oklahoma; Changes Made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action herein assigns FM Channel 276A to Atoka, Oklahoma, in response to a petition filed by M. J. Chase. The assignment could provide Atoka with a first local FM service.

DATE: Effective November 23, 1981.

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

FOR FURTHER INFORMATION CONTACT: Nancy V Joyner, Broadcast Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION:

In the matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations. (Atoka, Oklahoma); Report and order (Proceeding Terminated).

Adopted: September 17, 1981.

Released: September 23, 1981.

By the Acting Chief, Policy and Rules Division.

1. The Commission has before it for consideration a *Notice of Proposed Rule Making*, 46 FR 27728, published May 21, 1981, in response to a petition filed by M. J. Chase ("petitioner"), proposing the assignment of FM Channel 276A to Atoka, Oklahoma, as that Community's first FM assignment. Supporting comments were filed by petitioner in which she reaffirmed her intent to file for the channel, if assigned. No oppositions to the proposal were received.

2. Atoka (population 3,346),[1] in Atoka County (population 10,972), is located approximately 176 kilometers (110 miles) southeast of Oklahoma City, Oklahoma. It is currently served by daytime-only AM Station KEOR. Channel 276A could be assigned to Atoka in compliance with the minimum distance separation requirements of § 73.207 of the Commission's Rules.

3. In support of her proposal, petitioner submitted information with respect to Atoka which is persuasive as to its need for a first FM channel assignment.

4. We believe that the public interest would be served by the assignment of Channel 276A to Atoka, Oklahoma. An interest has been shown for its use, and such an assignment would provide the community with an FM station which could render a first fulltime local aural broadcast service.

5. Authority for the adoption of the amendment contained herein appears in Sections 4(i), 5(d)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and § 0.281 of the Commission's Rules.

6. Accordingly, it is ordered, That effective November 23, 1981, § 73.202(b) of the Commission's Rules, the FM Table of Assignments, is amended with regard to the following community:

City	Channel No.
Atoka, Oklahoma	276A

7 It is further ordered, That this proceeding is terminated.

8. For further information concerning the above, contact Nancy V Joyner, Broadcast Bureau, (202) 632-7792.

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

Federal Communications Commission.

Martin Blumenthal,

Acting Chief, Policy and Rules Division, Broadcast Bureau.

[FR Doc. 81-28383 Filed 9-30-81; 8:45 am]

BILLING CODE 6712-01-M

[1] Population figures are taken from the 1980 U.S. Census.

47 CFR Part 73

[BC Docket No. 80-50; RM-3183]

FM Broadcast Station Coeur D'Alene, Idaho; Changes Made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action assigns a second Class A FM channel to Coeur D'Alene, Idaho. In doing so, two proposed plans involving Class C channels were rejected. The proceeding was initiated by Coeur Broadcasting, Inc.

DATE: Effective November 24, 1981.

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

FOR FURTHER INFORMATION CONTACT: Mark N. Lipp, Broadcast Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION:

In the matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations. (Coeur D'Alene, Idaho); Report and order (Proceeding Terminated).

Adopted: September 18, 1981.

Released: September 25, 1981.

By the Chief, Policy and Rules Division:

1. The Commission has before it the *Notice of Proposed Rule Making*, 45 FR 12451, published February 26, 1980, which proposed three assignment plans to add a second FM channel to Coeur D'Alene, Idaho. One plan involved shifts in existing assignments at Libby, Montana, at Colfax, Washington, and at Orofino, Idaho.[1] Comments were received from petitioner, Coeur Broadcasting, Inc.; 4-K Radio, Inc., licensee of Station KLER-FM, Orofino, Idaho; Idaho Broadcasting Co., licensee of Station KIOB(FM), Coeur D'Alene, Idaho, Spokane Public Radio, licensee of Station KPBX(FM), Spokane, Washington; and KGVO Broadcasters, Inc., proponent for the assignment of a Class C channel for Missoula, Montana, in BC Docket No. 80-180.[2]

[1] This proposal also necessitated frequency changes for two Spokane noncommercial stations as well in order to avoid the potential for IF interference. This is discussed further below. However, because noncommercial FM assignments are not listed in the Table of Assignments, no proposed rule amendment was needed in this regard.

[2] The distance between Missoula and Coeur D'Alene is approximately 227 kilometers (142 miles) and the required distance for first adjacent channel Class C assignments, as in two of the proposed plans for Coeur D'Alene, is 240 kilometers (150 miles). However, in view of the action taken herein,

Continued

2. Coeur D'Alene with a population of 20,054,[3] is the seat of Kootenai County (population 59,770), and is located in the narrow, northern tip of Idaho, near its western border with Washington. It is 51 kilometers (32 miles) east of Spokane, Washington, and 420 kilometers (260 miles) east of Seattle, Washington. Present aural services licensed to Coeur D'Alene are fulltime AM Station KVNI and Class A FM Station KIOB.

3. The *Notice* set forth three assignment plans for Coeur D'Alene. First, we proposed to assign two Class C channels which involved upgrading Station KIOB (Channel 276A) to Class C status. Three substitutions of Class A channels, at Orofino, Idaho, at Libby, Montana, and at Colfax, Washington, were also necessary. The basis for assigning Class C channels to this community was the showing of considerable first and second FM and aural service to outlying areas which were demonstrating signficant growth. Two Class C channels were proposed to avoid intermixture, particularly since Station KIOB had just recently commenced operations: Only one Class C channel (Channel 270) however could utilize a transmitter location in or near to Coeur D'Alene. The closest site for another Class C assignment was 61 kilometers (39 miles) on Channel 291. Therefore we indicated that should the distant site restriction prove unsatisfactory or should Station KIOB not desire to avail itself of a Class C facility, one Class C channel might be assigned (Plan II). As in Plan I, three Class A channel substitutions would be necessary. Finally, we left open the option of assigning a second Class A channel to Coeur D'Alene since it seemed no unlikely that the first two plans may prove too problematic (Plan III). No other channel assignments would be affected by the second Class A channel "drop-in."

4. A number of submissions were filed in response to the three plans proposed in the *Notice*. 4-K Radio, Inc., licensee of Station KLER-FM, Channel 237A, in Orofino, Idaho, filed a pleading in which it waived its right to a hearing regarding Plan I which proposed to change its channel. It argued instead that if Channel 276A could be reassigned from Coeur D'Alene to Colfax, then the need to change Orofino's 237A assignment would be eliminated. Plan II, it argued, could also be modified to place either Channel 237A or Channel 276A in Colfax with appropriate site restrictions.[4] As to Plan III, KLER-FM notes that by placing a site restriction on Channel 272A in Colfax, Channel 272A could also be assigned to Coeur D'Alene. Alternatively it is suggested that Channel 237A or Channel 276A could be substituted, with a site restriction, for Channel 272A in Colfax.

5. Coeur Broadcasting, Inc., the petitioner, provided a list of channels available to precluded communities as requested. It also submitted that Channel 291 would be an unacceptable assignment to Coeur D'Alene, as the site restriction would place it beyond two mountain ranges thus causing severe shadowing. From such a restricted site (39 miles), petitioner insists there is no possibility of 70 dBu coverage to Coeur D'Alene. Petitioner further noted that the site for Station KIOB-FM, which is in a valley floor, would provide very poor coverage as a Class C facility thus removing the rationale for assigning a Class C channel. For the same reason, other possible Class C assignments, each needing greater site restrictions, are also unusable. Petitioner further states that it is undecided about whether it would accept a Class A assignment should the third plan be adopted, however, it does fully endorse Plan II.[5]

6. Another party filing comments is Idaho Broadcasting Co., the licensee of Station KIOB-FM (Channel 276A), in Coeur D'Alene, stating that it would accept upgrading to Channel 270, that it would share the costs of reimbursement for the related changes under Plan I, and further that Channel 276A could be reassigned to Colfax under Plan I in lieu of Channel 272A or 237A.[6]

7 We believe it has been adequately shown that Coeur D'Alene, Idaho, merits a second FM assignment. As to the first proposed plan, it appears that due to site restrictions and surrounding terrain any Class C channel other than 270 would cause severe shadowing and thus is of no interest to petitioner or any other party. Therefore we have dismissed Plan I from further consideration having been convinced that no other Class C channel is available for Coeur D'Alene. The second plan involves an intermixture of channels in Coeur D'Alene. We have consistently refused to intermix a Class C channel with an existing Class A station in this type of situtation except in two types of situations: (1) The Class A station were upgraded to the Class C channel and there was an interest in utilizing the vacated Class A frequency by some party; [7] or (2) the need for a Class C assignment based on a showing of substantial new service to unserved and underserved areas was demonstrated.[8] As to the first example, Idaho Broadcasting appears willing to switch to a Class C facility if it were reimbursed for the change in frequency, as proposed. We have no reason to believe it is otherwise willing to upgrade on its own. We also lack an expression of willingness in this regard from petitioner to the effect that it would be willing to occupy the vacated Class A frequency. In fact, petitioner stated it was undecided whether it would apply for a Class A channel under Plan III which proposed two Class A channels for Coeur D'Alene. We feel it is more unlikely that petitioner would be willing to apply for a Class A channel at Coeur D'Alene if it were to be faced with an intermixture situation. But even more important from a public interest standpoint, there is little to be gained from a Class C channel assignment. Due to the mountainous terrain, a Class C station's signal would carry a relatively short distance from Station KIOB's present site in the valley where Coeur D'Alene is located and surrounded by mountains. Thus outlying areas in need of service, could not be reached, just as none of the proposed Class C channels in Plan I or II operating from distant transmitter sites of 39 miles and beyond could reach into the Coeur D'Alene valley area. Similarly, a Class C station utilizing petitioners proposed site at Mica Peak with 75 kW at 2,200 feet approximately 10.5 miles southwest of Coeur D'Alene, according to our staff study, would not provide any first FM or aural service and would not likely provide any second FM or aural service. Rather such a location would provide an excellent signal to Spokane, only 20 miles west, and which is in line of sight from Mica Peak. This fact may have raised *Berwick* [9] concerns were we to

---

it was not necessary to consolidate the two proceedings.

[3] All population figures are taken from the 1980 U.S. Census.

[4] The Bureau's study indicates that a site restriction of 8.5 kilometers (5.3 miles) northwest is required for Channel 237A in Colfax, to avoid short spacing to Channel 237A in Orofino, licensed to Station KLER-FM.

[5] In addition to its comments petitioner filed a reply pleading expressing its continued support for Plan II and lack of objection to the comments of Pend Oreille and 4-K Radio.

[6] Pend Oreille Valley Broadcasting filed a petition for the assignment of Channel 285A to Newport, Washington (BC Docket No. 81-332), and, as such, in its comments submitted in the Coeur D'Alene proceeding, opposed any plan that would interfere with it. Nothing in that proposal, however, affects any of the proposals in Plans I, II or III or vice versa.

[7] See. *Rome, New York*, 42 RR 2d 618 (1978).

[8] *Fayetteville, North Carolina*, 43 FR. 36104 (1979).

[9] The *Berwick* issue involves a situation where a proposed transmitter location is so close to a larger market as to raise questions of the petitioner's true intent. See *Communications Investment Corp.* 48 RR 2d 1291 (D.C. Cir. 1981).

consider that proposal. Therefore we find that not only do we lack the willingness of Idaho Broadcasting to upgrade without reimbursement and of petitioner to be the "victim" of an intermixture result by seeking to occupy the vacated Class A channel, but, we lack the showing justifying a Class C channel for Coeur D'Alene.

8. On the other hand, pursuant to Plan III, we have no difficulty in finding a need for a second Class A channel assignment to Coeur D'Alene based on its size and lack of local service. While we do not have the unqualified expression of interest in applying for the channel that we normally require, we believe the assignment is nonetheless justified and hopefully the channel will be applied for in the near future.[10]

9. Canadian concurrence in the assignment of Channel 272A to Coeur D'Alene has been obtained.

10. Accordingly, pursuant to authority contained in Sections 4(i), 5(d)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §0.281 of the Commission's Rules, IT IS ORDERED, That effective November 24, 1981, the FM Table of Assignments (Section 73.202(b) of the Rules) is amended with respect to the communities listed below:

City	Channel No.
Coeur D'Alene, Idaho	272A, 276A

11. It is further ordered, That this proceeding IS TERMINATED.

12. For further information concerning this proceeding, contact Mark N. Lipp, (202) 632-7792.

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

Federal Communications Commission.

Martin Blumenthal,

Acting Chief, Policy and Rules Division, Broadcast Bureau.

[FR Doc. 81-28387 Filed 9-30-81; 8:45 am]

BILLING CODE 6712-01-M

[10] In assigning Channel 272A to Coeur D'Alene, we note that a site restriction of 3.6 miles south on Channel 272A at Colfax, Washington, is necessary.

---

47 CFR Part 73

[BC Docket No. 81-102; RM-3783]

FM Broadcast Station in Fort Worth and Palestine, Texas; Changes Made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action substitutes Channel 231 for Channel 230 at Fort Worth, Texas; substitutes Channel 244A for Channel 232A at Palestine, Texas, and modifies the licenses accordingly, in response to a petition filed by Latin American Broadcasting Company.

DATE: Effective November 23, 1981.

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

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Broadcast Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION: In the matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations. (Fort Worth and Palestine, Texas); Report and Order (Proceeding Terminated).

Adopted: September 17, 1981.

Released: September 24, 1981.

By the Acting Chief, Policy and Rules Division:

1. The Commission has under consideration a *Notice of Proposed Rule Making*, 46 FR 15186, published May 4, 1981, proposing the substitution of Channel 231 for Channel 230 at Fort Worth and the substitution of Channel 244A for Channel 232A at Palestine, Texas, in response to a petition filed by Latin American Broadcasting Company ("petitioner"), licensee of Station KESS(FM), Fort Worth, Texas (Channel 230). The *Notice* also proposed modification of the licenses to specify the newly assigned channels. Comments supporting the petition were filed by the petitioner, by Vista Broadcasting Company, Inc., licensee of Station KLIS (FM), Palestine, Texas (Ch. 232A), and by Service Broadcasting Corporation, licensee of Station KKDA(FM), Dallas, Texas (Ch. 283).

2. In comments, petitioner incorporated by reference the information contained in the *Notice*, noting the benefits that could be derived from the proposed substitution of channels at Fort Worth and Palestine. To recapitulate, those benefits include moving to a site which will permit Station KESS to provide a better signal to the Spanish speaking population in the Dallas-Fort Worth area. Petitioner restated its willingness to reimburse Station KLIS (FM) for changes associated with its own channel change.

3. Vista in comments, restated its support of the proposal to modify its license from Channel 232A to Channel 244A. Service Broadcasting also filed supporting comments, asserting that the proposal, if adopted, would also permit relocation of its own transmitter site, thereby improving coverage to the black community of Dallas. Service restated its earlier commitment to share in the expenses of the KLIS(FM) channel change.

4. In the *Notice*, we stated that the substitution of Channel 231 for Channel 230 would reduce preclusion on Channels 228, 229 and 230, and would cause no new preclusion on Channels 231, 233 and 234. We also stated that new preclusion would occur, however, on Channel 232A in the Waco-Gatesville Marlin area.[1] As directed by the *Notice*, the petitioner submitted information indicating that the following channels are available for assignment to the precluded communities: Channels 221A and 289 to Marlin; Channels 221A, 269A and 289 to Waco, and Channels 269A, 289 and 290 to Gatesville.

5. We have determined that the public interest would be served by the substitution of channels, as proposed in the *Notice*, inasmuch as the substitution of Channel 231 for Channel 230 at Fort Worth would enable better broadcast service to a substantial Spanish speaking population in the area. It would also allow Station KKDA to relocate and provide better service to its listeners. The above proposal requires the substitution of Channel 244A for Channel 232A (Station KLIS (FM)), Palestine, Texas. Based on the benefits that could be derived by the proposed substitution of channels, we shall substitute Channel 230 for Channel 231 at Fort Worth, Channel 244A for Channel 232A at Palestine and modify the licenses of FM Stations KESS and KLIS to specify the newly assigned channels.

6. Accordingly, it is ordered, That effective November 23, 1981, the FM Table of Assignments, § 73.202(b) of the Commission's Rules, IS AMENDED with respect to the following communities:

City—Channel No.

Fort Worth, Texas—231, 242, 246, 258, 271, 298

Palestine, Texas—244A, 252A

7 IT IS FURTHR ORDERED, pursuant to the authority contained in section 316 of the Communications Act of 1934, as amended, the license of Station KESS (FM), Fort Worth, Texas, IS MODIFIED to specify operation on Channel 231, subject to the following provisions:

(a) At least 30 days before operating on Channel 231, the licensee shall submit to the Commission the technical information normally required of an applicant for a construction permit on Channel 231;

[1] The *Notice* incorrectly referred to the community as "Martin."

(b) At least 10 days prior to commencing operation on Channel 231, the licensee shall submit the measurement data required of an applicant for an FM broadcast station license; and

(c) The licensee shall not commence operation on Channel 231 without prior Commission authorization.

(d) Nothing contained herein shall be construed to authorize a major change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to § 1.1301 of the Commission Rules.

8. It is further ordered, pursuant to the authority contained in section 316 of the Communications Act of 1934, as amended, the license of Station KLIS (FM), Palestine, Texas, IS MODIFIED to specify operation on Channel 244A, subject to the following provisions:

(a) At least 30 days before operating on Channel 244A, the licensee shall submit to the Commission the technical information normally required of an applicant for a construction permit on Channel 244A;

(b) At least 10 days prior to commencing operation on Channel 244A, the licensee shall submit the measurement data required of an applicant for an FM broadcast station license; and

(c) The licensee shall not commence operation on Channel 244A without prior Commission authorization.

(d) Nothing contained herein shall be construed to authorize a major change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to § 1.1301 of the Commission's Rules.

9. Authority for the actions taken herein is contained in sections 4(i), 5(d)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and § 0.281 of the Commission's Rules.

10. It is further order, That this proceeding IS TERMINATED.

11. For further information concerning the above proceeding, contact Montrose H. Tyree, Broadcast Bureau, (202) 632-7792.

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

Federal Communications Commission.

Martin Blumenthal,

Acting Chief, Policy and Rules Division, Broadcast Bureau.

[FR Doc. 81-28388 Filed 9-30-81; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[BC Docket No. 81-331; RM-3726]

FM Broadcast Station in Kailua-Kona, Hawaii; Changes Made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action assigns Channel 228A to Kailua-Kona, Hawaii, in response to a petition filed by Norman E. and Sally A. Garrison. The proposed station would provide a first local FM broadcast service to Kailua-Kona.

DATE: Effective November 23, 1981.

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

FOR FURTHER INFORMATION CONTRACT: Montrose H. Tyree, Broadcast Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION: In the matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations. (Kailua-Kona, Hawaii); Report and order (Proceeding Terminated).

Adopted: September 17, 1981.

Released: September 23, 1981.

By the Acting Chief, Policy and Rules Division:

1. The Commission has under consideration a *Notice of Proposed Rule Making*, 46 FR 29488, published June 2, 1981, proposing the assignment of Channel 228A to Kailua-Kona, Hawaii, as that community's first FM assignment. The *Notice* was initiated in response to a petition filed by Norman E. and Sally A. Garrison ("petitioners"). Supporting comments were filed by Shoblom Broadcasting, Inc. ("Shoblom"),[1] and by the petitioner, both stating their intent to apply for the channel, if assigned. No oppositions to the proposal were received.

2. Kailua-Kona (population 365)[2] is located in the North Kona Division (population 4,832) on the Island of Hawaii (population 63,468). Kailua-Kona is located on the west coast of the Island of Hawaii, approximately 280 kilometers (173 miles) southeast of Honolulu. It has no local aural broadcast service.

3. Petitioner incorporated by reference the information contained in the *Notice*, demonstrating the need for a first FM assignment to Kailua-Kona. They again note the lack of service at Kailua-Kona and the need for a station to meet the needs of the community.

4. We believe that the petitioner has adequately demonstrated the need for a first FM assignment to Kailua-Kona, and that the public interest would be served by assigning Channel 228A to that community. The assignment can be made in compliance with the minimum distance separation requirements.

5. Accordingly, pursuant to Sections 4(i), 5(d)(1), 303 (g) and (r) and 307(b) of the Communications Act, as amended, and § 0.281 of the Commission's, Rules, it is ordered, That effective November 23, 1981, the FM Table of Assignments, § 73.202(b) of the Rules, is amended with respect to the following community:

City—Channel No.

Kailua-Kona, Hawaii—228A

6. It is further ordered, That this proceeding is terminated.

7. For further information concerning this proceeding, contact Montrose H. Tyree, Broadcast Bureau, (202) 632-7792.

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

Federal Communications Commission.

Martin Blumenthal,

Acting Chief, Policy and Rules Division, Broadcast Bureau.

[FR Doc. 81-28389 Filed 9-30-81; 8:45 am]

BILLING CODE 6712-01-M

[1] Shoblom is licensee of Stations KFWJ (AM and FM), Lake Havasu City, Arizona, and Station KUUK(AM), Wickensburg, Arizona, and is the petitioner in BC Docket No. 80-744 to assign Channel 240A to Lahaina, Hawaii.

[2] Population figures are taken from the 1980 U.S. Census.

47 CFR Part 73

[BC Docket No. 81-333; RM-3758]

FM Broadcast Station in Owensville, Missouri; Changes Made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action assigns FM Channel 237A to Owensville, Missouri, in response to a petition filed by Gerald W. Hertlein. The assignment could provide Owensville with a first local aural broadcast service.

DATE: Effective November 23, 1981.

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

FOR FURTHER INFORMATION CONTACT: Nancy V Joyner, Broadcast Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION: In the matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations. (Owensville, Missouri); Report and order (Proceeding Terminated).

Adopted: September 17, 1981.

Released: September 23, 1981.

By the Acting Chief, Policy and Rules Division:

1. The Commission has before it for consideration a *Notice of Proposed Rule Making*, 46 FR 27727, published May 21, 1981, in response to a petition filed by Gerald W. Hertlein ("petitioner"), proposing the assignment of FM Channel 237A to Owensville, Missouri, as that community's first FM assignment. Supporting comments were filed by petitioner in which he reaffirmed his intent to file for the channel, if assigned. No oppositions to the proposal were received.

2. Owensville (population 2,416),[1] in Gasconade County (population 11,878), is located approximately 113 kilometers (70 miles) southwest of St. Louis, Missouri. It presently has no local aural service. Channel 237A could be assigned to Owensville, provided the transmitter site is located approximately 9.2 kilometers (5.7 miles) south of that community to avoid short-spacing to Station KWWR, Mexico, Missouri, in compliance with § 73.207 of the Commission's Rules.

3. In support of his proposal, petitioner submitted information with respect to Owensville which is persuasive as to its need for a first FM channel assignment.

4. We believe that the public interest would be served by the assignment of Channel 237A to Owensville, Missouri. An interest has been shown for its use, and such an assignment would provide the community with an FM station which could render a first local aural broadcast service.

5. Authority for the adoption of the amendment herein is contained in Sections 4(i), 5(d)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and § 0.281 of the Commission's Rules.

6. Accordingly, it is ordered, That effective November 23, 1981, § 73.202(b) of the Commission's Rules, the FM Table of Assignments, is amended with regard to the following community:

City—Channel No.

Owensville, Missouri—237A

7 It is further ordered, That this proceeding is terminated.

8. For further information regarding the above, contact Nancy V Joyner, Broadcast Bureau, (202) 632-7792.

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

[1] Population figures are taken from the 1980 U.S. Census.

Federal Communications Commission.

Martin Blumenthal,

Acting Chief, Policy and Rules Division, Broadcast Bureau.

[FR Doc. 81-28391 Filed 9-30-81; 8:45 am]

BILLING CODE 6712-01-M

---

47 CFR Part 73

[BC Docket No. 346; RM-3766]

FM Broadcast Station in Rayville, Louisiana; Changes Made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action assigns Channel 221A to Rayville, Louisiana, in response to a petition filed by North Louisiana Broadcast Enterprise. The proposed station would provide a first local aural broadcast service to Rayville.

DATE: Effective November 23, 1981.

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

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Broadcast Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION:

In the matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations. (Rayville, Louisiana); Report and order (Proceeding Terminated).

Adopted: September 17, 1981.

Released: September 23, 1981.

By the Acting Chief, Policy and Rules Division:

1. The Commission has under consideration a *Notice of Proposed Rule Making*, 46 FR 30154, published June 5, 1981, proposing the assignment of Channel 221A to Rayville, Louisiana, as that community's first FM assignment, in response to a petition filed by North Louisiana Broadcast Enterprise ("petitioner".) Supporting comments were filed by the petitioner and by a community leader of Rayville.

2. Rayville (population 3,962),[1] seat of Richland County (population 21,774) is located approximately 320 kilometers (200 miles) northwest of New Orleans, Louisiana. It is served locally by daytime-only AM Station KRIH.

3. In comments to the proposal, petitioner restated the information contained in the *Notice* which demonstrated the need for an FM assignment to Rayville. Petitioner reiterated its intent to apply for the channel, if assigned.

[1] Population figures are taken from the 1980 U.S. Census.

4. The Commission believes that the public interest would be served by assigning Channel 221A to Rayville, Louisiana, since it would provide the community with an opportunity for its first local FM broadcast service. The transmitter site is restricted to kilometers (2.5 miles) northeast of the city to avoid short-spacing to Station KVCL-FM, Winnfield, Louisiana.

5. Accordingly, pursuant to Section 4(i), 5(d)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and § 0.281 of the Commission's Rues, IT IS ORDERED, That effective November 23, 1981, the FM Table of Assignments (Section 73.202(b) of the Commission's Rules, IS AMENDED with respect to the following community:

City	Channel No.
Rayville, Louisiana	221A

6. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

7 For futher information concerning this proceeding, contact Montrose H. Tyree, Broadcast Bureau, (202) 632-7792.

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

Martin Blumenthal,

Acting Chief, Policy and Rules Division, Broadcast Bureau.

[FR Doc. 81-28392 Filed 9-30-81; 8:45 am]

BILLING CODE 6712-01-M

NATIONAL TRANSPORTATION SAFETY BOARD

49 CFR Part 801

Public Availability of Information, Appendix—Fee Schedule

AGENCY: National Transportation Safety Board.

ACTION: Final rule.

SUMMARY: This revision sets forth price changes for obtaining copies of factual investigative records and other documents available from the National Transportation Safety Board (Board) under the Freedom of Information Act. Certain changes in the fee schedule are now required to reflect the price terms of the renewed contract with the commercial reproducer.

EFFECTIVE DATE: October 1, 1981.

FOR FURTHER INFORMATION CONTACT: John M. Stuhldreher, General Counsel, National Transportation Safety Board, Washington, D.C. 20594 (202-382-6540).

SUPPLEMENTARY INFORMATION: Pursuant to subsection (a)(4)(A) of the Freedom of Information Act (Pub. L. 93-502, November 21, 1974, amending 5 U.S.C. 552), fee schedules for document search and duplication must be published in the Federal Register. In 1975, after notice, the Board issued its regulations implementing this subsection. In an amended Appendix to 49 CFR Part 801, which was published at 45 FR 64193, September 29, 1980, a price list for documents published by or available from the Board was established; based on the provisions of the then current contract between the Board and the commercial reproducer. The Board has renewed that contract effective October 1, 1981, and the renewed contract necessitates certain price changes for reproduction services and photographic prints.

Pursuant to 5 U.S.C. 553, the Board believes that notice of proposed rulemaking is unnecessary and impracticable since the changes in reproduction fees were subject to and are the result of a formally advertised procurement.

PART 801—PUBLIC AVAILABILITY OF INFORMATION

Accordingly, 49 CFR Part 801 is hereby amended by revising the Appendix—Fee Schedule as set forth below:

Appendix—Fee Schedule

1. Special services fees (pursuant to 31 U.S.C. 483a). Upon request, services relating to public documents are available at the following fees:

(a) Subscriptions (Calendar year):

(1) Initial decisions of the administrative law judges—$40.00 for one subscription, $30.00 for each additional subscription.

(2) Board safety enforcement opinions and orders—$20.00 for one subscription. $15.00 for each additional subscription.

(3) Board aircraft accident (probable cause) reports, brief format—$40.00 (U.S.) and $80.00 (foreign).

(4) Aircraft accident reports, narrative—$40.00 (U.S.) and $80.00 (foreign).

(5) Board safety recommendations—$60.00.

Note.—Send subscription orders for (a)(1), (a)(2), and (a)(5) above to: Public Inquiries Section, National Transportation Safety Board, Washington, D.C. 20594. Subscription orders for (a) (3) and (4), above, should be forwarded to the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

(b) Document certification under the Board's seal—$4.

(c) Computer tapes and services for aviation accidents. Duplication of computer tapes (or a fraction thereof)—$40.

Note.—Computer tape requests should be addressed to the Chief, Information Systems Division, Bureau of Technology, National Transportation Safety Board, Washington, D.C. 20594.

(d) The basic fees set forth provide for ordinary first-class postage prepaid. If registered, certified, air, or special delivery mail is used, postal fees therefor will be added to the basic fee. Also, if special handling or packaging is required, such costs will be added to the basic fee.

(e) Subscription fees for paragraph (a) above reproduction fees, and search fees are waived for qualifying foreign countries, international organizations, nonprofit public safety entities, State and Federal transportation agencies, and colleges and universities, after approval by the Director, Bureau of Administration. In addition, such fees may be waived or reduced for other recipients not in any of the foregoing categories, when determined by the Director, Bureau of Administration, to be appropriate in the interest of and contributing to the Board's program.

2. Reproduction fees. All documents in the Board's public files may be examined, without charge, in the Board's public reference room, located in the Public Inquiries Section, Room 808F, 800 Independence Ave., SW, Washington, D.C. A self-service duplicator in the reference room is available to the public for reproduction at a nominal cost.

—All transportation mode accident files. Reproduction of accident files (statements, photographs, hearing transcripts, and other material contained in the board's accident investigation files) is accomplished by commercial contract. Reproductions of all printed matter and photographs are made from the best copy available. Requests must be forwarded to the Public Inquiries Section, National Transportation Safety Board, Washington, D.C. 20594. The contractor may bill and/or collect full payment before duplicating the requested documents. Fees are subject to change depending upon the Board's annual contract award.

Current fees are:

(a) Reproduction services:

SIZE (IN INCHES)	
8½ by 11	$0.12
8½ by 14	.08
10 by 14	.01

(b) *Photographic prints:*

SIZE (IN INCHES)	
8 by 10 black/white	$0.45
3½ by 5 color	.40
5 by 7 color	.75
8 by 10 color	3.13
2 by 2 color slide	.45

(c) Hearing transcripts $0.15 per page.

(d) Regular service—Usually, three weeks' time is required to service a request for reproduction. Filling any request for reproduction of a file that must be retrieved from the Federal Records Center will require two additonal weeks.

(e) Expedited service—A $1.00 surcharge will be made for accelerated service which will be provided within 2 working days commencing when the contractor has received advance payment or when telephone arrangements for payment have been made with the contractor. Reproduction service through the commercial contractor will be handled as follows:

Step 1. Customer places telephone or written request to the Board's Public Inquiries Section for desired accident file.

Step 2. The Board forwards order form and file to contractor.

Step 3. Contractor sends advance billing invoice, which shows total cost, to customer.

Step 4. Customer calls contractor direct and verifies that he is wiring payment to contractor, as specified by contractor, or customer returns a copy of the contractor's invoice with full payment enclosed.

Step 5. Contractor copies documents and mails them to the customer.

3. Availability of accident files. All transportation mode accident files are retained in accordance with the following schedule:

(1) Air carrier accident files and all public hearing files are retained for a period of fifteen (15) years and then destroyed.

(2) All other transportation accident files are retained for a period of seven (7) years and then destroyed.

All transportation mode accident files are retained at the Board for four (4) calendar years commencing with the anniversary date of the accident and ending on the last day of the fourth calendar year. After the retention period at the board, the files are then transferred to the Federal Records Center for retention in accordance with the schedule outlined in paragraphs (1) and (2), above, and then destroyed on the last day of the fifteenth or seventh year, as applicable.

4. Document search fee—The Board has determined that it is in the public interest to eliminate fees for the first hour of search time. For all time expended beyond the initial hour in locating documents, the fee is $5 per hour.

5. Responses to safety recommendations. Single copies of responses to safety recommendations are available without charge.

6. Documents available without commercial reproduction cost until limited supplies are exhausted.

(1) Press releases.

(2) Aircraft accident reports, narrative, and brief format probable cause reports (on request for specific accidents).

(3) Surface accident reports.

(4) Special studies.

(5) Safety Board regulations (chapter VIII of title 49, Code of Federal Regulations).

(6) Indexes to initial decisions, Board orders, opinions and orders, and staff manuals and instructions.

(7) Statistical data published by the Board.

(8) Safety recommendations.

7. Documents for sale by the Government Printing Office:

(1) Board's annual report.

(2) Volume I, National Transportation Safety Board Decisions (1967-1972).

(3) Volume II, National Transportation Safety Board Decisions (1973-1976).

(5 U.S.C. 552, 31 U.S.C. 483a, and 49 U.S.C. 1901 et seq.)

Signed at Washington, D.C., on this 28th day of September 1981.

James B. King,

Chairman.

[FR Doc. 81-28588 Filed 9-30-81; 8:45 am]

BILLING CODE 4910-58-M

49 CFR Part 826

Equal Access to Justice Act; Implementation

AGENCY: National Transportation Safety Board.

ACTION: Final rule.

SUMMARY: This amendment adds a new Part 826 to the Board's rules to provide procedural regulations to implement the Equal Access to Justice Act (the Act). That Act provides for the award of attorney fees and other expenses to certain parties who prevail against the United States in certain adversary adjudications conducted by Federal agencies. The Safety Board has concluded that it conducts one such proceeding that is encompassed by the Act. That is the review on appeal of the suspension or revocation of certain airman and other FAA certificates issued by the Federal Aviation Administration (FAA) (safety enforcement proceedings). The procedural regulations that are adopted herein provide for the hearing of fee award proceedings by Safety Board administrative law judges in FAA safety enforcement cases, with Board review, when appropriate.

EFFECTIVE DATE: October 1, 1981.

FOR FURTHER INFORMATION CONTACT: John M. Stuhldreher, General Counsel, National Transportation Safety Board, 800 Independence Avenue, S.W., Washington, D.C. 20594; telephone (202-382-6540).

SUPPLEMENTARY INFORMATION: *Public Comments:* By a notice of proposed rulemaking published September 8, 1981 (46 FR 44797), interested persons were invited by the Board to participate in the making of the proposed rules by the submission of written data, views, or arguments.

Three comments were received in response to the notice. The first comment takes issue with the Board's determination that the Act does not apply to proceedings involving the denial of airman medical certification. The Board's determination was based upon the statutory language in Section 504(b)(1)(C) of the Act (5 USC 504) which expressly excludes adversary adjudications for the purpose of granting or renewing a license. Nothing is cited in the first comment to justify reversal of that determination.

The second comment, from FAA Chief Counsel, disputes the Board's determination that FAA safety enforcement proceedings involving the suspension of revocation of certain airman or other certificates are adversary adjudications covered by the Act, claiming that the Board's position on the issue constitutes a change of its position regarding the status of dual-agency adjudications under the Act. The Board's position was set forth in the preamble to the proposed rule as follows:

> Together with other agencies of Government, including the United States Department of Justice, and the Office of the Secretary, DOT, the Board's comment on the [Administrative Conference's] Model Rules expressed some reservations regarding its role in adjudicating fee awards that may involve the ordering by the Board of the disbursement of another Government agency's funds.

We also pointed out that, in its response to our comment, to the comment of the United States Department of Justice, and to those of other agencies, the Administrative Conference cited the language of the Act and its legislative history [citations appear in 46 FR 32900], in support of its view that dual-agency situations are covered by the Act. The Administrative Conference cited statements made in floor debate in both the House and the Senate in respect to the Act in which the dual-agency situation involving the Occupational Safety and Health Review Commission's role in the adjudication of enforcement actions brought by the Department of Labor was discussed in support of the Act. (See, for example, statement of Senator De Concini, *Congressional Record,* September 26, 1980, at S. 13690).

The Board recognizes that the Act does not explicitly pertain to the dual agency situation, a factor which formed the basis of the Board's reservation previously expressed in our comments to the Administrative Conference. Nevertheless, after carefully reviewing and considering the Act in light of its legislative history, we are persuaded that it was the intent of Congress that the legislation cover proceedings where the enforcement and adjudicative functions reside in separate agencies. To conclude otherwise would be to exclude aviation enforcement proceedings from the Act altogether (since the Board is the only forum available to consider fee awards) and thereby frustrate the overall purpose of the Act of providing for the awards of fees and expenses to private parties who prevail against the United States in adversary adjudications.

A third comment was submitted by the Chief Counsel of the United States Coast Guard who recommends that appeals from fee award determinations in cases, the merits of which have been appealed to and decided by the Board, be taken directly from the decision of the Commandant to the Courts as provided by the Act. The Board has decided that there is good cause to adopt this recommendation and the final rule is modified to delete any provisions pertaining to proceedings involving the Coast Guard. Unlike the aviation enforcement proceedings discussed above, there is a forum, other than the Board, available to consider awards in marine enforcement proceedings. The administrative law judge who renders the initial decision in the fee award proceeding is a Coast Guard employee. The appeal from that decision to the Commandant provides the agency review contemplated by the Act. The fact that the appeal from the Commandant's decision on the fee award would go directly to the Courts, rather than first coming to the Board, does not, in our judgment, do any violence to the intent of the Equal Access to Justice Act.

Background

Congress enacted the Equal Access to Justice Act (Pub. L. 96-481, 94 Stat. 2325) to provide for the award of attorney fees and other expenses to certain parties who prevail against the United States in adversary adjudications conducted by Federal agencies (proceedings under section 554 of the Administrative Procedure Act, 5 U.S.C. 554, in which the position of the United States is represented by counsel or otherwise). The Safety Board has concluded that it conducts one such proceeding; which is, the review on appeal of the suspension or revocation of certain airman and other FAA certificates listed under section 609(a) of the Federal Aviation Act of 1958 (U.S.C. 1429(a) (safety enforcement proceedings). The award of fees in proceedings involving the United States Coast Guard will be conducted under rules promulgated by the Department of Transportation.

The regulations that are adopted herein establish uniform procedures for the award of fees in administrative proceedings under section 609 of the Federal Aviation Act, an action mandated by the Equal Access to Justice Act. Those procedures apply to certain persons, identified herein, when such an identified person prevails in an appeal to the Board under section 609, and

require that the Board award fees and other expenses incurred in connection with that appeal, unless the Board's administrative law judge who heard and initially decided the appeal finds that the position of the FAA was substantially justified in bringing the enforcement action that was the subject of the appeal or that special circumstances make an award unjust. Any initial decision made in response to a request for the award of fees is appealable to the full Board in order to ensure uniformity of application of the Equal Access to Justice Act to all safety enforcement proceedings in which a fee award is sought. When an award is administratively final, it will be recoverable by submission of the award to the appropriate official identified in § 826.40. The general rules applicable to all petitions for review, appeals to the Board, and initial decisions, found in Subpart B of Part 821, are applicable to the proceedings adopted herein. Moreover, appeals to the full Board from initial fee award decisions of Board administrative law judges shall be conducted in accordance with Subpart H of Part 821 of the Board's Rules of Procedure in Air Safety Proceedings (49 CFR 821.47–821.50).

Accordingly, the Board adopts a new 49 CFR part 826 to read as follows:

PART 826—RULES IMPLEMENTING THE EQUAL ACCESS TO JUSTICE ACT OF 1980

Subpart A—General Provisions

Sec.
826.1 Purpose of these rules.
826.2 When the Act applies.
826.3 Proceedings covered.
826.4 Eligibility of applicants.
826.5 Standards for awards.
826.6 Allowable fees and expenses.
826.7 Rulemaking on maximum rates for attorney fees.
826.8 Awards against the Federal Aviation Administration.

Subpart B—Information Required From Applicants

826.21 Contents of application.
826.22 Net worth exhibit.
826.23 Documentation of fees and expenses.
826.24 When an application may be filed.

Subpart C—Procedures for Considering Applications

826.31 Filing and service of documents.
826.32 Answer to application.
826.33 Reply.
826.34 Comments by other parties.
826.35 Settlement.
826.36 Further proceedings.
826.37 Decision.
826.38 Board review.
826.39 Judicial review.
826.40 Payment of award.

Authority: Sec. 203(a)(1), Pub. L. 96–481, 94 Stat. 2325 [5 U.S.C. 504 (c)(1)].

Subpart A—General Provisions

§ 826.1 Purpose of these rules.

The Equal Access to Justice Act, 5 U.S.C. 504 (the Act), provides for the award of attorney fees and other expenses to eligible individuals and entities who are parties to certain administrative proceedings (adversary adjudications) before the National Transportation Safety Board (Board). An eligible party may receive an award when it prevails over the Federal Aviation Administration (FAA), unless the Government agency's position in the proceeding was substantially justified or special circumstances make an award unjust. The rules in this part describe the parties eligible for awards and the proceedings that are covered. They also explain how to apply for awards, and the procedures and standards that this Board will use to make them. As used hereinafter, the term "agency" applies to the FAA.

§ 826.2 When the Act applies.

The Act applies to any adversary adjudication identified in § 826.3 as covered under the Act that is pending before the Board at any time between October 1, 1981, and September 30, 1984. This includes proceedings begun before October 1, 1981, if final Board action has not been taken before that date, and proceedings pending on September 30, 1984, regardless of when they were initiated or when final Board action occurs.

§ 826.3 Proceedings covered.

(a) The Act applies to certain adversary adjudications conducted by the Board. These are adjudications under 5 U.S.C. 554 in which the position of the FAA is presented by an attorney or other representative who enters an appearance and participates in the proceeding. Proceedings to grant or renew certificates or documents, hereinafter referred to as "licenses," are excluded, but proceedings to modify, suspend, or revoke licenses are covered if they are otherwise "adversary adjudications." For the Board, the type of proceeding covered includes aviation enforcement cases appealed to the Board under section 609 of the Federal Aviation Act (49 U.S.C. 1429).

(b) The Board may also designate a proceeding not listed in paragraph (a) as an adversary adjudication for purposes of the Act by so stating in an order initiating the proceeding or designating the matter for hearing. The Board's failure to designate a proceeding as an adversary adjudication shall not preclude the filing of an application by a party who believes the proceeding is covered by the act; whether the procedure is covered will then be an issue for resolution in proceedings on the application.

(c) If a proceeding includes both matters covered by the Act and matters specifically excluded from coverage, any award made will include only fees and expenses related to covered issues.

§ 826.4 Eligibility of applicants.

(a) To be eligible for an award of attorney fees and other expenses under the Act, the applicant must be a party to the adversary adjudication for which it seeks an award. The term "party" is defined in 5 U.S.C. 551(3). The applicant must show that it meets all conditions of eligibility set out in this subpart and in subpart B.

(b) The types of eligible applicants are as follows:

(1) An individual with a net worth of not more than $1 million;

(2) The sole owner of an unincorporated business who has a net worth of not more than $5 million, including both personal and business interests, and not more than 500 employees;

(3) A charitable or other tax-exempt organization described in section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)) with not more than 500 employees;

(4) A cooperative association as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a)) with not more than 500 employees; and

(5) Any other partnership, corporation, association, or public or private organization with a net worth of not more than $5 million and not more than 500 employees.

(c) For the purpose of eligibility, the net worth and number of employees of an applicant shall be determined as of the date the proceeding was initiated.

(d) An applicant who owns an unincorporated business will be considered an "individual" rather than a "sole owner of an unincorporated business" if the issues on which the applicant prevails are related primarily to personal interests rather than to business interests.

(e) The employees of an applicant include all persons who regularly perform services for remuneration for the applicant, under the applicant's direction and control. Part-time employees shall be included on a proportional basis.

(f) The net worth and number of employees of the applicant and all of its

affiliates shall be aggregated to determine eligibility. Any individual, corporation, or other entity that directly or indirectly controls or owns a majority of the voting shares or other interest of the applicant, or any corporation or other entity of which the applicant directly or indirectly owns or controls a majority of the voting shares or other interest, will be considered an affiliate for purposes of this Part, unless the administrative law judge determines that such treatment would be unjust and contrary to the purposes of the Act in light of the actual relationship between the affiliated entities. In addition, the administrative law judge may determine that financial relationships of the applicant other than those described in this paragraph constitute special circumstances that would make an award unjust.

(g) An applicant that participates in a proceeding primarily on behalf of one or more other persons or entities that would be ineligible is not itself eligible for an award.

§ 826.5 Standards for awards.

(a) A prevailing applicant may receive an award for fees and expenses incurred in connection with a proceeding, or in a significant and discrete substantive portion of the proceeding, unless the position of the agency over which the applicant has prevailed was substantially justified. The burden of proof that an award should not be made to an eligible prevailing applicant is on the agency counsel, who may avoid an award by showing that the agency's position was reasonable in law and fact.

(b) An award will be reduced or denied if the applicant has unduly or unreasonably protracted the proceeding or if special circumstances make the award sought unjust.

§ 826.6 Allowable fees and expenses.

(a) Awards will be based on rates customarily charged by persons engaged in the business of acting as attorneys, agents, and expert witnesses, even if the services were made available without charge or at a reduced rate to the applicant.

(b) No award for the fee of an attorney or agent under these rules may exceed $75 per hour. No award to compensate an expert witness may exceed the highest rate at which the agency pays expert witnesses. However, an award may also include the reasonable expenses of the attorney, agent, or witness as a separate item, if the attorney, agent, or witness ordinarily charges clients separately for such expenses.

(c) In determining the reasonableness of the fee sought for an attorney, agent, or expert witness, the administrative law judge shall consider the following:

(1) If the attorney, agent, or witness is in private practice, his or her customary fee for similar services, or if an employee of the applicant, the fully allocated cost of the services;

(2) The prevailing rate for similar services in the community in which the attorney, agent, or witness ordinarily performs services;

(3) The time actually spent in the representation of the applicant;

(4) The time reasonably spent in light of the difficulty or complexity of the issues in the proceeding; and

(5) Such other factors as may bear on the value of the services provided.

(d) The reasonable cost of any study, analysis, engineering report, test, project, or similar matter prepared on behalf of a party may be awarded, to the extent that the charge for the service does not exceed the prevailing rate for similar services, and the study or other matter was necessary for preparation of the applicant's case.

§ 826.7 Rulemaking on maximum rates for attorney fees.

(a) If warranted by an increase in the cost of living or by special circumstances (such as limited availability of attorneys qualified to handle certain types of proceedings), the Board may adopt regulations providing that attorney fees may be awarded at a rate higher than $75 per hour in some or all of the types of proceedings covered by this Part. The Board will conduct any rulemaking proceedings for this purpose under the informal rulemaking procedures of the Administrative Procedure Act.

(b) Any person may file with the Board a petition for rulemaking to increase the maximum rate for attorney fees. The petition should identify the rate the petitioner believes the Board should establish and the types of proceedings in which the rate should be used. It should also explain fully the reasons why the higher rate is warranted. The Board will respond to the petition within 60 days after it is filed, by initiating a rulemaking proceeding, denying the petition, or taking other appropriate action.

§ 826.8 Awards against the Federal Aviation Administration.

When an applicant is entitled to an award because it prevails over an agency of the United States that participates in a proceeding before the Board and takes a position that is not substantially justified, the award shall be made against that agency.

Subpart B—Information Required From Applicants

§ 826.21 Contents of application.

(a) An application for an award of fees and expenses under the Act shall identify the applicant and the proceeding for which an award is sought. The application shall show that the applicant has prevailed and identify the position of the agency in the proceeding that the applicant alleges was not substantially justified. Unless the applicant is an individual, the application shall also state the number of employees of the applicant and describe briefly the type and purpose of its organization or business.

(b) The application shall also include a statement that the applicant's net worth does not exceed $1 million (if an individual) or $5 million (for all other applicants, including their affiliates). However, an applicant may omit this statement if:

(1) It attaches a copy of a ruling by the Internal Revenue Service that it qualifies as an organization described in section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)), or in the case of a tax-exempt organization not required to obtain a ruling from the Internal Revenue Service on its exempt status, a statement that describes the basis for the applicant's belief that it qualifies under such section; or

(2) It states that it is a cooperative association as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a)).

(c) The application shall state the amount of fees and expenses for which an award is sought.

(d) The application may also include any other matters that the applicant wishes this agency to consider in determining whether and in what amount an award should be made.

(e) The application shall be signed by the applicant or an authorized officer or attorney for the applicant. It shall also contain or be accompanied by a written verification under oath or under penalty of perjury that the information provided in the application is true and correct.

§ 826.22 Net worth exhibit.

(a) Each applicant except a qualified tax-exempt organization or cooperative association must provide with its application a detailed exhibit showing the net worth of the applicant and any affiliates (as defined in § 826.4(f) of this part) when the proceeding was initiated. The exhibit may be in any form

convenient to the applicant that provides full disclosure of the applicant's and its affiliates' assets and liabilities and is sufficient to determine whether the applicant qualifies under the standards in this part. The administrative law judge may require an applicant to file additional information to determine the eligibility for an award.

(b) Ordinarily, the net worth exhibit will be included in the public record of the proceeding. However, an applicant that objects to public disclosure of information in any portion of the exhibit and believes there are legal grounds for withholding it from disclosure may submit that portion of the exhibit directly to the administrative law judge in a sealed envelope labeled "Confidential Financial Information," accompanied by a motion to withhold the information from public disclosure. The motion shall describe the information sought to be withheld and explain, in detail, why it falls within one or more of the specific exemptions from mandatory disclosure under the Freedom of Information Act, 5 U.S.C. 552(b)(1)–(9), why public disclosure of the information would adversely affect the applicant, and why disclosure is not required in the public interest. The material in question shall be served on counsel representing the agency against which the applicant seeks an award, but need not be served on any other party to the proceeding. If the administrative law judge finds that the information should not be withheld from disclosure, it shall be placed in the public record of the proceeding. Otherwise, any request to inspect or copy the exhibit shall be disposed of in accordance with the Board's established procedures under the Freedom of Information Act as implemented by Part 801 of the Board's rules.

§ 826.23 Documentation of fees and expenses.

The application shall be accompanied by full documentation of the fees and expenses, including the cost of any study, analysis, engineering report, test, project or similar matter, for which an award is sought. A separate itemized statement shall be submitted for each professional firm or individual whose services are covered by the application, showing the hours spend in connection with the proceeding by each individual, a description of the specific services performed, the rate at which each fee has been computed, any expenses for which reimbursement is sought, the total amount claimed, and the total amount paid or payable by the applicant or by any other person or entity for the services provided. The administrative law judge may require the applicant to provide vouchers, receipts, or other substantiation for any expenses claimed.

§ 826.24 When an application may be filed.

(a) An application may be filed whenever the applicant has prevailed in the proceeding, but in no case later than 30 days after the Board's final disposition of the proceeding.

(b) If review or reconsideration is sought or taken of a decision to which an applicant believes it has prevailed, proceedings for the award of fees shall be stayed pending final disposition of the underlying controversy.

(c) For purposes of this rule, final disposition means the later of (1) the date on which an unappealed initial decision by an administrative law judge becomes administratively final; (2) issuance of an order disposing of any petitions for reconsideration of the Board's final order in the proceeding; (3) if no petition for reconsideration is filed, the last date on which such a petition could have been filed; or (4) issuance of a final order or any other final resolution of a proceeding, such as a settlement or voluntary dismissal, which is not subject to a petition for reconsideration.

Subpart C—Procedures for Considering Applications

§ 826.31 Filing and service of documents.

Any application for an award or other pleading or document related to an application shall be filed and served on all parties to the proceeding in the same manner as other pleadings in the proceeding, except as provided in § 826.22(b) for confidential financial information.

§ 826.32 Answer to application.

(a) Within 30 days after service of an application, counsel representing the agency against which an award is sought may file an answer to the application. Unless agency counsel requests an extension of time for filing or files a statement of intent to negotiate under paragraph (b) of this section, failure to file an answer within the 30-day period may be treated as a consent to the award requested.

(b) If agency counsel and the applicant believe that the issues in the fee application can be settled, they may jointly file a statement of their intent to negotiate a settlement. The filing of this statement shall extend the time for filing an answer for an additional 30 days, and further extensions may be granted by the administrative law judge upon request by agency counsel and the applicant.

(c) The answer shall explain in detail any objections to the award requested and identify the facts relied on in support of agency counsel's position. If the answer is based on any alleged facts not already in the record of the proceeding, agency counsel shall include with the answer either supporting affidavits or a request for further proceedings under § 826.36.

§ 826.33 Reply.

Within 15 days after service of an answer, the applicant may file a reply. If the reply is based on any alleged facts not already in the record of the proceeding, the applicant shall include with the reply either supporting affidavits or a request for further proceedings under § 826.36.

§ 826.34 Comments by other parties.

Any party to a proceeding other than the applicant and agency counsel may file comments on an application within 30 days after it is served or on an answer within 15 days after it is served. A commenting party may not participate further in proceedings on the application unless the administrative law judge determines that the public interest requires such participation in order to permit full exploration of matters raised in the comments.

§ 826.35 Settlement.

The applicant and agency counsel may agree on a proposed settlement of the award before final action on the application, either in connection with a settlement of the underlying proceeding, or after the underlying proceeding has been concluded. If a prevailing party and agency counsel agree on a proposed settlement of an award before an application has been filed, the application shall be filed with the proposed settlement.

§ 826.36 Further proceedings.

(a) Ordinarily the determination of an award will be made on the basis of the written record; however, on request of either the applicant or agency counsel, or on his or her own initiative, the administrative law judge assigned to the matter may order further proceedings, such as an informal conference, oral argument, additional written submissions, or an evidentiary hearing. Such further proceedings shall be held only when necessary for full and fair resolution of the issues arising from the application and shall be conducted as promptly as possible.

(b) A request that the administrative law judge order further proceedings

under this section shall specifically identify the information sought or the disputed issues and shall explain why the additional proceedings are necessary to resolve the issues.

§ 826.37 Decision.

The administrative law judge shall issue an initial decision on the application within 60 days after completion of proceedings on the application. The decision shall include written findings and conclusions on the applicant's eligibility and status as a prevailing party and an explanation of the reasons for any difference between the amount requested and the amount awarded. The decision shall also include, if at issue, findings on whether the agency's position was substantially justified, whether the applicant unduly protracted the proceedings, or whether special circumstances make an award unjust.

§ 826.38 Board review.

Either the applicant or agency counsel may seek review of the initial decision on the fee application, or the Board may decide to review the decision on its own initiative, in accordance with Subpart H of Part 821 for FAA safety enforcement matters appealed under Section 609 of the Federal Aviation Act. If neither the applicant nor agency counsel seeks review and the Board does not take review on its own initiative, the initial decision on the application shall become a final decision of the Board 30 days after it is issued. Whether to review a decision is a matter within the discretion of the Board. If review is taken, the Board will issue a final decision on the application or remand the application to the administrative law judge who issued the initial fee award determination for further proceedings.

§ 826.39 Judicial review.

Judicial review of final Board decisions on awards may be sought as provided in 5 U.S.C. 504(c)(2).

§ 826.40 Payment of award.

An applicant seeking payment of an award shall submit to the disbursing official of the FAA a copy of the Board's final decision granting the award, accompanied by a statement that the applicant will not seek review of the decision in the United States courts. Applications for award grants in cases involving the FAA shall be sent to: The Office of Accounting and Audit, AAA-1, Federal Aviation Administration, 800 Independence Avenue, S.W., Washington, D.C. 20591. The agency will pay the amount awarded to the applicant within 60 days, unless judicial review of the award or of the underlying decision of the adversary adjudication has been sought by the applicant or any other party to the proceeding.

Signed at Washington, D.C., on this 28th day of September 1981.

James B. King,

Chairman.

[FR Doc. 81-28616 Filed 9-30-81; 8:45 am]

BILLING CODE 4910-58-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1033

[Fifth Revised Service Order No. 1495]

Car Service Order; Burlington Northern Railroad Co. and Fort Worth and Denver Railway Co. Authorized To Use Tracks and/or Facilities of Chicago, Rock Island and Pacific Railroad Co.

AGENCY: Interstate Commerce Commission.

ACTION: Fifth Revised Service Order No. 1495.

SUMMARY: Pursuant to Section 122 of the Rock Island Railroad Transition and Employee Assistance Act, Public Law 96-254, this order authorizes the Burlington Northern and Fort Worth and Denver to provide interim service over the 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: 12:01 a.m., October 1, 1981, and continuing in effect until 11:59 p.m., October 30, 1981, unless otherwise modified, amended or vacated by order of this Commission.

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

SUPPLEMENTARY INFORMATION:

Decided: September 25, 1981.

Pursuant to Section 122 of the Rock Island Transition and Employee Assistance Act, Public Law 96-254, (RITEA), the Commission is authorizing Burlington Northern Railroad Company (BN) and Fort Worth and Denver Railway Company (FWD) 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 BN and FWD to continue to provide service to shippers which would otherwise be deprived of essential rail transportation.

Appendix A of the previous order is revised by the removal of the following:

Item 1

B. Fairfield, Iowa.

C. Henry to Peoria, Illinois, reduced to Mossville to Peoria, Illinois.

D. Phillipsburg, Kansas, to Stratton, Colorado, reduced to Phillipsburg, Kansas, to Caruso, Kansas. (C through E relettered B through D).

Item 2

C. From Groom to Adrian, Texas.

All changes effected were at the request of the involved carriers.

It is the opinion of the Commission that an emergency exists requiring that the BN and FWD, as indicated in the attached appendix, 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:

§ 1033.1495 Service Order 1495

(a) *Burlington Northern Inc. and Fort Worth and Denver Railway Company Authorized To Use Tracks and/or Facilities of the Chicago, Rock Island and Pacific Railroad Company, Debtor (William M. Gibbons, Trustee).* Burlington Northern Inc. (BN) and Fort Worth and Denver Railway Company (FWD) 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.

(b) The Trustee shall permit the BN and FWD 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 BN and FWD; 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.

(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 on the expected commencement date of those operations.

(e) BN and FWD, as 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 operations over the RI lines authorized in paragraph (a), BN and FWD 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.

(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 BN and FWD 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, the 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, the 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 12:01 a.m., October 1, 1981.

(n) *Expiration date.* The provisions of this order shall expire at 11:59 p.m., October 30, 1981, unless otherwise modified, amended, or vacated by order of this Commission.

(49 U.S.C. 10304, 10305, and Section 122, Public Law 96-254)

This order shall be served upon the Association of American Railroads, Transportation 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.

James H. Bayne,

Acting Secretary.

Appendix A.—RI Lines Authorized To Be Operated by Interim Operator

1. Burlington Northern Railroad Company (BN):
   A. Burlington, Iowa (milepost 0 to milepost 2.06)
   B. Mossville, Illinois (milepost 148.9) to Peoria, Illinois (milepost 164.35) including the Keller Branch (milepost 1.55 to 8.62).[1]
   C. Phillipsburg, Kansas (milepost 282) to Caruso, Kansas (milepost 430).[1]
   D. At Okeene, Oklahoma.[1]
2. Fort Worth and Denver Railway Company (FWD):
   A. From Amarillo to Bushland, Texas, including terminal trackage at Amarillo, and approximately three (3) miles northerly along the old Liberal Line.
   B. North Fort Worth, Texas (milepost 603.0 to 611.4).

[FR Doc. 81-28817 Filed 9-30-81; 8:45 am]
BILLING CODE 7035-01-M

---

49 CFR Part 1033

[23rd Revised Service Order No. 1473]

Car Service Order; Various Railroads Authorized To Use Tracks and/or Facilities of Chicago, Rock Island and Pacific Railroad Co., Debtor

AGENCY: Interstate Commerce Commission.

ACTION: Twenty-third Revised Service Order No. 1473.

SUMMARY: Pursuant to Section 122 of the Rock Island Railroad Transition and Employee Assistance Act, Public Law 96-254, this order authorizes various railroads to provide interim service over the 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: 12:01 a.m., October 1, 1981, and continuing in effect until 11:59 p.m., October 30, 1981, unless otherwise modified, amended or vacated by order of this Commission.

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

SUPPLEMENTARY INFORMATION:

Decided: September 25, 1981.

Pursuant to Section 122 of the Rock Island Transition and Employee Assistance Act, Public Law 96-254 (RITEA), 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 implementation of long range solutions for continued rail service over RI lines, and in consideration of a recent complaint by the Trustee regarding the absence of compensation for the use of his property by certain rail carriers, the Railroad Service Board (RSB) hereby reminds any carriers which haven't negotiated such compensation to do so in the interest of continued operations. Compensation to the Trustee is an integral part of the interim authority and an obligation of all interim operators as specified by paragraph (c) of the order.

Appendix A, to the previous order, is revised by adding at Item 5, V., the authority for the Chicago and North Western Transportation Company (CNW), to operate at Iowa Junction, Illinois; at renumbered Item 14.B., the authority for the Baltimore and Ohio Railroad to operate between Bureau and Henry, Illinois; at renumbered Item 20.B, the authority for the Iowa Northern Railroad to operate between Nora Springs and Manly, Iowa, and at Item 21, the new authority for the Iowa Railroad to operate between McClelland and Stuart, Iowa, and on two adjacent branch lines. That Appendix is further modified by deleting the authority for

[1] Changed.

the Missouri-Kansas-Texas/Oklahoma, Kansas and Texas Railroad Company to operate in that necessary authority was granted in Finance Docket 29372. All succeeding Items were renumbered accordingly.

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 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 Comission in accordance with pertinent authority conferred upon it by Section 122(a), Public Law 96-254.

(d) Interim operators, authorized in Appendex 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. Termination of interim operations will require at least (30) thirty days notice to the Railroad Service Board and affected shippers.

(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 of 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 responsiblity 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 division 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 12:01 a.m., October 1, 1981.

(n) *Expiration date.* The provisions of this order shall expire at 11:59 p.m., October 30, 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, Public Law 96-254.

This order shall be served upon the Association of American Railroads, Transportation 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.

James H. Bayne,

Acting Secretary.

Appendix A.—RI Lines Authorized To Be Operated By Interim Operator

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 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.
4. *Toledo, Peoria and Western Railroad Company (TP&W):*
   A. Keokuk, Iowa.
   B. Peoria Terminal Company trackage from Hollis to Iowa Junction, Illinois.
5. *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 73.6) to Carlisle, Iowa.
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 Allerton, Iowa (milepost 415.9) to Air Line Junction, Missouri (milepost 502.2).
J. From Iowa Falls (milepost 97.4) to Esterville, Iowa (milepost 209.9).
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 to Indianola, Iowa.
T. Omaha, Nebraska (between milepost 502 to milepost 504).
U. Earlham (milepost 388.6) to Dexter, Iowa (milepost 393.5).
V. Peoria Terminal Company trackage from Iowa Junction (PTC milepost .91) through Hollis, Illinois to the Illinois River bridge (PTC milepost 7.40), and between RI mileposts 164.30 and 164.32 at Iowa Junction, Illinois.[1]

6. *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.
D. From Davenport to Iowa City, Iowa.
E. At Davenport, Iowa.

7. *Davenport, Rock Island and North Western Railway Company (DRI):*
A. Moline, Illinois.
B. Rock Island, Illinois, including 26th Street yard.
C. From Rock Island through Milan, Illinois, to a point west of Milan sufficient to include service to the Rock Island Industrial complex.
D. From Rock Island, Illinois, to Davenport, Iowa, sufficient to include service to Rock Island Arsenal.

8. *St. Louis Southwestern Railway Company (SSW):*
A. From Brinkley to Briark, Arkansas, and at Stuttgart, Arkansas.
B. At North Topeka and Topeka, Kansas.

9. *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).

10. *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.

11. *Norfolk and Western Railroad 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 Calument approximately four plus miles to the point, approximately 2,500 feet beyond the railroad bridge over the Calument 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 existed between the Chicago, Rock Island and Pacific Railroad Company and other carriers, and which extend to the Chicago Regional Port District Lake Calument Harbor, West Side, will be continued so that shippers at the port can have NW rates and routed regardless of which carrier performs switching services.

12. *Southern Railway Company:* A. At Memphis, Tennessee.

13. *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.[1]
B. 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.
C. From Limon, Colorado (milepost 532) to but not including Caruso, Kansas (milepost 429.3), with over-head rights from Caruso to Colby, Kansas, in order to effect interchange with the Union Pacific.
D. Rock Island trackage rights over Union Pacific Railroad Company between Limon and Denver, Colorado.

14. *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.
B. From Bureau, Illinois (milepost 114.12) to Henry, Illinois (milepost 126.94) a distance of approximately 12.8 miles.[2]

15. *Cedar Rapids and Iowa City Railway Company (ICC):* 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 70 North, Route 6 West, Johnson County, Iowa, including spurs of the main trackage to serve various industry; and to effect interchange with the Chicago, Milwaukee, St. Paul and Pacific Railroad Company.

16. *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.
B. At Vinton, Iowa, and to serve any industries on the former RI which are not being served presently.
C. From Vinton Junction, Iowa (milepost 23.4) to Iowa Falls, Iowa (milepost 97.4).

17. *The La Salle and Bureau County Railroad Company:*
A. From Chicago (milepost 0.66) 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.
C. From Gresham (subdivision 1, milepost 10.0) to South Chicago (subdivision 1B, milepost 14.5) at Chicago, Illinois.

18. *The Atchison, Topeka and Santa Fe Railway Company:* A. At Alva, Oklahoma.

19. *The Brandon Corporation:* A. From Clifton, Kansas (milepost 197.0), to Manhattan, Kansas (milepost 143.0), a distance of approximately 53 miles.

20. *Iowa Northern Railroad:*
A. From Cedar Rapids, Iowa (milepost 100.5), to Waterloo, Iowa (milepost 150.76).
B. From Shell Rock, Iowa (milepost 172.1), to Manly, Iowa (milepost 225.1).
C. At Vinton, Iowa, and west on the Iowa Falls Line to milepost 24.3.

21. *Iowa Railroad Company:*
A. From McClelland, Iowa (milepost 476.6) to Stuart, Iowa (milepost 397.84) a distance of approximately 78.76 miles.
B. From Audubon Junction (milepost 440.7) to Audubon, Iowa (milepost 465.1) a distance of approximately 24.4 miles.
C. From Hancock, Iowa (milepost 6.4) to Oakland, Iowa (milepost 12.3) a distance of approximately 5.9 miles.

[1] Changed.
[2] Added.

[FR Doc. 81-28618 Filed 9-30-81; 8:45 am]
BILLING CODE 7035-01-M

---

49 CFR Parts 1039 and 1300

[Ex Parte No. 387]

Railroad Transportation Contracts

AGENCY: Interstate Commerce Commission.

ACTION: Removal of interim rules.

SUMMARY: At 45 FR 73481, November 5, 1980, the Commission published interim rules implementing the provisions of the

Staggers Rail Act which govern the process of contract filing, complaints, and approval and disapproval of contracts between rail carriers and purchasers of rail service. At 45 FR 85640, December 29, 1980, the Commission published a notice telling of a stay of these rules which took effect on December 16, 1980. Proposed rules were promulgated in the same issue, which had a comment due date of January 8, 1981.

This notice removes the interim rules. The purpose of removal at this time is to avoid inclusion of the stayed interim rules in the annual revision of the Code of Federal Regulations now being prepared. Comments on the proposed rules are currently being considered, and final action on them will be forthcoming.

EFFECTIVE DATE: October 1. 1981.

FOR FURTHER INFORMATION CONTACT: Jane Mackall, 202-275-7693.

SUPPLEMENTARY INFORMATION: Title 49 of the Code of Federal Regulations is amended by removing §§ 1039.1-1039.6, and §§ 1300.300, 1300.310, 1300.311, 1300.312, 1300.313, 1300.314, and 1300.315 as published at 45 FR 73481, November 5, 1980.

Decided: September 28, 1981.

By the Commission, Chairman Taylor, Vice Chairman Clapp, Commissioners Gresham and Gilliam

James H. Bayne,

Acting Secretary.

[FR Doc. 81-28585 Filed 9-30-81; 8:45 am]

BILLING CODE 7035-01-M

---

49 CFR Parts 1100, 1108, 1111, and 1121

General Rules of Practice; Guidelines for Implementation of the National Environmental Policy Act of 1969; Railroad Acquisition, Control, Merger, Consolidation Project, Trackage Rights and Lease Procedures; Abandonment of Railroad Lines and Discontinuance of Service; Corrections

AGENCY: Interstate Commerce Commission.

ACTION: Corrections to final rules.

SUMMARY: The purpose of this notice is to correct errors, inconsistencies and omissions which occurred inadvertently in documents published during the period from October 1, 1979 to the present. The documents concern regulations on the Commission's general rules of practice, environmental considerations, and railroad matters. The corrections are listed and discussed separately below.

FOR FURTHER INFORMATION CONTACT: Ann Guthridge, 202-275-7281.

SUPPLEMENTARY INFORMATION: (1) At 45 FR 86789, December 31, 1980, in Ex Parte No. 55 (Sub-No. 43), the Commission published rules governing applications for operating authority. The rules modified the Commission's procedures for permanent authority governing issuance of certificates, permits and licenses to motor and water carriers, freight forwarders and brokers. The instruction for removing portions of Appendix F is corrected as follows:

PART 1100—COMMISSION ORGANIZATION; DELEGATION OF AUTHORITY

Appendix F [Amended]

Remove that portion of Appendix F to Part 1100 under the headings "Applications—Motor Carrier and Broker," and "Applications—Water Carrier and Freight Forwarder."

(2) At 45 FR 79813, December 2, 1980, in Ex Parte No. 55 (Sub-No. 22), the Commission revised its exisiting guidelines for environmental policy. The heading of the revised Part 1108 was inadvertently omitted. The heading should read as follows:

PART 1108—GUIDELINES FOR IMPLEMENTATION OF THE NATIONAL ENVIRONMENTAL POLICY ACT OF 1969

(3) At 46 FR 9113, January 28, 1981, in Ex Parte No. 282 (Sub-No. 6), the Commission issued a policy statement on the importance of rail consolidations in national policy. The instruction for the CFR amendment in column 3 is corrected as follows:

PART 1111—RAILROAD ACQUISITION, CONTROL, MERGER, CONSOLIDATION PROJECT, TRACKAGE RIGHTS AND LEASE PROCEDURES

Title 49 CFR Part 1111 is amended by adding § 1111.10 to read as follows:

(4) At 45 FR 79488, December 1, 1980, in Ex Parte No. 282 (Sub-No. 7), the Commission issued interim rules which describe application procedures for special intermodal authority for transportation prior or subsequent to rail transportation. § 1111.11(c) in instruction number (2) is corrected as follows:

(2) The interim rule in 49 CFR 1111.11 (c) is revised to read as follows:

* * * * *

(c) *Protests*—(1) *Filing requirements.* The original and five copies of a protest to an application filed under 49 CFR 1111.11(a) shall be filed with the Section of Finance, Room 5414, Interstate Commerce Commission, Washington, D.C. 20423, within 10 days of filing of the application. The protest shall bear the same caption (IM prefix, number and title) as that appearing on the application. This caption shall also be printed on the front of the envelope containing the application.

(2) *Contents.* The protest shall be in the form of verified statements and shall demonstrate why there is no presently impaired rail service and/or inadequate motor common carrier service which results in the serious failure of the rail carrier serving the shippers to meet the rail equipment or transportation schedules of shippers or which otherwise seriously fail to provide adequate normal rail services required by shippers and which shippers would reasonably expect a rail carrier to provide.

PART 1121—ABANDONMENT OF RAILROAD LINES AND DISCONTINUANCE OF SERVICE

(5) At 45 FR 78148, November 25, 1980, in Ex Parte No. 274 (Sub-No. 6), the Commission issued interim rules concerning the abandonment of railroad lines and discontinuance of service. Subparagraphs (i) and (ii) in paragraph (a) of § 1121.37 are corrected to read (1) and (2).

James H. Bayne,

Acting Secretary.

[FR Doc. 81-28513 Filed 9-30-81; 8:45 am]

BILLING CODE 7035-01-M

Proposed Rules

Federal Register
Vol. 46, No. 190
Thursday, October 1, 1981

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

DEPARTMENT OF AGRICULTURE

Federal Grain Inspection Service

7 CFR Part 800

Changes in the Options To Treat Insect Infested Shiplot Grain

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Notice of Withdrawal of Proposed Rule.

SUMMARY: The Federal Grain Inspection Service (FGIS) is withdrawing the proposal to eliminate the current option of treating insect infested grain during loading aboard ships other than bulk dry cargo ships. This action is based on comments received regarding the proposal, as well as, research resulting in new developments in the treatment of insect infested grain aboard ships.

EFFECTIVE DATE: October 1, 1981.

FOR FURTHER INFORMATION CONTACT: John W. Marshall, Director, Inspection Division, USDA, FGIS, 1400 Independence Avenue, SW, Washington, D.C. 20250, telephone (202) 447-8497

SUPPLEMENTARY INFORMATION: In the May 15, 1980, issue of the Federal Register (45 FR 32284), the Federal Grain Inspection Service (FGIS) proposed to amend § 800.86(e)(1) of the regulations (7 CFR 800.86(e)(1)) under the United States Grain Standards Act (7 U.S.C. 71 et. seq.) by deleting paragraph (e)(1)(iii) of § 800.86. The effect of this proposal would have been to revoke procedures allowing the fumigation of insect infested grain during loading aboard ships other than bulk dry cargo ships. Public comments were solicited on the proposal. All comments received by FGIS were opposed to the proposal. The commentors recommended the evaluation of other alternatives which would be less restrictive.

Since the publication of this proposal and receipt of the comments, research conducted by the Agricultural Research Service, U.S. Department of Agriculture, has determined that insect infested grain, which has been loaded aboard tanker-type ships, can be safely and effectively treated in accordance with procedures similar to those used for bulk dry cargo ships. Therefore, treatment of insect infested grain aboard tankers has been approved on an interim basis by FGIS instruction until further research in regard to gas distribution is conducted.

FGIS is evaluating other alternative methods for safely and effectively treating insect infested grain aboard ships other than tankers and bulk dry cargo ships. The methods will be designed to minimize any potential economic impact on the U.S. grain and maritime industries while providing for safe and effective fumigation of grain on board other types of ships.

Accordingly, FGIS has determined that the proposed amendment should be withdrawn. The withdrawal of this proposal, however, does not preclude FGIS from issuing similar notices in the future or commit FGIS to any course of action.

Accordingly, the proposed amendment published in the Federal Register (45 FR 32284–32285) on May 15, 1980, entitled "Proposed Change in the Options to Treat Insect Infested Shiplot Grain" is hereby withdrawn.

(Sec. 18, Pub. L. 94–582, 90 Stat. 2884 (7 U.S.C. 87e)).

Done in Washington, D.C., on September 25, 1981.

Kenneth A. Gilles,

Administrator.

[FR Doc. 81-28631 Filed 9-30-81; 8:45 am]
BILLING CODE 3410-EN-M

FEDERAL RESERVE SYSTEM

12 CFR Ch. II

Semiannual Agenda of Regulations and Regulatory Flexibility Agenda

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Semiannual Agenda.

SUMMARY: Pursuant to the Regulatory Flexibility Act, and the Board's Statement of Policy Regarding Expanded Rulemaking Procedures, the Board anticipates having under consideration regulatory matters as indicated below during the period from October 1, 1981 through April 1, 1982. The Board's next semiannual agenda will be published on April 1, 1982.

DATE: Comments may be received any time during the next six months.

ADDRESS: Comments sould be addressed to William W. Wiles, Secretary of the Board, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

FOR FURTHER INFORMATION CONTACT: (A staff contact for each item is indicated with the regulatory description below.)

SUPPLEMENTARY INFORMATION: The Board's Semiannual Agenda is divided into three sections: Section A reports those regulatory matters from the Board's last Semiannual Agenda (April 1, 1981 through October 1, 1981) on which final action has been taken; Section B reports on regulatory matters that have been proposed and that are under Board consideration; and Section C reports regulatory matters the Board may consider proposing for public comment during the next six months.

A double asterisk (**) in Sections B and C indicates those matters listed on the Board's previous Semiannual Agenda; a dagger(†) indicates a proposal that is likely to have a significant economic impact on a substantial number of small entities. The latter designation applies to only those matters proposed or expected to be proposed for public comment *after* the January 1, 1981, effective date of the Regulatory Flexibility Act.

A. REGULATORY MATTERS FROM THE APRIL 1, 1981 THROUGH OCTOBER 1, 1981 SEMIANNUAL AGENDA ON WHICH FINAL ACTION HAS BEEN TAKEN

1. Regulation: C—Home Mortgage Disclosure (12 CFR part 203)

ACTION TAKEN: In July 1981, the Board adopted a revised regulation that implements statutory changes to the Home Mortgage Disclosure Act that were enacted in October 1980 (Pub. L. 96–399), and that is written in a simplified, concise form (46 FR 40679, August 11, 1981). This proposal was published for comment in February 1981 (46 FR 11780, February 10, 1981). The regulation requires depository institutions located in standard metropolitan statistical areas (SMSAs) and with assets over $10 million to

disclose data about their home mortgage and home improvement loans each year. No significant new burdens were imposed on any covered institutions.

Some of the principal changes in the revised regulation are as follows: (1) disclosures are no longer required at a branch office in the SMSA where the institution's home office is located. (A disclosure statement will continue to be available at the home office and will contain complete data for all SMSAs in which the institution has offices.); (2) disclosures at other branch offices are only required to give data about loans on property in the SMSA where the branch is located; (3) the "total residential mortgage loans" category is no longer required; (4) geographic breakdowns must be given in terms of census tracts or counties and not by ZIP codes; (5) an institution may use either 1970 or 1980 census tract boundaries in geocoding loans, until the 1980 census tract outline maps for the SMSA are issued by the U.S. Census Bureau; (6) a lobby notice is required regarding the availability of home mortgage data; (7) an institution that has exempt status and that subsequently loses its exemption must begin to compile and report data only, in general, for the calendar year following the loss of exemption; and (8) an institution must send a copy of its disclosure statement to its supervisory agency.

The lobby notice requirement became effective on September 30, 1981. The remaining requirements went into effect on August 11, 1981. The Board also adopted a revised version of the HMDA-1 form for reporting and disclosure of loan data. The form will be published after review by the U.S. Office of Management and Budget.

AUTHORITY: Home Mortgage Disclosure Act of 1975, 12 U.S.C. 2804(a).

DOCKET NUMBER: R-0350.

STAFF CONTACT: John C. Wood, Senior Attorney, Division of Consumer and Community Affairs, (202-452-2412).

2. Regulation: D—Reserve Requirements of Depository Institutions, Q—Interest on Deposits (12 CFR Parts 204, 217)

ACTION TAKEN: In response to requests from the banking community, in December 1980 the Board issued for public comment proposed amendments to its Regulations D and Q to permit the establishment in the United States of International Banking Facilities (IBFs) by depository and other institutions to promote international banking activity in the United States. IBFs would make loans to and accept deposits from foreign residents free of reserve requirements and interest-rate limitations (45 FR 84070, December 22, 1980). This proposal would affect principally the major banks already engaged in international banking transactions. Following review of the public comments, the Board adopted the proposal in substantially the form proposed (46 FR 32426, June 23, 1981).

AUTHORITY: Federal Reserve Act, 12 U.S.C. 461.

DOCKET NUMBER: R-0214.

STAFF CONTACT: Robert F Gemmill, Associate Director, Division of International Finance, (202-452-3733); Gilbert T. Schwartz, Associate General Counsel, Legal Division (202-452-3625).

3. Regulation: T—Credit by Brokers and Dealers (12 CFR 220.6(j))

ACTION TAKEN: In response to a request on behalf of a registered broker-dealer, the Board in December 1980 denied permission to allow the acceptance of bank depository receipts for gold by a broker or dealer to meet the margin requirements specified by the rule. At the same time the Board issued for public comment a proposed amendment to Regulation T deleting § 220.6(j) which permits the use of foreign currency to meet margin requirements (45 FR 83510, December 19, 1980). In June 1981, after reviewing comments received on the draft amendments, the Board deleted § 220.6(j) from Regulation T (46 FR 31250, June 15, 1981).

AUTHORITY: Securities Exchange Act of 1945, 15 U.S.C. 78g and w.

DOCKET NUMBER: R-0250.

STAFF CONTACT: Laura Homer, Securities Credit Officer, Robert Lord, Attorney, Securities Regulation Section, Division of Banking Supervision and Regulation, (202-452-2781).

4. Regulation: Y—Bank Holding Companies and Change in Bank Control (12 CFR 225.4(a)(9))

ACTION TAKEN: In March 1978 the Board issued for public comment a proposal to amend its Regulation Y relating to permissible insurance activities for bank holding companies (43 FR 14970, April 10, 1978). The proposed amendments were required in order to conform the regulation to an opinion of the United States Court of Appeals for the Fifth Circuit. The first amendment deletes the authority of bank holding companies to act as an agent for the sale of insurance sold as a matter of convenience to the public. Another amendment removes the authority for bank holding companies to act as agent for the sale of insurance for themselves or for their subsidiaries. In July 1981, the Board adopted the proposals in substantially the form proposed (46 FR 38493, July 28, 1981).

AUTHORITY: Bank Holding Company Act, 12 U.S.C. 1843(c)(8).

DOCKET NUMBER: R-0050.

STAFF CONTACT: Richard M. Whiting, Senior Attorney, Legal Division, (202-452-3779).

B. REGULATORY MATTERS THAT HAVE BEEN PROPOSED AND WILL INVOLVE FURTHER BOARD CONSIDERATION

****1. Regulation: B—Equal Credit Opportunity (12 CFR Part 202)**

ACTION TAKEN: In April 1979, the Board, in response to requests for clarification, requested public comment on how the specific rules of Regulation B should apply to various credit scoring practices (44 FR 23365, April 23, 1979).

In August 1980, the Board published a revised proposal in the form of two proposed interpretations, the first dealing with consideration of income in credit scoring systems and the second with the selection and disclosure of reasons for adverse action (45 FR 56818, August 26, 1980). Both proposals would affect creditors that use credit scoring systems. The Board will review the comments received on the draft proposals and is expected to take further action during the next six months.

AUTHORITY: Section 703(a) of the Equal Credit Opportunity Act, 15 U.S.C. 1691b(a).

DOCKET NUMBER: R-0203.

STAFF CONTACT: Dolores S. Smith, Assistant Director, Division of Consumer and Community Affairs, (202-452-2412).

****2. Regulation: B—Equal Credit Opportunity (12 CFR Part 202)**

ACTION TAKEN: In October 1978, the Board proposed for comment several amendments to the regulation. In April of 1979 one of the proposals was adopted (44 FR 23813, April 23, 1979). The amendment clarified that persons who regularly refer consumers to creditors were subject to the general proscriptions against discrimination but were not subject to the mechanical and recordkeeping provisions of the regulation. Three proposals, which would affect creditors that extend credit to small businesses, have yet to be acted upon. These proposals would extend recordkeeping and adverse action notification requirements to business loans of under $100,000. Inquiries as to marital status of applicants would be prohibited in all business credit

applications. It is expected that these matters will be considered by the Board during the next six months in conjunction with action on the proposed credit-scoring interpretations that are also outstanding. (See entry B.1.)

AUTHORITY: Equal Credit Opportunity Act; 15 U.S.C. 1691b.

DOCKET NUMBER: R-0185.

STAFF CONTACT. Dolores S. Smith, Assistant Director, Division of Consumer and Community Affairs, (202-452-2412).

**3. Regulation: D—Reserve Requirements of Depository Institutions (12 CFR Part 204)

ACTION TAKEN: The Board will consider further during the next six months a proposal to adopt contemporaneous reserve accounting. In August 1980, the Board stated that it is disposed toward returning to contemporaneous reserve accounting if investigation indicates that such a system is practical (45 FR 56009, August 22, 1980). The proposal would change the reserve maintenance schedule of depository institutions to coincide with reserve computation periods as a means of improving the System's ability to meet its monetary policy objectives. Such a proposal would affect the reserve management practices of all depository institutions with $15 million or more in total deposits.

AUTHORITY: 12 U.S.C. 461 *et seq.*

DOCKET NUMBER: R-0306.

STAFF CONTACT: David Lindsey, Assistant Director, Division of Research and Statistics, (202-452-2601); Gilbert T. Schwartz, Associate General Counsel, Legal Division, (202-452-3625).

†4. Regulation: G—Securities Credit by Persons Other than Banks, Brokers or Dealers (12 CFR Part 207); T—Credit by Brokers and Dealers (12 CFR Part 220); and U—Credit by Banks for the Purpose of Purchasing or Carrying Margin Stocks (12 CFR Part 221)

ACTION TAKEN: In June and July 1981, proposals to revise the Board's margin regulations were published for comment as part of the Board's Regulatory Improvement Project. The objectives of the proposed revisions, as described below and in the proposal's Initial Regulatory Flexibility Analysis, are to simplify the regulations and to reduce the burden of compliance wherever possible for individual and business borrowers.

In its first group of proposed amendments (46 FR 32592, June 24, 1981) to its margin regulations, the Board proposed to amend Regulation T to:

1. Eliminate "equity building" devices; consolidate bond accounts with the General Account; and require in certain circumstances, an off-setting adjustment to any highly leveraged General Account by transfers from the customer's Special Miscellaneous Account.

2. Relax the restriction on the arranging of credit for customers by investment bankers to permit investment banking services that may be otherwise prohibited.

For Regulation U, the Board proposed to change the collateral test to exempt from quantitative limitation all bank credit not secured by margin equity securities. At the present time a purpose loan that is collateralized by any stock is subject to the margin regulation.

In a second announcement (46 FR 37516, July 21, 1981), the following principal changes in the Board's margin regulations were proposed:

1. Regulation T would be amended to reduce the number of types of securities and other accounts subject to Regulation T from eleven to seven and to restructure the accounts along functional lines. Four of the accounts would be used for public customer transactions and three for transactions between industry members.

2. The terminology of Regulation T would be revised to prescribe the amount of margin required rather than the maximum loan value of securities used as collateral. This would conform to the terminology generally used by the securities industry.

3. The definition of "indirectly secured" margin loans in Regulations U and G would be amended to achieve more objective standards. This action would affect principally lending arrangements, by banks and insurance companies with corporate borrowers, that contain restrictions on disposition of the borrower's assets.

4. Regulation G would be amended to broaden the types of credit which may be extended by lenders subject to that regulation, chiefly insurance companies and credit unions.

The Board will review comments on these proposals and is expected to take further action during the next six months.

AUTHORITY: Securities Exchange Act of 1934, 15 U.S.C. 78g, w.

DOCKET NUMBER: R-0362.

STAFF CONTACT: Laura Homer, Securities Credit Officer, Division of Banking Supervision and Regulation, (202-452-2781); Robert Rewald, Division of Research and Statistics, (202-452-3637) Board of Governors of the Federal Reserve System, Washington, D.C., or Mindy R. Silverman, (212-791-5032), James M. McNeil, (212-791-5914) Federal Reserve Bank of New York.

5. Regulation: J—Collection of Checks and Other Items and Wire Transfer of Funds (12 CFR Part 210)

ACTION TAKEN: In May 1981, the Board issued for public comment proposals to amend Subpart A of Regulation J by (1) redefining the terms "sender" and "bank" to include a depository institution as defined in 12 U.S.C. 461(b), namely, banks and thrift institutions, (2) imposing on a paying bank that returns an item an indemnity for loss or expense resulting from return of the item beyond the deadlines provided in the regulation, (3) incorporating provisions for collecting coupons and other securities similar to provisions regarding the payment and return of cash items, and (4) imposing a warranty and related indemnity regarding wire advice of nonpayment on a paying bank which returns a cash item (46 FR 24576, May 1, 1981). After considering the comments received, the Board adopted the first proposal in substantially the form proposed (46 FR 42059, August 19, 1981). Final action on the other three items is expected during the next six months. In its consideration of these proposals, the Board has taken account of the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601-612, and has concluded that none are expected to have a significant economic impact on a substantial number of small entities.

AUTHORITY: Sections 13, 16, and 11(i) of the Federal Reserve Act, 12 U.S.C. 342, 248(o), 360, and 248(i).

DOCKET NUMBER: R-0357.

STAFF CONTACT: Joseph R. Alexander, Attorney, Legal Division, (202-452-2489).

**6. Regulation: T—Credit by Brokers and Dealers (12 CFR Part 220)

ANTICIPATED ACTION: In the last Semiannual Agenda, reference was made to possible consideration of an amendment to Regulation T dealing with back office procedures of brokers-dealers.

Such an amendment has been proposed as part of the current revision of Regulation T (46 FR 32592, June 24, 1981). The Board will review the comments on the proposal and is expected to take further action during the next six months. (See entry B.4.)

AUTHORITY: Securities Exchange Act of 1934, 15 U.S.C. 78g and w.

STAFF CONTACT: Laura Homer, Securities Credit Officer, Bruce Brett,

Securities Regulation Analyst, Division of Banking Supervision and Regulation, (202-452-2781).

†7. Regulation: T—Credit by Brokers and Dealers (12 CFR Part 220)**

ACTION TAKEN: In June 1981, the Board issued for public comment a proposed amendment to Regulation T to provide special rules for margin on options written on Treasury or Government National Mortgage Association (GNMA) securities (46 FR 32033, June 19, 1981).

The Securities and Exchange Commission on February 24, 1981, approved a Chicago Board Options Exchange proposal to trade options on GNMA securities. The Board's existing margin requirements for options on equity securities will be applicable unless relaxing changes are made for options on fixed income securities. If special rules are not adopted, the markets for these risk-transferring instruments may not be economically viable. Sectors affected by such a proposal would include securities brokers, government securities dealers, mortgage bankers, option exchanges, and the general public who may wish to take positions in the options market.

The Board's June 16, 1981 action requested public comment on two alternative margin-setting proposals for options on government and government agency debt issues. One such proposal would permit brokers and dealers to give "good faith" loan value to an option which has been purchased and would permit a "good faith" margin when an option contract is written. Under the alternate proposal, the Board would set a margin requirement of 130 percent of the option premium, plus $1,000 for the initial writing of all uncovered option contracts on exempt debt securities. Under this proposal no option contract would be permitted to have loan value.

The Board will review the comments on the proposals and is expected to take further action during the next six months.

AUTHORITY: Securities Exchange Act of 1934, 15 U.S.C. 78 g and w.
DOCKET NUMBER: R-0082.
STAFF CONTACT: Laura Homer, Securities Credit Officer, Bruce Brett, Securities Regulation Analyst, Division of Banking Supervision and Regulation (202-452-2781).

****8. Regulation: Y—Bank Holding Companies and Change in Bank Control (12 CFR 225.7)**

ACTION TAKEN: In February 1979, the Board adopted regulations to implement the Change in Bank Control Act, under which any person seeking to acquire control of any insured bank or bank holding company must provide 60 days' prior written notice to the appropriate Federal banking agency. At the same time the Board invited public comment on the final regulations (44 FR 7229, February 6, 1979); following review of the comments received, the Board will determine whether further action should be taken.

AUTHORITY: Change in Bank Control Act of 1978, 12 U.S.C. 1817(j).
DOCKET NUMBER: R-0199.
STAFF CONTACT: Carl Howard, Senior Attorney, Legal Division (202-452-3786); Jack M. Egertson, Assistant Director, Division of Banking Supervision and Regulation (202-452-3408).

9. Regulation: Y—Bank Holding Companies and Change in Bank Control (12 CFR 225.4(a))

ACTION TAKEN: In June 1981, the Board issued for public comment a proposed amendment to Regulation Y to include the issuance of travelers checks in the list of activities permissible for bank holding companies (46 FR 32594, June 24, 1981).

Before a bank holding company is allowed to engage in a nonbanking activity, the Board must first determine that (1) the activity is "so closely related to banking * * * as to be a proper incident thereto." and (2) permitting the particular company to engage in the activity is in the public interest. The Board may make the "closely related" determination by issuing an order in an individual case upon request or by adopting a regulation; the public interest determination is always made on a case-by-case basis. On several occasions the Board has found by order that the issuance of travelers checks by particular holding companies is closely related to banking. In view of the increased number of applications to engage in this activity, the Board is proposing to make the general "closely related" determination by regulation.

The change would impose no additional burden on any bank holding company; indeed, it should facilitate the application process for any company wishing to engage in the activity because the company would merely have to refer to the regulation without offering specific evidence on the "closely related" test.

The Board will review the comments received on the draft proposal and is expected to take final action on the proposal during the next six months.

AUTHORITY: Bank Holding Company Act, 12 U.S.C. 1843(c)(8).
DOCKET NUMBER: R-0361.
STAFF CONTACT: Richard Whiting, Senior Attorney, Legal Division (202-452-3779); Susan Weinberg, Attorney, Legal Division (202-452-3707).

****10. Guidelines for Enforcement of the Equal Credit Opportunity and Fair Housing Acts**

ACTION TAKEN: In July 1978, the five Federal financial regulatory agencies—Comptroller of the Currency, Federal Deposit Insurance Corporation, Federal Home Loan Bank Board, National Credit Union Administration, and the Federal Reserve Board—issued for public comment proposed uniform guidelines for enforcement of the Equal Credit Opportunity and Fair Housing Acts (43 FR 29256, July 6, 1978). The guidelines would specify the kind of corrective action a creditor would be requested to take for violations of the more substantive provisions of the Equal Credit Opportunity Act (Regulation B) and the Fair Housing Act. Based on the comments received and further deliberation, the agencies, under the direction of the Federal Financial Institutions Examination Council, have developed a policy statement and agency guidelines for implementing the policy statement. These have been recommended to the agencies for possible adoption by October 1981.

AUTHORITY: Equal Credit Opportunity Act, 15 U.S.C. 1691, *et seq.*, Federal Deposit Insurance Act, 12 U.S.C. 1818(b).

DOCKET NUMBER: R-0168.

STAFF CONTACT: Jerauld C. Kluckman, Associate Director, Division of Consumer and Community Affairs (202-452-3401).

C. REGULATORY MATTERS THE BOARD MAY CONSIDER DURING THE NEXT SIX MONTHS

†1. Regulation: E—Electronic Fund Transfers (12 CFR Part 205)

ANTICIPATED ACTION: The Board has been asked by financial institutions to consider publishing for comment amendments to the regulation concerning (1) a limited exemption for small institutions that participate in the federal government's direct deposit program, but do not offer other electronic services subject to the regulation; (2) a partial exemption from the periodic statement requirements for savings accounts that are accessible by intra-institutional telephone transfers; and (3) modification of certain requirements for institutions that offer electronic services internationally.

The suggested amendments, if proposed and adopted by the Board, would relax existing regulatory burdens for a number of small institutions (under the first two items listed above) and for

institutions that are members of debit-credit card networks (under the third item). It is believed that these proposed changes would not result in any loss of significant protections for consumers.

The Board is expected to consider, within the next six months, whether to publish these proposals.

AUTHORITY: Electronic Fund Transfer Act, 15 U.S.C. 1693b.

STAFF CONTACT: Dolores S. Smith, Assistant Director, Division of Consumer and Community Affairs (202-452-2412).

†2. Regulation: G—Securities Credit by Persons Other than Banks, Brokers, and Dealers (12 CFR Part 207); T—Credit by Brokers and Dealers (12 CFR Part 220); and U—Credit by Banks for the Purpose of Purchasing or Carrying Margin Stocks (12 CFR Part 221)

ANTICIPATED ACTION: The Board will consider issuing for public comment proposed amendments to the requirements set forth in Regulations G, T and U for initial and continued inclusion on the List of OTC Margin Stocks.

In July 1969, the Board adopted criteria for including stocks on the List of OTC Margin Stocks. In discussions leading to the selection of the criteria, the Board indicated that (a) stocks to be included on the List should have market characteristics similar to exchange-listed securities; (b) manipulation by issuers to permit or prevent inclusion or non-inclusion should be made as difficult as possible, and (c) fluctuations in the List should be minimized.

Recommended changes in the OTC List criteria are the result of a staff review of the OTC Margin stock listing and continued listing requirements in light of recent developments in the securities markets in general, the OTC market in particular, and staff experience with administering the requirements. It is believed that revising the criteria is especially appropriate at this time because of a recent decision to revise the List three times a year commencing in 1982 rather than twice a year as is the current practice. This has been a frequent recommendation of the securities industry.

Stocks included on the List of OTC Margin Stocks may be bought and held on margin at brokerage firms, and some market participants believe this broadens the market for these stocks. To the extent this is true, changes in the listing criteria may affect the future growth of the List and might have some effect on the ability of small corporations to raise additional equity capital from the public.

AUTHORITY: Securities Exchange Act of 1934, 15 U.S.C. 78g and w.

STAFF CONTACT: Robert S. Plotkin, Assistant Director; Laura Homer, Securities Credit Officer; Jamie Lenoci, Financial Analyst, Division of Banking Supervision and Regulation, (202-452-2781).

† **3. Regulation: K—International Banking Operations (12 CFR Part 211)

ANTICIPATED ACTION: The Board will consider publishing for comment a revised proposal that would permit Edge Corporations to provide a broader range of banking services than is now permissible to a limited class of customers. While Edge Corporations are in most instances owned by major banks, the proposal would also afford scope for smaller banks to compete more effectively in development and supply of services to support U.S. trade. Pursuant to the International Banking Act, a similar proposal was published for comment in February 1979 (44 FR 10509, February 21, 1979), to improve the competitive position of Edge Corporations.

Action on this matter would represent a relaxation of regulatory burden on Edge Corporations and would permit a shift to a more cost-effective method of supervision of Edge Corporations.

AUTHORITY: International Banking Act of 1978, 12 U.S.C. 3101. Federal Reserve Act 12 U.S.C. 601 and 615.

STAFF CONTACT: James S. Keller, Senior Attorney, Legal, (202-452-3582); Henry S. Terrell, Chief, International Banking Section, Division of International Finance, (202-452-3768).

4. Regulation: K—International Banking Operations (12 CFR Part 211)

ANTICIPATED ACTION: The Board will consider publishing for comment an amendment to Regulation K that would permit Edge Corporations in the United States to offer certain investment, financial and economic advisory services. These services would include providing general economic information and certain portfolio investment advice, as well as managing investment portfolios for non-U.S. customers of the Edge Corporation.

This proposal, in response to a request by a U.S. banking organization in accordance with Regulation K, would enable Edge Corporations to offer a service that currently is not on the list of activities permissible for an Edge Corporation in the U.S. The proposal would impose no additional burden on any Edge Corporation.

AUTHORITY: Federal Reserve Act, 12 U.S.C. 616. International Banking Act of 1978, 12 U.S.C. 611.

STAFF CONTACT: Melanie L. Fein, Attorney, Legal Division, (202-452-3594); Henry N. Schiffman, Division of Banking Supervision and Regulation, (202-452-2525).

5. Regulation: T—Credit by Brokers and Dealers (12 CFR 220.4(c))

ANTICIPATED ACTION: The Board will consider issuing for public comment either an amendment to the special cash account provision of Regulation T or an interpretation to facilitate the covered writing of options by institutions and other entities which are prevented by law from using margin accounts. Because of processing delays in delivery versus payment arrangements in which escrow receipts from banks are used, brokers have asked for more flexibility than presently permitted.

Lifting the Securities and Exchange Commission's moratorium on option expansion has increased the difficulties encountered by brokers, and the Board's staff has verified with banks that a problem exists. With respect to the Regulatory Flexibility Act (5 U.S.C. 601-612), it is not expected that such a proposal would be likely to have a significant economic impact on a substantial number of small entities.

AUTHORITY: Securities Exchange Act of 1934, 15 U.S.C. 78g and w.

STAFF CONTACT: Robert Lord, Attorney, Securities Regulation Section, Division of Banking Supervision and Regulation, (202-452-2781).

6. Regulation: T—Credit by Brokers and Dealers (12 CFR Part 220)

ANTICIPATED ACTION: The Board will consider issuing for public comment a proposed amendment to Regulation T to permit letters of credit to be used as collateral in connection with the lending of securities. The current rule (12 CFR 220.6(h)) permits only cash to be used as collateral when creditors borrow securities to make delivery in the cases of short sales, failures to receive securities required to be delivered, or in other circumstances involving settlement of securities transactions. In addition, staff has expressed the view that Treasury bills may also be used as collateral.

Members of the securities industry and institutional lenders of securities have requested Board staff to review Regulation T with a view toward permitting the use of letters of credit in securities lending transactions. They argue that a low-cost alternative to cash

deposits in such transactions is necessary under current economic conditions. They also argue that the use of letters of credit would be more efficient since it eliminates transfers of money and book entry problems. In addition, the newly revised Federal Bankruptcy Code has created uncertainty over the rights of securities lenders to the cash collateral deposited by a broker/borrower in the event of the latter's insolvency. Finally, the Department of Labor has recently given permission to employee benefit plans to lend securities and take back letters of credit as collateral. It is not expected that such a proposal would have an adverse impact on any small institutions.

AUTHORITY: Securities Exchange Act of 1934, 15 U.S.C. 78g and w.

STAFF CONTACT: Laura Homer, Securities Credit Officer, Division of Banking Supervision and Regulation, (202-452-2781).

7. Regulation: Y—Bank Holding Companies and Change in Bank Control (12 CFR 225.4(a)(9))

ANTICIPATED ACTION: The Board will consider issuing for public comment a proposal to amend Regulation Y to authorize bank holding companies to act as agents for the sale of renewal insurance.

In rulemaking proceedings to conform the Board's insurance agency regulation (Section 225.4(a)(9) of Regulation Y) to a court decision, the Board in July 1981, deleted the authority for bank holding companies to sell renewal insurance. In connection with that rulemaking proceeding, the Board had received comments from several organizations requesting that the authority for bank holding companies to sell renewal insurance be re-added to Regulation Y. In addition the Board received a request opposing the inclusion of renewal insurance within the final regulation. The proposal was deferred pending final Board action on the rulemaking proceedings referred to above; now that those proceedings are completed the Board will consider issuing for public comment a proposal to amend Regulation Y to authorize bank holding companies to act as agents for the sale of renewal insurance.

If the Board determines to issue this proposal, it would seek comment from the public on whether the activity is "so closely related to banking * * * as to be a proper incident thereto," including comment on whether performance of the activity by an affiliate of a bank holding company can reasonably be expected to produce benefits to the public that outweigh possible adverse effects. The proposal would impose no additional burden on any bank holding company.

AUTHORITY: Bank Holding Company Act. 12 U.S.C. 1843(c)(8).

STAFF CONTACT: Richard Whiting, Senior Attorney, Legal Division, (202-452-3779).

****8. Regulation: AA—Unfair or Deceptive Acts and Practices (12 CFR Part 227)**

ANTICIPATED ACTION: The Board is required by the Federal Trade Commission Act to adopt a rule applicable to the acts or practices of banks that is substantially similar to a trade regulation rule adopted by the FTC prohibiting certain acts or practices of other creditors as unfair or deceptive, unless the Board finds that such acts or practices of banks are not unfair or deceptive or that implementation of a similar rule with respect to banks would seriously conflict with essential monetary and payments systems policies of the Board. In response to a proposed FTC rule (known as the "creditor holder-in-due-course rule") governing the preservation of consumers' claims and defenses, the Board published a comparable proposal for comment (41 FR 7110, February 17, 1976). The proposal would require the insertion in certain credit contracts of a notice preserving a consumer's claims and defenses against a seller of goods or services so that they can be raised against any holder of the contract. The FTC published a revised version of its creditor rule for comment in November 1979, and is expected to take final action sometime in 1981. When a final FTC rule is adopted, the Board will consider publishing a new proposal for comment or taking other appropriate regulatory action.

AUTHORITY: Section 18(f) of Federal Trade Commission Act, 15 U.S.C. 41 *et seq.*

DOCKET NUMBER: R-0006.

STAFF CONTACT: Dolores S. Smith, Assistant Director, Division of Consumer and Community Affairs, (202-452-2412).

****9. Regulation: Rules Regarding Availability of Information (12 CFR Part 261)**

ANTICIPATED ACTION: The Board will consider issuing for public comment certain amendments to its Rules Regarding Availability of Information in order to bring them into conformity with existing information disclosure law as it has developed since the regulation was last amended, and also in order to take advantage of the staff's experience working with the Freedom of Information Act. With respect to the Regulatory Flexibility Act (5 U.S.C. 601-612), it is not expected that proposals in the area would create any additional burden for small businesses.

AUTHORITY: Freedom of Information Act, 5 U.S.C. 552.

STAFF CONTACT: Stephen L. Siciliano, Senior Counsel, Legal Division, (202-452-3920).

****10. Regulatory Improvement Project**

ANTICIPATED ACTION: The Board's Regulatory Improvement Project involves, among other things, a substantive, zero-base review of all Federal Reserve regulations that affect the public to determine (1) the fundamental objectives of the regulation and the extent to which it is meeting current policy goals, (2) nonregulatory alternatives that would accomplish the objectives, (3) costs and benefits of the regulation, (4) unnecessary burdens imposed by the regulation, and (5) the clarity of the regulation.

During the next six months, the staff is expected to complete its review of Regulation Y (Bank Holding Companies and Change in Bank Control), and public comment on proposed changes may be sought during this period. In addition, the Project will be continuing its review of the "margin credit" regulations; Regulation G (Securities Credit by Persons Other than Banks, Brokers, or Dealers), Regulation T (Credit by Brokers and Dealers), Regulation U (Credit by Banks for the Purposes of Purchasing or Carrying Margin Stocks), and Regulation X (Rules Governing Borrowers Who Obtain Securities Credit). The staff will be reviewing the comments that were due by September 15, 1981, on some margin credit proposals, and additional requests for public comment may be made over the coming six months. The Project will also participate in other regulatory action listed in this agenda to ensure that the objectives of the Project are met.

AUTHORITY: Financial Simplification Act of 1980, 12 U.S.C. 3501.

STAFF CONTACT: Barbara R. Lowrey, Assistant Secretary, Office of the Secretary, (202-452-3742).

Board of Governors of the Federal Reserve System, September 24, 1981.

Barbara R. Lowrey,

Assistant Secretary of the Board.

[FR Doc. 81-28447 Filed 9-30-81; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 81-NW-55-AD]

Airworthiness Directive; Lockheed-California Company Model L-1011 Series Airplanes

AGENCY: Federal Aviation (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes a new Airworthiness Directive (AD) applicable to Lockheed L-1011 series airplanes that would require an inspection for fuel leaks from the No. 2 engine and APU fuel lines in the after body compartment, and an inspection for hydraulic fluid leakage in the right hand horizontal stabilizer servo area. This action is necessary to prevent a possible fire hazard in an area of the aircraft which is not equipped with a fire detection or extinguishing system.

DATE: Comments must be received no later than November 20, 1981. Compliance schedule as prescribed in the body of the AD unless previously accomplished.

ADDRESSES: The applicable service information may be obtained from: Lockheed-California Company, P.O. Box 551, Burbank, California 91520, Attention: Commercial Support Contracts, Dept. 63-11, U-33, B-1. This information also may be examined at FAA Northwest Region, 9010 East Marginal Way South, Seattle, Washington 98108, or 4344 Donald Douglas Drive, Long Beach, California 90808.

FOR FURTHER INFORMATION CONTACT: Duane Naff, Aerospace Engineer, Propulsion Branch, ANW-140L, Federal Aviation Administration, Los Angeles Area Aircraft Certification Office, Northwest Region, 4344 Donald Douglas Drive, Long Beach, California 90808, telephone (213) 548-2835.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals 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. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRMS

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Northwest Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 81-NW-55-AD, 9010 East Marginal Way South, Seattle, Washington 98108.

Discussion: Recent tests have revealed that auxiliary power unit (APU) exhaust shroud external surface temperatures are higher than indicated by previous testing. The shroud surface temperature can exceed 650°F in high ambient temperatures with high APU loads. This represents a potential ignition source. The area in which the shroud is located contains hydraulic components and is open to the general afterbody compartment which contains engine and APU fuel feed lines. This area does not have firewalls nor fire detection nor fire extinguishing systems.

If a leak should occur from the fuel lines within the afterbody cavity or from the hydraulic components adjacent to the APU shroud, flammable fluid or vapors could be carried to the heated shroud, which could become an ignition source, thus causing a fire hazard.

Since this condition is likely to exist or develop in other airplanes of the same type design, an airworthiness directive is being proposed which requires initial and repetitive leak tests and visual inspections of the fuel line couplings and fittings and the hydraulic actuators and servos located in the afterbody compartment. At the present time a repair or modification which represents terminating action for this AD does not exist. The FAA, however, is in the process of evaluating a modification to the shroud which, if approved, will eliminate the need for the proposed repetitive inspections.

The Proposed Amendment

Accordingly, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) by adding the following new Airworthiness Directive:

Lockheed-California Company: Applies to all Lockheed Model L-1011 Series airplanes, certificated in all categories.

Compliance required as indicated, unless previously accomplished.

A. To detect leakage of flammable fluids in areas from which fluids or vapors could reach the auxiliary power unit exhaust shroud, accomplish the following:

1. Within 400 hours time in service from the effective date of this AD, and at repetitive intervals not to exceed 400 hours time in service thereafter, perform lead tests and visual inspections as specified in the accomplishment instructions of Lockheed Service Bulletin 093-49-058 dated July 31, 1981, or later revisions approved by the Chief, Los Angeles Area Aircraft Certification Office, FAA Northwest Region.

2. If fuel or hydraulic fluid leakage is detected, repair or replace defective parts or components with serviceable units before further flight.

B. Within 400 hours time in service from the effective date of this AD, and at repetitive intervals not to exceed 1600 hours time in service thereafter, remove the drain plugs from each double "o" ring, wig-o-flex coupling in the section of the number 2 engine fuel fluid line located in the afterbody compartment (figure B of Service Bulletin 093-49-058) and pressurize the line in accordance with paragraph 2.A(2) of the Service Bulletin. There should be no fuel leakage. If fuel leakage is detected, repair or replace defective parts or components with serviceable units before further flight.

C. Special flight permits may be issued in accordance with FARs 21.197 and 21.199 to operate airplanes to a base in order to comply with the inspection requirements of this AD.

D. Upon request of the operator, an FAA maintenance inspector, subject to prior approval by the chief, Los Angeles Area Aircraft Certification Office, FAA Northwest Region, may adjust the repetitive inspection intervals specified in this AD to permit compliance at an established inspection period of the operator if the request contains substantiating data to justify the change for that operator.

E. Alternative means of compliance with this AD, which provide an equivalent level of safety, may be used when approved by the Chief, Los Angeles Area Aircraft certification Office, FAA Northwest Region.

The manufacturer's specifications and procedures indentified and described in this directive are incorporated herein and made a part hereof pursuant to 5 U.S.C. 552(a)(1).

All persons affected by this proposal who have not already received these documents from the manufacturer may obtain copies upon request to the Lockheed-California Company, P.O. Box 551, Burbank, California 91520, Attention: Commercial Support Contracts, Dept. 63-11, U-33, B-1. These documents also may be examined at FAA Northwest Region, 9010 East Marginal Way South, Seattle, Washington 98108, or 4344 Donald Douglas Drive, Long beach, California 90808.

(Secs. 313(a), 601, and 603, Federal Aviation act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 1423; Sec. 6(c)), Department of

Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.85)

Note.—The FAA has determined that this proposed regulation involves a regulation which is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979), and will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act, since it involves few, if any, such entities. A draft evaluation has been prepared for this proposed regulation and has been placed in the docket. A copy of it may be obtained by contacting the person identified under the caption "For Further Information Contact."

Issued in Seattle, Washington, on September 18, 1981.

Robert O. Brown,

Acting Director, Northwest Region.

[FR Doc. 81-28597 Filed 9-30-81; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Part 39

[Docket No. 81-NW-63-AD]

Airworthiness Directives: Lockheed-California Company Model L-1011 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes an Airworthiness Directive (AD) applicable to Lockheed-California Company L-1011 series airplanes that would require installation of a wire harness shield and a one-time inspection of the APU generator feeder cables for either insufficient or excessive slack; to be followed by the corrective action necessary. Incidents of arcing related to abrasion and chafing of the cable harness have been reported. This AD is needed to ensure the integrity of the APU electrical generating system and prevent a possible fire hazard.

DATES: Comments must be received no later than November 20, 1981. Compliance schedule as prescribed in the body of the AD, unless already accomplished.

ADDRESSES: The applicable service information may be obtained from: Lockheed-California Company, P.O. Box 551, Burbank, California 91520, Attention: Commercial Support Contracts, Dept. 63-11, U-33, B-1. This information also may be examined at FAA Northwest Region, 9010 East Marginal Way South, Seattle, Washington 98108, or 4344 Donald Douglas Drive, Long Beach, California 90808.

FOR FURTHER INFORMATION CONTACT: Lonnie Tarver, Aerospace Engineer, Systems and Equipment Branch, ANW-130L, Federal Aviation Administration, Northwest Region, Los Angeles Area Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California 90808, telephone (213) 548-2831.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals 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. A report summarizing each Federal Aviation Administration-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRMS

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Northwest Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 81-NW-63-AD, 9010 East Marginal Way South, Seattle, Washington 98108.

Discussion: There have been four (4) reported instances of APU generator feeder cable malfunctions which have resulted from chafing or abrasion of the cables. One instance resulted in minor damage to a stringer as a consequence of arcing. Chafing or abrasion may be caused by either excessive or insufficient cable slack in conjunction with inadequate clamping procedures. In addition, abrasion of cables has resulted from inadvertent mispositioning of the cables during maintenance.

To minimize damage during maintenance activity, Lockheed issued L-1011 Service Bulletin 093-25-254 dated October 25, 1976, which provides a protective wire harness shield. Lockheed also issued L-1011 Service Bulletins 093-24-097 dated November 20, 1980 and 093-53-182 dated November 18, 1980 relating to cable clamping modifications to minimize chafing or abrasion damage. Therefore, in consideration of the hazardous consequence of feeder cable arcing, and the need for the integrity of this power source to be maintained as an alternate generating system, the Federal Aviation Administration considers the proposed AD to be necessary.

The Proposed Amendment

Accordingly, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) by adding the following new Airworthiness Directive:

Lockheed-California Company: Applies to Lockheed Model L-1011-385 series airplanes certificated in all categories. Compliance required within six months from the effective date of this AD, unless already accomplished.

To prevent APU electrical power supply cable arcing resulting from chafing or abrasion, accomplish the following:

A. Install wire harness shield per Part 2 of Lockheed L-1011 Service Bulletin 093-25-254 dated October 25, 1976, or later revisions approved by the Chief, Los Angeles Area Aircraft Certification Office, FAA Northwest Region.

B. Perform a one-time inspection of APU feeder harness J130 for clearance from stringer No. 42, and install a harness support if found necessary, in accordance with Part 2 of Service Bulletin 093-53-182 dated June 18, 1980, or later revisions approved by the Chief, Los Angeles Area Aircraft Certification Office, FAA Northwest Region.

C. Perform a one-time inspection of APU feeder cable harness No. J130 and harness No. X043 and install wire harness support if found necessary, in accordance with part 2 of Service Bulletin 093-24-097 dated November 20, 1980, or later revisions approved by the Chief, Los Angeles Area Aircraft Certification Office, FAA Northwest Region.

D. Alternative inspections, repairs, or other methods which provide an equivalant level of safety, may be used when approved by the Chief, Los Angeles Area Aircraft Certification Office, FAA Northwest Region.

The manufacturer's specifications and procedures identified and described in this directive are incorporated herein and made a part hereof pursuant to 5 U.S.C. 552(a)(1).

All persons affected by this directive who have not already received these documents from the manufacturer may obtain copies upon request to Lockheed-California Company, P.O. Box 551, Burbank, California 91520, Attention: Commercial Support Contracts, Dept. 63-11, U-33, B-1. These documents also may be examined at FAA Northeast Region, 9010 East Marginal Way South, Seattle, Washington 98108, or 4344 Donald Douglas Drive, Long Beach, California 90808.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 1423; Sec. 6(c), Department of

Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.85)

Note.—The Federal Aviation Administration has determined that this proposed regulation involves a regulation which is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979), and will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act, since it involves few, if any, such entities. A draft evaluation has been prepared for this proposed regulation and has been placed in the docket. A copy of it may be obtained by contacting the person identified under the caption "FOR FURTHER INFORMATION CONTACT"

Issued in Seattle, Washington on September 21, 1981.

Charles R. Foster,

Director, Northwest Region.

[FR Doc. 81-28602 Filed 9-30-81; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 81-NW-64-AD]

Airworthiness Directives: McDonnell Douglas Model DC-9 and C-9 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: This notice proposes an Airworthiness Directive (AD) that would require modification or replacement of the tailcone lock housing on Kevlar tailcones installed on Douglas Model DC-9 series airplanes. The lighter-weight Kevlar tailcone has been shown to shift its position on the latches during release resulting in tailcone hangup. This AD is needed to assure proper operation of the tailcone emergency exit in the event an emergency evacuation is required.

DATE: Comments must be received no later than November 20, 1981. Compliance schedule as prescribed in the body of the AD, unless already accomplished.

ADDRESSES: The applicable service information may be obtained from: McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1-750 (54-60). This information also may be examined at FAA Northwest Region, 9010 East Marginal Way South, Seattle, Washington 98108, or 4344 Donald Douglas Drive, Long Beach, California 90808.

FOR FURTHER INFORMATION CONTACT: Gilbert L. Thompson, Aerospace Engineer, Systems and Equipment Branch, ANW-130L, Federal Aviation Administration, Northwest Region, Los Angeles Area Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California 90808, telephone (213) 548-2833.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals 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. A report summarizing each Federal Aviation Administration-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRMS

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Northwest Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 81-NW-64-AD, 9010 East Marginal Way South, Seattle, Washington 98108.

Discussion:

During recent production DC-9 tailcone drop tests, the lightweight Kevlar tailcone failed to release completely and as a result did not separate from the aircraft. As a consequence, the emergency evacuation slide could not be deployed as required for emergency evacuation.

Investigation revealed that when the tailcone release handle was pulled, the lockpin on the fuselage latching mechanism would catch the edge of the relief cutout in the tailcone lock housing. This release problem is attributed to the lightweight Kevlar tailcone shifting its position on the latches during the release sequence, allowing the tailcone to hand up. Prior design heavier fiberglass tailcones have not exhibited similar release problems. This proposed AD is necessary to assure that the tailcone emergency exit functions properly on those DC-9 aircraft configured with Kevlar tailcones.

The Proposed Amendment

Accordingly, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) by adding the following new Airworthiness Directive:

McDonnell Douglas: Applies to McDonnell Douglas Model DC-9-10, -20, -30, -40, -50, and -80 series airplanes, including C-9A, C-9B, and VC-9C airplanes, certificated in all categories. Compliance required within the next 900 hours time-in-service from the effective date of this AD, unless already accomplished. To assure proper operation of the tailcone emergency exit tailcone release mechanism on aircraft utilizing tailcone assemblies P/N 5910233-505 or P/N 5910233-507, accomplish the following:

A. Replace or modify the tailcone lock housing as outlined in the Accomplishment Instructions of McDonnell Douglas DC-9 Service Bulletin 53-158 dated July 15, 1981, or later revisions approved by the Chief, Los Angeles Area Aircraft Certification Office, FAA Northwest Region.

B. Alternate means of compliance with the AD which provide an equivalent level of safety may be used when approved by the Chief, Los Angeles Area Aircraft Certification Office, FAA Northwest Region.

C. Special flight permits may be issued in accordance with FARs 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

The manufacturer's specifications and procedures identified and described in this directive are incorporated herein and made a part hereof pursuant to 5 U.S.C. 552(a)(1).

All persons affected by this proposal who have not already received these documents from the manufacturer may obtain copies upon request to the McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1-750 (54-60). These documents also may be examined at FAA Northwest Region, 9010 East Marginal Way South, Seattle, Washington 98108, or 4344 Donald Douglas Drive, Long Beach, California 90808.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 1423; Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.85)

Note: The FAA has determined that this proposed regulation involves a regulation which is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979), and will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act, since it involves few, if any, such entities. A draft evaluation has been prepared for this

proposed regulation and has been placed in the docket. A copy of it may be obtained by contacting the person identified under the caption "FOR FURTHER INFORMATION CONTACT"

Issued in Seattle, Washington, on September 18, 1981.

Robert O. Brown,

Acting Director Northwest Region.

[FR Doc. 81-28615 Filed 9-30-81; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 81-AGL-36]

Proposed Alteration of VOR Federal Airway

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to revoke a segment of VOR Federal Airway V-279 between Gunne, OH, Intersection and the Columbus, OH, nondirectional radio beacon (RBN). The Columbus RBN will be decommissioned and that segment of V-279 is no longer required for air traffic control.

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

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA Great Lakes Region, Attention: Chief, Air Traffic Division, Docket No. 81-AGL-36, 2300 East Devon, Des Plaines, IL 60018.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, D.C.

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

FOR FURTHER INFORMATION CONTACT: 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) 426-8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 81-AGL-36." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

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

The Proposal

The FAA is considering an amendment to § 71.123 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to eliminate a segment of VOR Federal Airway V-279 between Gunne, OH, Intersection and the Columbus, OH, nondirectional radio beacon (RBN). The Columbus RBN is scheduled for decommissioning and we have determined this airway segment is not necessary for air traffic control purposes. This would reduce chart clutter and return airspace for public use. Section 71.123 of Part 71 was republished in the Federal Register on January 2, 1981 (46 FR 409).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposed to amend § 71.123 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as republished (46 FR 409) as follows:

V-279 [Amended]

By deleting the words "From the Columbus, OH, RBN, INT Findlay, OH, 146° and Rosewood, OH, 045° radials;" and substituting for them the words "From INT Findlay, OH, 146° and Rosewood, OH, 083° radials; to Findlay;"

(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 proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal; (4) is appropriate to have a comment period of less than 45 days; and (5) at promulgation, will not have a significant effect on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Issued in Washington, D.C., on September 23, 1981.

John W. Baier,

Acting Chief, Airspace and Air Traffic Rules Division.

[FR Doc. 81-28438 Filed 9-30-81; 8:45 am]

BILLING CODE 4910-13-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[File No. 9103]

The Times Mirror Co.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order, accepted subject to final Commission approval, would require, among other things, a Los Angeles, California, publisher, in connection with the sale of retail display advertising in the Los Angeles Times and its suburban sections, to cease charging different prices per line to competing purchasers of advertising, unless the difference in price results from the use of an Annual

Cumulative Volume Discount rate, as prescribed in the order. Should the firm elect to use the volume discount system prescribed, the company would be required to reduce the amount of the discounts to percentages allowed by the order and grant a specified extra discount to advertisers which provide their advertisements in "camera ready" form. Additionally, the order would bar other discounts, credits or commissions which are not functionally available to all purchasers of display advertising. The order would not be meant to infringe upon or limit the company's publishing standards and policies and would not prevent the company from asserting certain defenses in any action brought to enforce this order. Except for recordkeeping, compliance obligations under this order would terminate in ten years.

DATE: Comments must be received on or before November 30, 1981.

ADDRESS: Comments should be directed to: Office of the Secretary, Federal Trade Commission, 6th St. and Pennsylvania Ave., NW., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: FTC/C, Benjamin Sharp, Washington, D.C., 20580, (202) 523-3601, or Robert J. Enders, Director, 7R, Los Angeles Regional Office, Federal Trade Commission, 11000 Wilshire Blvd., Los Angeles, Calif. 90024, (213) 834-7575.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 3.25(f) of the Commission's rules of practice (16 CFR 3.25(f)), notice is hereby given that the following consent agreement containing a consent order to cease and desist and an explanation thereof, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(14) of the Commission's rules of practice (16 CFR 4.9(b)(14)).

Agreement Containing Consent Order To Cease and Desist

The agreement herein, by and between The Times Mirror Company ("Times Mirror"), a corporation, hereafter sometimes referred to as respondent, by its duly authorized officer and its attorney, and counsel for the Federal Trade Commission, is entered into in accordance with the Commission's rules governing consent order procedures. In accordance therewith the parties hereby agree that:

1. Times Mirror is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with an office and its principal place of business located at Times Mirror Square, Los Angeles, California 90053.

2. Times Mirror has been served with a copy of the Complaint issued by the Federal Trade Commission on July 27, 1977, charging it, *inter alia*, with violation of Section 5 of the Federal Trade Commission Act and Times Mirror has filed an Answer to the Complaint denying, *inter alia*, said charge.

3. Times Mirror admits that the Commission has jurisdiction in this matter pursuant to Section 5 of the Federal Trade Commission Act.

4. Times Mirror waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law; and

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the Order entered pursuant to this Agreement.

5. This Agreement shall not become a part of the public record of the proceeding unless and until it is accepted by the Commission. If this Agreement is accepted by the Commission it will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter either may issue and serve its decision accepting the following Order in disposition of the proceeding or may withdraw its acceptance of this Agreement and so notify Times Mirror in which event the Commission may take such action as it may consider appropriate.

6. This Agreement is for settlement purposes only, is entered into without trial or final adjudication of any issue of fact or law herein and without the taking of any evidence or testimony, and does not constitute any evidence or any admission by Times Mirror that the law has been violated as alleged in the Complaint.

7 This Agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 3.25(f) of the Commission's rules, the Commission may without further notice to Times Mirror, (1) issue its decision containing the following Order in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the Order shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The Order shall become final upon service. Delivery by the U.S. Postal Service of the decision containing the agreed-to Order to Times Mirror's address as stated in this Agreement shall constitute service. Times Mirror waives any right it may have to any other manner of service. Count I of the Complaint and this Agreement may be used in construing the terms of the Order and no agreement, understanding, representation, or interpretation not contained in the Order or in this Agreement may be used to vary or to contradict the terms of the Order.

8. Times Mirror has read the Complaint and the Order contemplated hereby. It understands that, once the Order has been issued, it will be required to file one or more compliance reports setting forth the manner in which it intends to comply, is complying, and/or has complied with the Order. Times Mirror further understands that it may be liable for civil penalties in the amount provided by law for each violation of the Order after it becomes final.

9. In the event that the Order contemplated hereby shall become final, Times Mirror agrees to dismiss its appeal to the United States Court of Appeals for the Ninth Circuit, No. 78-3683, from the Order of the United States District Court for the Central District of California, entered October 17, 1978 in Civil Action No. 78-3422 LEW, entitled "The Times Mirror Company, Plaintiff, v. Federal Trade Commission, et al., defendants" It is expressly agreed that each party to the civil action is to bear its own costs, including all costs on appeal and all costs before the district court.

10. It is expressly agreed that, should the Commission reject, alter, modify or otherwise change any portion of the proposed Order prior to its becoming final, Times Mirror shall be relieved of all undertakings, commitments and other provisions contained in this Agreement and proposed Order and may litigate fully and without limitation or prejudice all claims alleged in the Complaint and/or otherwise incidental to this proceeding as provided by law as if this Agreement had never existed.

11. During the pendency of the proceeding, Times Mirror conducted studies of the accounting and other costs associated with the sale of ROP retail display advertising linage in the Los Angeles Times, including a statistical

work-sampling study of certain accounting cost centers. The agreement of the parties, for purposes of settlement and enforcement of this Agreement and Order, regarding the results of those cost studies and all other costs is reflected in the provisions of Parts I, II and IV of the Order.

Order

For purposes of this Order, the following definitions shall apply:

A. "Respondent" means The Times Mirror Company, a corporation, and its successors and assigns, and its officers, employees, agents, and representatives, whether acting directly or indirectly or through any corporation, subsidiary, division, or other device.

B. "Los Angeles Times" means the daily and Sunday newspaper of general circulation bearing that name, founded in 1881 and presently published by respondent and includes any successor newspaper.

C. "ROP retail display advertising linage in the Los Angeles Times" shall be defined as follows:

(1) The term means display advertising linage in the full-run (ROP) editions of the Los Angeles Times sold pursuant to the "Retail Rates, R.O.P." schedule contained in the "NR"-Series Los Angeles Times Retail Rate Card: *Provided, however,* That the term includes display advertising linage sold pursuant to other schedules of rates, whether presently existing or hereafter created, if such linage is of the type that was in 1978 customarily sold pursuant to the "Retail Rates, R.O.P " or "Master Contract Retail Rates, R.O.P." contained in the "NR"-Series Los Angeles Times Retail Rate Card. A copy of Los Angeles Times Retail Rate Card NR-10, effective February 1, 1980, is attached hereto as Exhibit A.

(2) The term does not include advertising in the Los Angeles Times other than that specified in subparagraph (1) above, whether sold pursuant to other schedules of rates contained in the "NR"-Series Los Angeles Times Retail Rate Card and/or sold pursuant to other rate cards or schedules whether presently existing or hereafter created.

D. "Qualifying ROP Volume" means the volume of advertising linage which applies toward fulfillment of a purchaser's Los Angeles Times Retail Display Advertising Contract (ROP) or which otherwise qualifies for a ROP annual cumulative volume discount rate. In determining Qualifying ROP Volume for purposes of this Order, respondent shall use the rules, practices, procedures, and policies which were used to determine Qualifying ROP Volume in the Los Angeles Times in 1978 and which are fully described in the file to be maintained by respondent pursuant to paragraph 4 of Part VIII of this Order: *Provided,* That Retail "Master" Contracts shall not be extended and provided that commonly owned retail enterprises engaged in like businesses may be permitted to aggregate advertising linage for purposes of determining Qualifying ROP Volume only if all of the following requirements are satisfied: (1) Dispatching services for the transportation and delivery of advertising copy and/or advertising proofs are to a single location for the group of enterprises; (2) Sales activity for all of the enterprises is primarily handled by a single Los Angeles Times salesperson; and (3) Billings for all of the enterprises are directed to a single address for payment.

E. "ROP Retail Rate Brackets" means the rate classifications set forth in the "Retail Rates, R.O.P " schedule contained in the Los Angeles Times Retail Rate Card NR-10, attached hereto as Exhibit A, or as modified in accordance with Part I of the Order.

F. "Suburban Section retail display advertising linage in the Los Angeles Times" shall be defined as follows:

(1) The term means display advertising linage in a single Suburban Section of the Los Angeles Times, as defined from time to time, sold pursuant to the "Suburban Rates" schedules contained in the "NR" Series Los Angeles Times Retail Rate Card: *Provided, however,* That the term includes display advertising linage sold pursuant to other schedules of rates, whether presently existing or hereafter created, if such linage is of the type that was in 1978 customarily sold pursuant to the "Suburban Rates" or "Suburban Section Retail Master Contract Rates" contained in the "NR"-Series Los Angeles Times Retail Rate Card.

(2) The term does not include advertising in the Los Angeles Times other than that specified in subparagraph (1) above, whether sold pursuant to other schedules of rates contained in the "NR"-Series Los Angeles Times Retail Rate Card and/or sold pursuant to other rate cards or schedules, whether presently existing or hereafter created.

G. "Qualifying Suburban Section Volume" means the volume of advertising linage which applies toward fulfillment of a purchaser's Los Angeles Times Retail Display Advertising Contract (Suburban Section) or which otherwise qualifies for a Suburban Section annual cumulative volume discount rate. In determining Qualifying Suburban Section Volume for purposes of this Order, respondent shall use the rules, practices, procedures, and policies which were used to determine Qualifying Suburban Section Volume in the Los Angeles Times in 1978 and which are fully described in the file to be maintained by respondent pursuant to paragraph 4 of Part VIII of this Order: *Provided,* That Retail "Master" Contracts shall not be extended and provided that commonly owned retail enterprises engaged in like businesses may be permitted to aggregate advertising linage for purposes of determining Qualifying Suburban Section Volume only if all of the following requirements are satisfied: (1) Dispatching services for the transportation and delivery of advertising copy and/or advertising proofs are to a single location for the group of enterprises; (2) Sales activity for all of the enterprises is primarily handled by a single Los Angeles Times salesperson; and (3) Billings for all of the enterprises are directed to a single address for payment.

H. "Suburban Section Retail Rate Brackets" means the rate classifications offered now or in the future in the "Suburban Rates" schedules contained in the "NR"-Series Los Angeles Times Retail Rate Card.

I. "Phase-in Period" means the period, if any, not to exceed two years, during which respondent complies with the provisions of Part I of this Order by calculating annual cumulative volume discount rate schedules by means of Index 1 and/or Index 2 in accordance with Part I of this Order. Employment of the Phase-in Period shall be at respondent's option.

J. "Effective Date" means the day on which this Order becomes final by service upon respondent by the Commission.

K. "Camera Ready" means advertising copy or material that complies with the following specifications: (1) Type is furnished by the advertiser and is in place; (2) Illustrations, line and halftone, are furnished by the advertiser and are in place; and (3) the material is proof-approved and either in the form of a velox or in a form ready for direct production of a velox or veloxes. Advertising copy or material that requires camera shots to produce a velox for page paste-up is camera ready Additional uniform requirements and specifications may be imposed by respondent.

I

It is ordered, That respondent in connection with the sale of ROP retail

display advertising linage in the Los Angeles Times in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, shall, not later than six months after the Effective Date of this Order, cease and desist from discriminating, directly or indirectly, in the price of such linage of like grade and quality by selling such linage to any purchaser at a net price higher than the net price charged any other purchaser who, in fact, competes in the sale of merchandise at retail with the purchaser paying the higher price: *Provided, however,* That price differences resulting from the use of annual cumulative volume discount rate schedules as provided herein shall not violate this Part:

1. Each schedule shall list the ROP Retail Rate Brackets and a per line rate for each such Bracket determined in accordance with subparagraph 3 below.

2. Each purchaser's Qualifying ROP Volume shall determine that purchaser's ROP Retail Rate Bracket.

3. The per line rate for each ROP Retail Rate Bracket shall be determined as follows (or in a manner yielding the same rates):

(i) Respondent may set any rate for the 500-line bracket.

(ii) The minimum rate for each higher volume bracket shall be the product of the rate for the 500-line bracket and the applicable Index Value for such higher volume bracket as specified in subparagraph 4 below.

(iii) If a bracket's rate is set above the minimum rate (other than by rounding) then the minimum rate for each higher volume bracket shall be increased by the same absolute dollar amount. These adjustments may be made more than once.

(iv) The maximum rate for the open-line bracket shall be the product of the rate for the 500-line bracket and the applicable Index Value for the open-line bracket as specified in subparagraph 4 below.

(v) All rates may be rounded to the nearest full cent.

(vi) The rate for each bracket shall not be greater than the rate for the previous bracket.

(vii) Brackets may be added between any existing brackets. Rates for such added brackets shall be determined by interpolating the rates of adjoining brackets, using any generally accepted method of interpolation. Any such added brackets may thereafter be deleted.

4. In performing the calculations described in subparagraph 3 above, the following Index Values shall apply:

(a) During the first phase, if any, not to exceed one year, of the Phase-in Period, if any, the Index Values listed on Index 1;

(b) During the second phase, if any, not to exceed one year, of the Phase-in Period, if any, the Index Values listed on Index 2; and

(c) At all times thereafter during the term of this Order, the Index Values listed on Index 3.

5. Different annual cumulative volume discount rate schedules may be used for ROP retail display advertising linage in the Los Angeles Times for a different line or different lines of merchandise, such as apparel, appliances or furniture: *Provided* (a) That each such rate schedule complies with this Part; (b) that, except as provided in subparagraph 6 below, all ROP retail display advertising in the Los Angeles Times for such line or lines of merchandise is sold pursuant to such rate schedule; (c) that a purchaser's total Qualifying ROP Volume (and not merely the volume purchased pursuant to each separate rate schedule) shall determine that purchaser's rate bracket for each such separate schedule; and (d) that all volumes purchased pursuant to each such separate rate schedule shall be included in the purchaser's Qualifying ROP Volume.

6. Different annual cumulative volume discount rate schedules may be used for ROP retail display advertising linage in the Los Angeles Times in different sections of the newspaper: *Provided* (a) That each such rate schedule complies with this part; (b) that advertisements of similar content, size and quality are accepted for publication in each such section; (c) that a purchaser's total Qualifying ROP Volume (and not merely the volume purchased pursuant to each such separate rate schedule) shall determine that purchaser's rate bracket on each such separate rate schedule; and (d) that all volumes purchased pursuant to each such separate rate schedule shall be included in the purchaser's Qualifying ROP Volume.

7. In the event that respondent, during the term of this Order, employs annual cumulative volume discount rate schedules which are permitted by this Part and respondent decides to charge separately for services (other than services to make advertising copy camera-ready) which were customarily provided by respondent in 1978 as part of the basic line rates for ROP retail display advertising linage in the Los Angeles Times and the costs of which were included in the 1978 accounting cost study, respondent may do so: *Provided,* That the index values set forth in Indexes 1, 2, and 3 are recalculated based upon the 1978 accounting cost study and the costs of the services for which respondent will charge separately are eliminated from consideration in calculating the index values: *And provided,* That such charges are uniform to all purchasers of ROP retail display advertising linage in the Los Angeles Times who purchase such services. In the event that respondent employs annual cumulative volume discount rate schedules which are permitted by this part, respondent, in connection with the sale of ROP retail display advertising linage in the Los Angeles Times, may charge separately for services which were not customarily provided by respondent in 1978 as part of the basic line rates for ROP retail display advertising linage in the Los Angeles Times: *Provided,* That such charges are uniform to all purchasers of ROP retail display advertising linage in the Los Angeles Times who purchase such services.

8. In the event that respondent, during the term of this Order, employs annual cumulative volume discount rate schedules which are permitted by this part, respondent shall employ in conjunction therewith one of the following in its discretion: (1) Standardized fees per unit of work to make advertising copy camera-ready; (2) a surcharge in a uniform amount per line for all advertising copy which is not submitted camera-ready; or (3) a discount in a uniform amount per line or in percentage terms per line for all advertising copy which is submitted camera-ready. In the event that respondent uses alternative (1) above, the fees shall be not less than respondent's good faith estimate of the labor costs associated with the work. In the event that respondent uses alternative (2) above, the amount of the surcharge shall be not less than one percent of the rate for the 500-line bracket. In the event that respondent uses alternative (3) above, the amount of the uniform per line discount, if any, shall be not less than one percent of the rate for the 500-line bracket and the amount of the percentage per line discount, if any, shall be not less than one percent of the purchaser's rate.

9. Volume may be measured in lines or in any suitable equivalent, including column inches, fractions of pages, and pages.

II

It is ordered, That respondent in connection with the sale of Suburban Section retail display advertising linage in the Los Angeles Times in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, shall, not later than six months after the

Effective Date of this order, cease and desist from discriminating, directly or indirectly, in the price of such linage of like grade and quality by selling such linage to any purchaser at a net price higher than the net price charged any other purchaser, who, in fact, competes in the sale of merchandise at retail with the purchaser paying the higher price: *Provided, however,* That price differences resulting from the use of annual cumulative volume discount rate schedules as provided herein shall not violate this Part:

1. Each schedule shall list such Suburban Section Retail Rate Brackets as respondent elects to use and a per line rate for each such Bracket determined in accordance with subparagraph 3 below.

2. Each purchaser's Qualifying Suburban Section Volume shall determine that purchaser's Suburban Section Retail Rate Bracket.

3. Respondent may add, delete, change, and merge Suburban Section Retail Rate Brackets: *Provided,* That the per line rate difference between the Open Rate and any other Suburban Section Retail Rate Bracket shall not exceed the absolute per line rate difference then in effect between the corresponding ROP Retail Rate Brackets. When a bracket is employed in a Suburban Section schedule that is not employed in the ROP Retail Rate Brackets the maximum difference in price shall be calculated by interpolating from the rates for the most nearly corresponding ROP Retail Rate Brackets by any generally accepted method of interpolation.

4. Different annual cumulative volume discount rate schedules may be used for Suburban Section retail display advertising linage in the Los Angeles Times for a different line or different lines of merchandise, such as apparel, appliance, or furniture: *Provided* (a) That each such rate schedule complies with this part; (b) that, except as provided in subparagraph 5 below, all Suburban Section retail display advertising in the Los Angeles Times for such line or lines of merchandise is sold pursuant to such rate schedules; (c) that a purchaser's total Qualifying Suburban Section Volume (and not merely the volume purchased pursuant to each such separate rate schedule) shall determine that purchaser's rate bracket on each such separate rate schedule; and (d) that all volumes purchased pursuant to each such separate rate schedule shall be included in the purchaser's Qualifying Suburban Section Volume.

5. Different annual cumulative volume discount rate schedules may be used for Suburban Section retail display advertising linage in the Los Angeles Times in different sections of the newspaper: *Provided* (a) That each such rate schedule complies with this part; (b) that advertisements of similar content, size, and quality are accepted for publication in each such section; (c) that a purchaser's total Qualifying Suburban Section Volume (and not merely the volume purchased pursuant to each such separate rate schedule) shall determine that purchaser's rate bracket on each such separate rate schedule; and (d) that all volumes purchased pursuant to each such separate rate schedue shall be included in the purchaser's Qualifying Suburban Section Volume.

6. In the event that respondent, during the term of this Order, employs annual cumulative volume discount rate schedules which are permitted by this part, respondent may charge separately for services under the same circumstances as provided in subparagraph 7 of Part I of this Order.

7 In the event that respondent, during the term of this Order, employs annual cumulative volume discount rate schedules which are permitted by this Part, respondent shall employ in conjunction therewith one of the following in its discretion: (1) Standardized fees per unit of work to make advertising copy camera-ready; (2) a surcharge in a uniform amount per line for all advertising copy which is not submitted camera-ready; or (3) a discount in a uniform amount per line or in percentage terms per line for all advertising copy which is submitted camera-ready. In the event that respondent uses alternative (1) above, the fees shall be not be less than respondent's good faith estimate of the labor costs associated with the work. In the event that respondent uses alternative (2) above, the amount of the surcharge shall be not less than one percent of the rate for the 500-line bracket. In the event that respondent uses alternative (3) above, the amount of the uniform per line discount, if any, shall be not less than one percent of the rate for the 500-line bracket and the amount of the percentage per line discount, if any, shall be not less then one percent of the purchaser's rate.

8. Volume may be measured in lines or in any suitable equivalent, including column inches, fractions of pages, and pages.

III

It is ordered, That, in connection with the sale of ROP and/or Suburban Section retail display advertising linage in the Los Angeles Times, respondent shall not establish other discounts, credits, or commissions which are not made functionally available to all purchasers of ROP and/or Suburban Section retail display advertising linage in the Los Angeles Times or establish non-uniform charges to such purchasers, *Provided,* That nothing herein contained shall prevent respondent from using the discounts, credits, commissions, or charge which were used by respondent in connection with the sale of ROP and/or Suburban Section retail display advertising in the Los Angeles Times in 1978: *Provided, however,* That, in connection with the sale of ROP and/or Suburban Section retail display advertising linage in the Los Angeles Times, no discount for multiple full page advertisments in the full-run (ROP) editions of the Los Angeles Times on a single day may be granted and no annual cumulative volume discounts other than in compliance with Part I or Part II of this Order, as appropriate, may be granted. All such discounts, credits, commissions, or charges permitted by this part shall be disregarded in determining whether rates for ROP and/or Suburban Section retail display advertising linage in the Los Angeles Times comply with Part I or Part II of this Order.

IV

It is ordered, That nothing in this Order shall be construed to prevent respondent from asserting any of the following defenses in any action brought to enforce this Order: Price discrimination which makes only due allowance for differences in the cost of manufacture, sale or delivery resulting from differing methods or quantities in which such ROP and/or Suburban Section retail display advertising linage in the Los Angeles Times is sold or delivered to such purchasers, or which is made in good faith to meet an equally low price of a competitor, or where the purchaser is an agency of the United States of America; *provided,* That, in the event respondent employs annual cumulative volume discount rate schedules as permitted by Part I or Part II of this Order, no type or item of cost covered by paragraph 11 of the Agreement contemplating this Order may be relied on in justification of price differences greater than those differences expressly permitted by Part I and Part II.

V

It is ordered, That nothing in this Order shall be constructed to infringe upon or limit the publishing standards and policies of the Los Angeles Times, including, but not limited to, the right, in the exercise of its sole discretion, to

accept or reject advertising, and the right to revise or reject advertising which, in the judgement of the Los Angeles Times, is offensive, misleading, libelous or unlawful.

VI

It is ordered, That Count II of the Compliant be, and it hereby is, dismissed and that the Order Reinstating Count II of the Complaint, issued July 27, 1978, be, and it hereby is, vacated.

VII

It is ordered, That, except as specified in paragraph 3 of Part VIII below, this Order shall terminate ten (10) years from six months after the Effective Date: *provided, however,* That said ten (10) year period shall be reduced by the amount of time, if any, in excess of one (1) year elapsing between the execution of this Agreement by Times Mirror and its attorneys and by counsel for the Commission and the Effective Date: *And provided further,* That said ten (10) year period shall be increased by the amount of time, it any, of the Phase-in Period.

VIII

It is further ordered, That respondent shall:

1. Distribute within 60 days of the Effective Date a copy of this Order to all Los Angeles Times operating divisions involved in the sale of ROP retail display advertising linage in the Los Angeles Times and/or in the sale of Suburban Section retail display advertising linage in the Los Angeles Times, and to personnel, agents, or representatives having policy responsibilities with respect to the sale of such advertising linage in the Los Angeles Times and that respondent secure from each such person a signed statement acknowledging receipt of this Order.

2. Notify the Commission at least thirty (30) days prior to any proposed change in Times Mirror, such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or disslution of subsidiaries or any other change in the corporation, which may affect respondent's compliance obligations arising out of the Order.

3. Maintain, for a period of three years from the date of sale, records of all sales of ROP and Suburban Section retail display advertising linage in the Los Angeles Times sufficient to identify the purchaser, the number of lines purchased, the rates charged, and the discounts, credits, commissions and charges made in connection with the sale of ROP and/or Suburban Section retail display advertising linage in the Los Angeles Times. Respondent shall make said records available for inspection, copying, and reproduction to counsel for the Federal Trade Commission during respondent's normal business hours upon responable request. Respondent may have counsel present during any and all such inspections. Respondent's obligations to maintain these records and to provide access to them shall terminate one year following the termination of this Order.

4. Maintain, during the term of this Order, a file at its principal place of business containing informatin which fully describes the rules, practices, procedures, and policies which were used by the Los Angeles Times in 1978 to determine Qualifying ROP Volume and Qualifying Suburban Section Volume.

5. File with the Commission, within one (1) year after the Effective Date of this Order, a report, in writing, setting forth in detail the manner and form in which it intends to comply, is complying, and/or has complied with this Order; and, thereafter until this Order terminates, file annually copies of all schedules of rates for ROP and/or Suburban Section retail display advertising linage in the Los Angeles Times, showing the periods during which such rates were in effect, and a list of other types of discounts, surcharges, and commissions, if any, not shown on the schedules of rates for ROP and/or Suburban Section retail display advertising linage in the Los Angeles Times, that are offered or imposed in connection with the sale of ROP and/or Suburban Section retail display advertising linage in the Los Angeles Times, accompanied by a certification that such schedules of rates were employed in the sale of ROP and Suburban Section retail display advertising in the Los Angeles Times.

Analysis for Public Comment

The Federal Trade Commission has accepted an Agreement to a Proposed Consent Order from The Times Mirror Company, publisher of the Los Angeles Times newspaper, in settlement of Docket No. 9103.

The Proposed Consent Order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the Agreement and the comments received and will decide whether it should withdraw from the Agreement or make final the Agreement's Proposed Order.

I. The Complaint

The Complaint in this matter alleged that The Times Mirror Company, publisher of the Los Angeles Times newspaper, discriminated in price in the sale of adverting linage to competing retailers, in part through the use of annual cumulative volume discounts, with the result that larger volume advertisers were charged less per line for their advertising than were smaller volume advertisers. These discriminatory rates were alleged to constitute unreasonable restraints of trade and unfair methods of competition in violation of Section 5 of the Federal Trade Commission Act, and to constitute violations of the provisions of Section 2(a) of the Clayton Act, as amended by the Robinson-Patman Act.

II. Agreement and Order

The Order applies to sales of retail display advertising in both the run-of-the-paper and suburban sections of the Los Angeles Times. It does not apply to other types of advertising.

In general, the Order prohibits the Los Angeles Times from charging different prices per line to purchasers of advertising who compete with one another in the sale of merchandise. The Order does, however, contain a description of a volume discount system which the Los Angeles times can use and still be regarded as in compliance with the Order. Many of the characteristics of this system are based on the characteristics of the system the newspaper previously used, but the permitted discounts are limited to specified maximum percentages. These percentages are smaller than the percentage sizes of the discounts the Los Angeles times offered in the past.

The permitted percentages are expressed in the Order as "Indexes." For example, the Order requires that the price per line charged a purchaser of five million lines of advertising a year be not less than .73235 of the price per line charged a purchaser of five hunded lines a year. This equals a maximum discount of 26.765%.

If the Los Angeles Times chooses to use this permitted volume discount structure it must also either grant a specified extra discount to advertisers which provide their advertisements in "camera ready" form, or it must impose a separate specified charge on those who do not provide their advertisements in "camera ready" form.

The provisions described above in part reflect the results of studies of the Los Angeles Times' costs associated with the sale of advertising.

If the Los Angeles Times chooses to use the volume discount system described in the Order, it may reduce its present discounts to the percentages permitted by the Order in three stages over a two-year period. In the first year, the discounts will have to be reduced by at least one-third of the excess over the permitted levels; in the second year, they will have to be reduced by at least two-thirds of the excess; and in the third and following years, the discounts must be confined to the permitted levels. These three stages are reflected in Index 1, Index 2, and Index 3 of the Order.

The Los Angeles Times may continue to use various other discounts, credits and commissions that it used in 1978, except as prohibited in the Order. It may also establish new discounts, credits or commissions, but they must be made functionally available to all advertisers. In addition to the per-line advertising charges, separate charges can be made for related services, but these charges must be uniform to all purchasers.

The Los Angeles Times may use different rate schedules for different sections of the newspaper and it may use different schedules for discrete types of products, as long as each schedule conforms to the requirements of the Order. Such schedules must be equally available to competing retailers.

The Order preserves the defenses available to a charge of price discrimination except that the cost justification defense to a volume discount pricing system is deemed exhausted.

The Order will not be construed to infringe upon the publishing standards and policies of the Los Angeles Times.

As part of the settlement, Count II of the Complaint, the Robinson-Patman count, is dismissed. The settlement is grounded solely on FTCA Section 5 jurisdiction.

Times Mirror's compliance obligations under the Order, other than record keeping, will terminate after 10 years of full compliance.

III. Anticipated Effects of the Order

The Order does not require the use of any particular rate or discount system. It therefore leaves Times Mirror free to use any price system that is non-discriminatory or discriminatory only to the extent justified by differences in cost or the need to meet competition. However, the Order also provides that if Times Mirror uses the particular discount system described in the Order, that system will be deemed in compliance with the Order.

It is anticipated that the Order will therefore result in a substantial reduction in the relative differences in prices that smaller volume advertisers must now pay in comparison with larger volume advertisers. It is further anticipated that this reduction will enhance the ability of smaller businesses to compete with larger businesses in Southern California.

IV Pupose of the Analysis

The purpose of this analysis is to facilitate public comment on the Proposed Order, and it is not intended to constitute an official interpretation of the Agreement and Proposed Order or to modify in any way their terms.

In accepting this consent agreement for purposes of public comment the Commission wishes to direct particular attention to the following questions:

(1) How and to what extent will this order enhance the ability of smaller retailers to compete with larger retailers in Southern California?

(2) What effect will this order have on the ability of newspapers to compete in the sale of advertising?

(3) What should be the Commission's enforcement policies in the future with respect to the principles expressed in this order and what competitive effects—including effects on The Times—may flow from these policies?

Carol M. Thomas,

Secretary.

Dissenting Statement of Acting Chairman Clanton Regarding the Times Mirror Consent Agreement

I have voted not to accept the negotiated consent agreement with the Times Mirror Company. Instead, I would close the matter. My reluctance to accept this consent stems from my concerns about extending the coverage of Section 5 of the FTC Act to encompass commercial circumstances on which we reserved judgment in our *Reuben H. Donnelley Corp.* decision. 95 F.T.C. 1 (1980). The question for me is whether it is good policy, in this case, to extend Section 5 to embrace the kind of price discrimination practiced here. There are three separate reasons for my belief that we should exercise restraint in this instance.

First, in *Official Airline Guides, Inc.* v. *FTC,* 630 F.2d 920 (2d Cir. 1980), *cert. denied,* 101 S. Ct. 1362 (1981), the court ruled that a monopolist* has no duty under Section 5 to refrain from discriminating arbitrarily between classes of customers where there is no evidence that the monopolist is trying to preserve or expand its market power. Even if the court's decision does not constitute the last word on this subject, and I am not prepared to say that it does, the holding must still give us some pause. I recognize this is a consent agreement, but we must take account of future situations where litigation might result. Although this troublesome hurdle is not the decisive factor for me in deciding whether to accept or reject the order, it does have some bearing, especially in light of the other considerations discussed below.

Second, the Commission's opinion in *Donnelley* did not distignuish between an absolute refusal to deal and dealing on discriminatory terms. In fact, while we did not foreclose the possibility of reaching price discrimination under Section 5, we emphasized the difficulties of extending a duty-to-deal obligation to the kind of secondary-line discrimination at issue here:

> Another reason often advanced in opposition to imposing a duty not to be arbitrary is that refusals to deal at all will not be the only question presented; rather, there will be questions concerning discriminatory terms which do not amount to a total refusal to deal. Such questions, it is argued, will inevitably lead courts into complex issues regarding what constitutes a reasonable price, whether terms are really comparable, and so on. Thus, an order directing the seller to deal on reasonable terms, or not to be arbitrary, will lead a court or agency to specify what constitutes reasonable terms and to police compliance over time—a regulatory role that courts have wisely shunned whenever possible.
>
> * * * * *
>
> We agree that is is generally undesirable for courts to place themselves in a position of monitoring the pricing activities or other variable, on-going activities of a monopolist. But we are reviewing a refusal by Donnelley to list certain connecting flight information, and to group the listings of all carriers together—matters not involving pricing questions at all. 95 F.T.C. 1, 81 (1980).

Third, in defining what constitutes "arbitary" conduct in *Donnelley,* we indicated that our concern should be limited to

> "conduct which results in a substantial injury to competition and lacks subsantial business justification. In examining the question of business justifications, the economic self interest of the monopolist would be the major but not the exclusive consideration." 95 F.T.C. at 82.

After reviewing the evidence in hand—and, of course, a definitive answer is not possible since the issues have not been litigated—I am not satisfied that we would be likely to find liability under the *Donnelley* standard. It may well be that the *Times'* rate schedule cannot be fully cost justified,

* I assume for purposes of argument that the L.A. Times enjoys a monopoly in its market over the sale of retail advertising space, a conclusion that we obviously cannot reach at this time.

but it is at least questionable whether *Donnelley* requires the kind of cost justification mandated by the Robinson-Patman Act. Likewise, the *Times'* pricing practices may reflect a generalized response to other forms of competition (including competition from the electronic media) that might satisfy the demands of *Donnelley* but not the more stringent requirements of the Robinson-Patman Act.

In addition, the competitive injury test under Robinson-Patman presumably allows the Commission to infer injury from evidence of persistent, unjustified price differences. Under the "substantial injury to competition" standard of *Donnelley*, however, it probably would not be sufficient, as a general rule, to rely solely on the kind of inferences permissible under the Robinson-Patman Act. While it is possible that evidence of substantial competitive injury might be established in this case, if it were to be litigated, I am not persuaded that this possibility is sufficient to justify the acceptance of the order, especially in view of the other significant uncertainties associated with the case.

[FR Doc. 81-28539 Filed 9-30-81; 8:45 am]
BILLING CODE 6750-01-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 201

[Release No. 33-6344; 34-18106; 35-22200; 39-656; IC-11942; IA-775; File No. S7-905]

Request for Comments on Standard of Conduct Constituting Unethical or Improper Professional Practice Before the Commission

AGENCY: Securities and Exchange Commission.

ACTION: Request for written comments.

SUMMARY: The Securities and Exchange Commission is requesting written comments on its previously announced interpretation of the standard of conduct that constitutes unethical or improper professional conduct by a lawyer before the Commission pursuant to Rule 2(e)(1)(ii) of its Rules of Practice, 17 CFR 201.2(e)(1)(ii). A determination that one has engaged in unethical or improper professional conduct is one of a number of findings the Commission may make in determining to deny, temporarily or permanently, the privilege of appearing or practicing before it in any way to any person. This standard was previously announced in the context of an adjudication pursuant to Rule 2(e). The Commission has previously considered the issue of its authority to adopt and administer Rule 2(e) and is not soliciting comments on that issue at this time. Rather, comments should be limited to the appropriateness of the previously announced interpretation.

DATE: Comments should be received by the Commission on or before November 27, 1981.

ADDRESSES: Interested persons should submit six copies of their written comments to George A. Fitzsimmons, Secretary, Securities and Exhange Commission, Room 892, 500 North Capitol Street, Washington, D.C. 20549, and should refer to File No. S7-905. Copies of all submissions including the original decision will be available for public inspection at the Commission's Public Reference Section, Room 6101, 1100 L Street, N.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Stephen E. Cavan, Office of the General Counsel, 500 North Capitol Street, Washington, D.C. 20549, (202) 272-2454.

SUPPLEMENTARY INFORMATION:

Introduction

On February 28, 1981 the Commission announced its decision *In re Carter*,[1] an adjudication conducted pursuant to Rule 2(e) of the Commission's Rules of Practice [2] to determine if the two lawyers in that proceeding had engaged in, among other things, unethical or improper professional conduct.[3] This determination is one of a number of findings the Commission may make in deciding to deny, temporarily or permanently, the privilege of appearing or practicing before it.

In its opinion in that proceeding the Commission determined that the respondents' conduct "raises serious questions about the obligations of securities lawyers," [4] but stated that it could not conclude that standards of ethical and professional responsibilities were so clearly established as to constitute generally recognized norms at the time of their conduct. Therefore, in order to clarify publicly the standards of ethical and professional conduct that are applicable in similar circumstances, the Commission announced a prospective interpretation of the phrase "unethical or improper professional conduct" as that term is used in Rule 2(e)(1)(ii).

In its opinion, the Commission also stated its intent to issue a release soliciting public comment as to whether that interpretation should be expanded or modified. This release is intended to accomplish that purpose. After careful consideration of these comments, the Commission will issue a further release summarizing and analyzing the comments received. Based upon the comments, it may or may not determine to expand or modify its interpretation. Until that time, the present interpretation will govern all similar circumstances for purposes of proceedings pursuant to Rule 2(e) if the conduct occurred after February 28, 1981.[5]

Discussion

The opinion of the Commission *In re Carter* contains an extensive discussion of the ethical and professional responsibilities of lawyers who practice before the Commission.[6] And although in this instance the Commission determined to promulgate a definitive standard for conduct to be applied in the future, it made plain that generally recognized standards of conduct need not be formally adopted by the Commission before they may be relied upon as the appropriate standard in an administrative proceeding.

> [W]e perceive no unfairness whatsoever in holding those professionals who practice before us to generally recognized norms of professional conduct, whether or not such norms had previously been explicitly adopted or endorsed by the Commission. To do so upsets no justifiable expectations, since the professional is already subject to those norms.[7]

In this proceeding the Commission addressed the issue of determining "the professional obligations of the lawyer who gives essentially correct disclosure advice to a client that does not follow that advice and as a result violates the federal securities laws." [8] As a general matter, the Commission found "that a lawyer must, in order to discharge his professional responsibilities, make all efforts within reason to persuade his client to avoid or terminate proposed illegal action. Such efforts could include, where appropriate, notification to the board of directors of a corporate client." [9] The Commission recognized that these judgments often require difficult choices in an ongoing business situation.[10] Moreover, it noted that a

[1] Securities Exchange Act Rel. No. 17597, 22 *SEC Docket* 292, [1981] Fed. Sec. L. Rep. (CCH) ¶82,847.

[2] 17 CFR 201.2(e).

[3] [1981] Fed. Sec. L. Rep. (CCH) ¶82,847 at 84,169 to 84,173 and 84,177 to 84,178.

[4] *Id.* at 84,170.

[5] *Id.* at 84,172.

[6] *Id.* at 84,169 to 84,173 and 84,177 to 84,178. The opinion also contains a discussion of the Commission's authority to promulgate and enforce Rule 2(e). *See id.* at 84,146 to 84,150. This release is not soliciting comments on that issue.

[7] *Id.* at 84,170 (footnote omitted).

[8] *Id.*

[9] *Id.* (footnote omitted).

[10] As the Commission stated, "So long as a lawyer is acting in good faith and exerting reasonable

Continued

lawyer does not have a professional obligation to take extraordinary action merely because management seeks to make the minimum disclosure required by law. The Commission recognized that such a rule would lead to an undesirable reduction in a reporting company's reliance on outside counsel.

Within the context of the facts of *In re Carter*, the Commission determined that the following standard of unethical or improper professional conduct would be appropriate in similar cases in the future:

> When a lawyer with significant responsibilities in the effectuation of a company's compliance with the disclosure requirements of the federal securities laws becomes aware that his client is engaged in a substantial and continuing failure to satisfy those disclosure requirements, his continued participation violates professional standards unless he takes prompt steps [11] to end the client's noncompliance.[12]

Request for Written Comments

The Commission invites all interested members of the Public, including issuers, attorneys, investors and members of the academic community and the organized bar, to submit comments with respect to the standard announced by the Commission and whether this interpretation should be expanded or modified. Written statements must be received on or before November 27, 1981 and six copies should be submitted to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Such communications should refer to File No. S7-905 and will be available for public inspection.

By the Commission.

George A. Fitzsimmons,
Secretary.

September 21, 1981.

[FR Doc. 81-27801 Filed 9-30-81; 8:45 am]
BILLING CODE 8010-01-M

---

efforts to prevent violations of the law by his client, his professional obligations have been met." *Id.* at 84,172 to 84,173. Earlier in its opinion, while discussing the legal liability of an attorney for aiding and abetting his client's violations, the Commission stated, "It is axiomatic that a lawyer will not be liable as an aider and abettor merely because his advice, followed by the client, is ultimately determined to be wrong." *Id.* at 84,167.

[11] "What is required, in short, is some prompt action that leads to the conclusion that the lawyer is engaged in efforts to correct the underlying problem, rather than having capitulated to the desires of a strong-willed, but misguided client." *Id.* at 84,172 (footnote omitted).

[12] *Id.*

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 271

[Docket No. RM79-76 (Utah-3)]

High-Cost Gas Produced from Tight Formations; Notice of Proposed Rulemaking

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Federal Energy Regulatory Commission is authorized by section 107(c)(5) of the Natural Gas Policy Act of 1978 to designate certain types of natural gas as high-cost gas where the Commission determines that the gas is produced under conditions which present extraordinary risks or costs. Under section 107(c)(5), the Commission issued a final regulation designating natural gas produced from tight formations as high-cost gas which may receive an incentive price (18 CFR § 271.703). This rule established procedures for jurisdictional agencies to submit to the Commission recommendations of areas for designation as tight formations. This notice of proposed rulemaking by the Director of the Office of Pipeline and Producer Regulation contains the recommendation of the State of Utah that the Dakota Formation be designated as a tight formation under § 271.703(d).

DATE: Comments on the proposed rule are due on October 28, 1981.

PUBLIC HEARING: No public hearing is scheduled in this docket at yet. Written requests for a public hearing are due on October 13, 1981.

ADDRESS: Comments and requests for hearing must be filed with the Office of the Secretary, 825 North Capitol Street, NE, Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT: Leslie Lawner, (202) 357-8307, or Victor Zabel, (202) 357-8616.

Issued: September 28, 1981.

I. Background

On August 31, 1981, the State of Utah Board of Oil, Gas, and Mining (Utah), submitted to the Commission a recommendation, in accordance with § 271.703 of the Commission's regulations (45 FR 56034, August 22, 1980), that the Dakota Formation located in Grand and Uintah Counties, Utah, be designated as a tight formation. The United States Geological Survey joined in Utah's recommendation. Pursuant to § 271.703(c)(4) of the regulations, this Notice of Proposed Rulemaking is hereby issued to determine whether Utah's recommendation that the Dakota Formation be designated as a tight formation should be adopted. Utah's recommendation and supporting data are on file with the Commission and are available for public inspection.

II. Description of Recommendation

The recommended formation underlies certain lands in the Book Cliffs area of Grand and Uinatah Counties, Utah, just north of the town of Thompson. The recommended are contains 550,860 acres located in the general area of Townships 15 South through 20 South, and Ranges 16 East through 24 East. The average depth to the top of the Dakota Formation is 6,034 feet. The average thickness of the Dakota Formation measured from the top of the Dakota Silt down to the top of the Morrison Formation is approximately 250 feet.

III. Discussion of Recommendation

Utah claims in its submission that evidence gathered through information and testimony presented at a public hearing in Cause No. TGF-102 convened by Utah on this matter demonstrates that:

(1) The average *in situ* gas permeability throughout the pay section of the proposed area is not expected to exceed 0.1 millidarcy;

(2) "The standard production of gas from the subject lands, without stimulation, does not exceed the rate established by the Federal Energy Regulatory Commission (§ 271.703(c)(2)(i)(B)), taking into proper account the average depth from the surface to the Dakota Formation and the cost of drilling and completing gas wells in the area;" and

(3) No well drilled into the recommended formation is expected to produce more than five (5) barrels of oil per day.

Section 271.703(c)(2)(i) states that the Commission will approve the designation of any formation recommended by a jurisdictional agency if the formation meets each of the guidelines set forth in § 271.703(c)(2)(i)(A), (B), (C) and (D). Preliminary Commission staff analysis indicated that Utah's recommendation may meet the guideline specified in § 271.703(c)(2)(i)(B) because the staff computation based on data submitted in support of the recommendation, reflects an average pre-stimulation flow rate of wells completed for production in the recommended formation in excess of the

maximum allowable production rate set out in the regulation. Comments are specifically requested on this issue.

Utah further asserts that existing State and Federal Regulations assure that development of this formation will not adversely affect any fresh water aquifers.

Pursuant to the authority delegated to the Director of the Office of Pipeline and Producer Regulation by Commission Order No. 97, issued in Docket No. RM80-68 (45 FR 53456, August 12, 1980), notice is hereby given of the proposal submitted by Utah that the Dakota Formation, as described and delineated in Utah's recommendation as filed with the Commission, be designated as a tight formation pursuant to § 271.703.

IV Public Comment Procedures

Interested persons may comment on this proposed rulemaking by submitting written data, views or arguments to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, on or before October 28, 1981. Each person submitting a comment should indicate that the comment is being submitted in Docket No. RM79-76 (Utah-3), and should give reasons including supporting data for any recommendations. Comments should include the name, title, mailing address, and telephone number of one person to whom communications concerning the proposal may be addressed. An original and 14 conformed copies should be filed with the Secretary of the Commission. Written comments will be available for public inspection at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, N.E., Washington, D.C., during business hours.

Any person wishing to present testimony, views, data, or otherwise participate at a public hearing should notify the Commission in writing that they wish to make an oral presentation and therefore request a public hearing. Such request shall specify the amount of time requested at the hearing. Requests should be filed with the Secretary of the Commission no later than October 13, 1981.

(Natural Gas Policy Act of 1978, 15 U.S.C. §§ 3301-3342.)

Accordingly, the Commission proposes to amend the regulations in Part 271, Subchapter H, Title 18, Code of Federal Regulations, as set forth below, in the event Utah's recommendation is adopted.

Kenneth A. Williams,

Director, Office of Pipeline and Producer Regulation.

PART 271—CEILING PRICES

Section 271.703(d) is amended by adding new subparagraph (63) to read as follows:

§ 271.703 Tight formations.

* * * * *

(d) *Designated tight formations.* The following formations are designated as tight formations. A more detailed description of the geographical extent and geological parameters of the designated tight formations is located in the Commission's official file for Docket No. RM79-76, subindexed as indicated, and is also located in the official files of the jurisdictional agency that submitted the recommendation.

* * * * *

(55) through (62) [RESERVED.]

(63) *Dakota Formation in Utah.* RM79-76 (Utah-3).

(i) *Delineation of formation.* The Dakota Formation is found in the Book Cliffs area of Grand and Uintah Counties, Utah and is in the general area of Townships 15 South through 20 South and Ranges 16 East through 24 East. The Dakota Formation is defined as the interval from the top of the Dakota Silt down to the top of the Morrison Formation, a thickness of approximately 250 feet.

(ii) *Depth.* The average depth to the top of the Dakota Formation is 6,034 feet.

[FR Doc. 81-28613 Filed 9-30-81; 8:45 am]
BILLING CODE 6450-85-M

---

18 CFR Part 271

[Docket No. RM79-76 (New Mexico—5)]

High-Cost Gas Produced From Tight Formations: Correction

September 28, 1981.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of Proposed Rulemaking; correction.

SUMMARY: This document deletes an incorrect reference in the preamble and proposed regulation found in the Notice of Proposed Rulemaking issued by the Director of the Office of Pipeline and Producer Regulation on August 25, 1981, as it appeared in the Federal Register on September 1, 1981 at page 43844. The preamble and proposed regulation had incorrect identification of the Townships and Ranges in which the recommended formation was located.

FOR FURTHER INFORMATION CONTACT: Leslie Lawner, Office of General Counsel, Federal Energy Regulatory Commission, Washington, D.C. 20426 (202) 357-8307.

SUPPLEMENTARY INFORMATION: The following correction is made in FR Doc. 81-25468, as it appeared in the Federal Register on September 1, 1981.

1. On page 43845, in the section of the preamble headed "II. Description of Recommendation" delete the second sentence and substitute in its place the following sentence:

"The area recommended by New Mexico and the USGS is situated in Townships 26, 27 and 28 North, Ranges 2 and 3 West, along the eastern fringe of the main Blanco Mesaverde Gas Pool."

2. On page 43845, change the first sentence of the subparagraph in § 271.703(d)(63)(i), headed "Delineation of formation" to read as follows:

"The Mesaverde Formation underlies portions of Townships 26, 27 and 28 North, Ranges 2 and 3 West, in Rio Arriba County, New Mexico."

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-28532 Filed 9-30-81; 8:45 am]
BILLING CODE 6450-85-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 10, 18, 114, 143

Proposed Amendments to the Customs Regulations Relating to Carnets

AGENCY: Customs Service, Treasury.

ACTION: Proposed rule.

SUMMARY: This document proposes to make conforming amendments to the Customs Regulations relating to the use of carnets. Carnets are international customs documents, backed by an internationally valid guarantee, that may be used for the entry of articles into a country in place of the usual customs documents required. The proposed amendments would: (1) implement an optional provision of the Customs Convention on the A.T.A. Carnet for the Temporary Admission of Goods; (2) reflect the withdrawal of the United States from the Customs Convention on the E.C.S. Carnets for Commercial Samples; and (3) correct typographical errors in the regulations relating to carnets.

DATES: Comments must be received on or before November 30, 1981.

ADDRESS: Comments (preferably in triplicate) may be addressed to the Commissioner of Customs, Attention: Regulations and Information Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Jerold O. Worley, Office of Commercial Operations, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202-566-8551).

SUPPLEMENTARY INFORMATION:

Background

Carnets are international customs documents, backed by an internationally valid guarantee, which may be used for the entry of articles under various customs procedures such as temporary importation and transportation in bond (transit). The carnet is used in place of the usual national customs documentation and guarantees the payment of duties (including taxes and associated penalties) which may become due if the requirements under a particular customs procedure are not satisfied. The existence of a single international document rather than numerous national documents facilitates international commerce.

The carnet guarantee is based on international chains of national guaranteeing associations established in the countries accepting the carnets. The guaranteeing association is jointly and severally liable with the carnet holder for the payment of the sums due in the event of non-compliance with the conditions of the procedures for which the carnet is used.

Types of Carnets Commonly Used

A.T.A. Carnets. The A.T.A. ("Admission Temporaire—Temporary Admission") carnet is used for the temporary duty-free entry of professional equipment, commercial samples, and advertising material. The use of the A.T.A. carnet allows the traveler or businessman to make customs arrangements in advance and to use a single document for goods which will pass through several different countries. A.T.A carnets are valid for a period of 1 year. In the United States the U.S. Council of the International Chamber of Commerce has been designated by the Customs Service as the United States issuing and guaranteeing organization for A.T.A. carnets.

E.C.S. Carnets. Before the United States withdrew from the Customs Convention on the E.C.S. Carnets for Commercial Samples, effective August 11, 1977, the E.C.S. ("Echantillons Commerciaux-Commercial Samples") carnet was used in the same manner as the A.T.A. carnet, but only for the temporary duty-free entry of commercial samples. E.C.S. carnets were valid for one year. The U.S. Council of the International Chamber of Commerce also had been designated by the Customs Service as the United States issuing and guaranteeing organization for E.C.S. carnets.

T.I.R. Carnets. T.I.R. ("Transport International Routier—International Road Transport") carnets authorize road vehicles, containers, and their contents to transit one or more frontiers without customs inspection at intermediate points and with a minimum of other formalities. Road vehicles and containers transit the country or move from port of entry to final destination with their contents under customs seal. Inspection is accomplished at the final destination. T.I.R. carnets are valid until the end of the transit operation. The Equipment Interchange Association has been designated by the Customs Service as the issuing and guaranteeing association for T.I.R. carnets in the United States.

As a result of certain actions regarding the acceptance and use of carnets within the United States, and to correct typographical errors found in previous amendments to the regulations relating to carnets, Customs proposes to make certain conforming amendments to the Customs Regulations. The following is a list of the proposed changes and the reasons for them:

1. The United States withdrew from the Customs Convention on the E.C.S. Carnets for Commercial Samples effective August 11, 1977 In a General Notice published in the **Federal Register** on August 25, 1977 (42 FR 42851), Customs announced that it would not accept E.C.S. carnets issued after August 10, 1977, for the temporary duty-free admission of commercial samples into the United States. The A.T.A. carnet was designated to replace the E.C.S. carnet for this purpose. Accordingly, modifications to various sections of Parts 10, 114, and 143, Customs Regulations (19 CFR Parts 10, 114, 143), are necessary.

2. At the request of the Secretary General of the Customs Cooperation Council the United States has elected to exercise the option, under article 3, paragraph 3, of the Customs Convention on the A.T.A. Carnet for the Temporary Admission of Goods, to accept A.T.A. carnets for transit operations, permitting articles covered by A.T.A. carnets to be transported in bond. Therefore, modifications to various sections of Parts 18 and 114, Customs Regulations (19 CFR Parts 18, 114), are necessary.

3. By T.D. 75-41, published in the **Federal Register** on February 13, 1975 (40 FR 6646), § 10.68, Customs Regulations (19 CFR 10.68), was amended to include professional books, implements, instruments, and tools of trade, occupation, or employment, among the types of articles which are permitted to be returned, after having been temporarily taken abroad under cover of an A.T.A. carnet, without formal entry or payment of duty. However, the word "formal" was inadvertently omitted before the word "entry" and this made it appear that all the types of articles listed in § 10.68 could be returned without entry and without payment of duty if either an exportation voucher from an A.T.A. carnet or an application on Customs Form 4455 was filed prior to exportation. It is necessary to amend § 10.68 to: (1) clarify that in every case either an informal entry or a declaration is still required; and, (2) state when each procedure is necessary.

4. Minor typographical errors in §§ 114.12(b) and 114.26(c), Customs Regulations (19 CFR 114.12(b), 114.26(c)), also require correction.

Proposed Amendments to the Regulations

It is proposed to amend Parts 10, 18, 114, and 143, Customs Regulations (19 CFR Parts 10, 18, 114, 143), in the following manner:

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

It is proposed to amend § 10.68(a) by inserting "formal" between "without" and "entry" in the first sentence and by adding the following between the first and second sentences:

§ 10.68 Procedure.

(a) * * * Articles exported under cover of an A.T.A. carnet (where the carnet serves as the control document) may, in accordance with this paragraph, be returned without entry or the payment of duty. If Customs Form 4455 is utilized, commercial travelers' samples, professional books, implements, instruments, and tools of trade, occupation, or employment may be returned with either an informal entry or a declaration on Customs Form 3299; theatrical scenery, properties, and effects and motion-picture films may be returned only with an informal entry. * * *

PART 18—TRANSPORTATION IN BOND AND MERCHANDISE IN TRANSIT

1. It is proposed to amend § 10.1(a) by adding a new paragraph (3) to read as follows:

§ 18.1 Carriers; Application to bond.

(a) * * *

(3) Merchandise to be transported from one port to another in the United States under cover of an A.T.A. carnet (see Part 114 of this chapter) shall be delivered to a common carrier or contract carrier bonded for that purpose, but the merchandise thereafter may be transported with the use of other bonded or nonbonded common or contract carriers. The A.T.A. carnet shall be responsible for liability incurred in the carriage of merchandise under the carnet, and the carrier's bond shall be responsible as provided in § 114.22(d) of this chapter.

* * * * *

§ 18.2 [Amended]

2. It is proposed to amend § 18.2(a) by adding "or A.T.A." after "TIR" in the second sentence and by removing "TIR" from the third sentence.

§§ 18.2 and 18.4 [Amended]

3. It is proposed to amend §§ 18.2(c) and 18.4(c)(2) by removing "TIR" from the first sentence of each.

§ 18.5 [Amended]

4. It is proposed to amend §§ 18.5 (c) and (d) by removing "TIR."

§ 18.6 [Amended]

5. It is proposed to amend § 18.6(d) by removing "TIR" and by inserting "appropriate" between "the" and "guaranteeing" in the first sentence.

6. It is proposed to amend § 18.8(e) by substituting "114.22(d)" for "114.22(c)(3)" in the first sentence of subparagraph (2) and by adding a new subparagraph (3) to read as follows:

§ 18.8 Liability for shortage, irregular delivery, or nondelivery; penalties.

* * * * *

(e) * * *

(3) The domestic guaranteeing association shall be jointly and severally liable with the initial bonded carrier for pecuniary penalties, liquidated damages, duties, and taxes accruing to the United States and any other charges imposed as the result of any shortage, irregular delivery, or nondelivery at the port of destination or port of exit of merchandise covered by an A.T.A. carnet. However, the liability of the guaranteeing association shall not exceed the amount of the import duties by more than 10 percent. If an A.T.A. carnet is unconditionally discharged with respect to certain goods, the guaranteeing association will no longer be liable on the carnet with respect to those goods unless it is subsequently discovered that the discharge of the carnet was obtained fraudulently or improperly or that there has been a breach of the conditions of temporary admission or of transit. No claim for payment shall be made more than 1 year following the date of expiration of the validity of the carnet. The guaranteeing association shall be allowed a period of 6 months from the date of any claim by the district director in which to furnish proof of the reexportation of the goods or of any other proper discharge of the A.T.A. carnet. If such proof is not furnished within the time specified, the guaranteeing association shall either deposit or provisionally pay the sums. The deposit or payment shall become final 3 months after the date of the deposit or payment, during which time the guaranteeing association may still furnish proof of the reexportation of the goods to recover the sums deposited or paid.

§ 18.11 [Amended]

7 It is proposed to amend §§ 18.11 (b), (c), (f), and (g), by removing "TIR."

8. It is proposed to amend § 18.11(h) by removing "TIR" from the first sentence and by substituting "114.22(d)" for "114.22(c)(3)" in the last sentence.

§ 18.12 [Amended]

9. It is proposed to amend § 18.12(d) by removing "TIR."

10. It is proposed to amend § 18.12(e) by substituting "carnets" for "a TIR carnet."

§ 18.20 [Amended]

11. It is proposed to amend §§ 18.20 (a) and (b) by removing "TIR."

12. It is proposed to further amend § 18.20(b) by substituting "Sections 18.1(a) (2) and (3)" for "Section 18.1(a)(2)."

§ 18.24 [Amended]

13. It is proposed to amend §§ 18.24 (a) and (b) by removing "TIR."

14. It is proposed to amend § 18.25(a) by adding the following at the end of the section:

§ 18.25 Direct exportation.

(a) * * * If an A.T.A. carnet covers the merchandise which is to be exported directly without transportation, the carnet shall be discharged by the certification of the appropriate transportation and reexportation vouchers by Customs officers as necessary.

* * * * *

15. It is proposed to amend § 18.26(a) by adding the following at the end of the section:

§ 18.26 Indirect exportation.

(a) * * * If merchandise has been imported under cover of an A.T.A. carnet to be transported in bond to another port for exportation, the appropriate transit voucher shall be accepted in lieu of Customs Forms 7512. One transit voucher shall be certified by Customs officers at the port of importation and a second transit voucher, together with the reexportation voucher shall be certified at the port of exportation.

* * * * *

PART 114—CARNETS

§§ 114.1 and 114.2 [Amended]

1. It is proposed to amend Part 114 by removing §§ 114.1(e) and 114.2(b) and marking those paragraphs "Reserved."

§ 114.12 [Amended]

2. It is proposed to amended § 114.12(b) by substituting "of" for "by" before "future."

3. It is proposed to revise § 114.22(a) to read as follows:

§ 114.22 Coverage of carnets.

(a) *A.T.A. carnet.* The A.T.A. carnet is acceptable for goods to be temporarily entered, or temporarily entered and transported, under:

(1) The Customs Convention on the Temporary Importation of Professional Equipment, or

(2) The International Convention to Facilitate the Importation of Commercial Samples and Advertising Material, which includes motion-picture advertising films not exceeding 16 mm., consisting essentially of photographs (with or without sound track) showing the nature or operation of products or equipment whose qualities cannot be adequately demonstrated by samples or catalogs, provided that the films:

(i) Relate to products or equipment offered for sale or for hire by a person established in the territory of another contracting party;

(ii) Are of a kind suitable for exhibition to the public; and

(iii) Are imported in a packet which contains not more than 1 copy of each film and which does not form part of a larger consignment of films. There shall be presented with each carnet covering motion-picture advertising films a

statement showing how each of the foregoing requirements is met.

(3) When the total of duties and taxes on any shipment covered by an A.T.A. carnet exceeds the amount for which the guaranteeing association is liable, the excess constitutes a charge against the Carrier's Bond of the carrier which receipts for the merchandise in accordance with § 18.2(a) of this chapter.

* * * * *

§ 114.22 [Amended]

4. It is proposed that § 114.22(b) be removed and marked "Reserved."

5. It is proposed that § 114.22(c)(3) be redesignated as § 114.22(d) and be amended by removing "TIR."

§ 114.23 [Amended]

6. It is proposed that § 114.23(a) and the section heading be amended by removing *"and E.C.S."* and "or E.C.S."

§§ 114.24, 114.25, 114.26, and 114.34 [Amended]

7 It is proposed to amend §§ 114.24, 114.25, 114.26 (a) and (b), 114.34(b) by removing "or E.C.S." wherever it appears.

8. It is proposed to amend § 114.26(c) by revising the first sentence to read as follows:

§ 114.26 Discharge, nonacceptance, or cancellation of carnets.

* * * * *

(c) *Nonacceptance or cancellation of TIR carnets.* If a TIR carnet presented to Customs is not accepted, it shall be stamped "Not Taken on Charge" (see § 114.22(c)(2)). * * *

§ 114.32 [Amended]

9. It is proposed to amend § 114.32 by substituting "A.T.A." for "E.C.S."

PART 143—CONSUMPTION, APPRAISEMENT, AND INFORMAL ENTRIES

1. It is proposed to amend § 143.21 by removing "and" after the semicolon in paragraph (g), by substituting a semicolon for the period at the end of paragraph (h), by redesignating § 143.21(i) as § 143.21(j), and adding a new § 143.21(i) to read as follows:

§ 143.21 Merchandise eligible for informal entry.

* * * * *

(i) Theatrical scenery, properties, and effects, motion-picture films, commercial travelers' samples and professional books, implements, instruments, and tools of trade, occupation, or employment, as set forth in § 10.68 of this chapter.

* * * * *

2. It is proposed to further amend § 143.21 by substituting a semicolon for the bracket at the end of the citation of authority and adding the following:

"; T.D. 75-41, 40 FR 6646, February 13, 1975)"

Comments

Before adopting this proposal, consideration will be given to any written comments timely submitted to the Commissioner of Customs. Comments submitted will be available for public inspection in accordance with § 103.8(b), Customs Regulations (19 CFR 103.8(b)), on regular business days between the hours of 9:00 a.m. to 4:30 p.m. at the Regulations and Information Division, Room 2426, Headquarters, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

Authority

These amendments are proposed under the authority of R.S. 251, as amended, sections 484, 498, 624, 46 Stat. 722, as amended, 728 as amended, 729, sections 623, 624, 46 Stat. 759, as amended, section 101, 76 Stat. 72, 77A Stat. 14 (19 U.S.C. 66, 1202 (General Headnote 11), 1484, 1498, 1623, 1624).

Executive Order 12291

Because this document will not result in a regulation which would be a "major" rule as defined by section 1(b) of Executive Order 12291, a regulatory impact analysis and review as prescribed by section 3 of the Executive Order is not required.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to this proposal because the proposed amendments will not have a significant economic impact on a substantial number of small entities. Any economic impact flows directly from international agreements (the Customs Convention on the A.T.A. Carnet for the Temporary Admission of Goods and the Customs Convention on the E.C.S. Carnets for Commercial Samples) and not from the proposed implementing regulations. The proposal is not expected to: have significant secondary or incidental effects on a substantial number of small entities; impose, or otherwise cause, a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities; or generate significant interest or attention from small entities through comments, either formal or informal.

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

Drafting Information

The principal author of this document was Lawrence P. Dunham, Regulations and Information Division, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

William T. Archey,
Acting Commissioner of Customs.

Approved: July 29, 1981.

John P Simpson,
Acting Assistant Secretary of the Treasury.

[FR Doc. 81-28589 Filed 9-30-81; 8:45 am]
BILLING CODE 4810-22-M

---

19 CFR Part 19

Proposed Customs Regulations Amendment Relating to Imported Smelted or Refined Products Containing Metal

AGENCY: Customs Service, Treasury.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Customs Regulations to simplify the reporting requirements relating to the amount of dutiable metal in imported smelted or refined products. Customs believes the revenue would be amply protected without requiring that smelted or refined products containing dutiable metal be described in the warehouse withdrawal and delivery permit. Further, paper work and a reporting burden would be reduced.

DATES: Comments must be received on or before November 30, 1981.

ADDRESS: Written comments (preferably in triplicate) should be addressed to the Commissioner of Customs, Attention: Regulations and Information Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Room 2426, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: William Rosoff, Carriers, Drawback and Bonds Division, U.S. Customs Service,

1301 Constitution Avenue, NW., Washington, D.C. 20229 (202–566–5856).

SUPPLEMENTARY INFORMATION:

Background

Imported metal-bearing materials may be entered into a bonded smelting or refining warehouse in the United States without the payment of duties and smelted or refined, or both, together with other metal-bearing materials of domestic or foreign origin.

Upon the withdrawal for consumption of metal so smelted or refined, or both, duty is collected on the quantity of metal contained in the imported metal-bearing materials. In order to aid in determining the amount of duty to be paid, § 19.18(b), Customs Regulations 19 CFR 19.18(b)), provides that the warehouse withdrawal and delivery permit shall (1) describe the smelted or refined products to be withdrawn in terms of the condition in which they will be when released from Customs custody upon presentation of the delivery permit; (2) state the estimated amount of the dutiable metal contained in the products; and (3) the warehouse withdrawal shall specify the applicable wastage.

Customs has determined that the revenue is amply protected without requiring a description of the smelted or refined products containing dutiable metal in the warehouse withdrawal and delivery permit. The deletion of this requirement would reduce paper work and the reporting burden for those who must file the warehouse withdrawal and delivery permits and yet continue to provide adequate protection of the revenue. Accordingly, it is proposed to delete this requirement.

PART 19—CUSTOMS WAREHOUSES CONTAINER STATIONS AND CONTROL OF MERCHANDISE THEREIN

Proposed Amendment

It is proposed to amend § 19.18(b), customs Regulations (19 CFR 19.18(b)), by revising the fourth sentence of the paragraph to read as follows:

§ 19.18 Smelting and refining; allowance for wastage; withdrawal for consumption.

* * * * *

(b) * * * The warehouse withdrawal and delivery permit shall state the estimated amount of the dutiable metal contained in the products, and the warehouse withdrawal shall specify the applicable wastage.* * *

Authority

This amendment is proposed under the authority of R.S. 251, as amended, sections 312, 624, 46 Stat. 692, as amended, 759 (19 U.S.C. 66, 1312, 1624).

Comments

Before adopting this proposal, consideration will be given to any written comments that are timely submitted to the Commissioner of Customs. Comments submitted will be available for public inspection in accordance with § 103.8(b), Customs Regulations (19 CFR 103.8(b)), on regular business days between the hours of 9:00 a.m. to 4:30 p.m. at the Regulations and Information Division, Headquarters, U.S. Customs Service, 1301 Constitution Avenue, NW., Room 2426, Washington, D.C. 20229.

Executive Order 12291

This proposed amendment is not a "major" regulation as defined in section 1(b) of E.O. 12291. Accordingly, a regulatory impact analysis is not required.

Regulatory Flexibility Act

It has been determined that the proposed amendment is not subject to the provisions of Pub. L. 96–354, the Regulatory Flexibility Act (5 U.S.C. 601–612), because publication of a notice of proposed rulemaking is not required by the Administrative Procedure Act (5 U.S.C. 551 *et seq.*), or any other law. This minor amendment would not impose any additional affirmative duty or burden on the public, but rather would merely reduce paper work and relax a reporting requirement. Accordingly, pursuant to 5 U.S.C. 553(b)(B), notice and public procedure thereon are believed to be unnecessary. However, recognizing that there may be some minor impact from the proposal, in an effort to assess any effects and provide the public with an opportunity to comment, it has been determined to publish this document as a proposed rule.

Drafting Information

The principal author of this document was John E. Elkins, Regulations and Information Division, Office of Regulations and Rulings, U.S. Customs Service. However, other Customs personnel participated in its development.

William T. Archey,

Acting Commissioner of Customs.

Approved: August 26, 1981.

John P. Simpson,

Acting Assistant Secretary of the Treasury.

[FR Doc. 81-28590 Filed 9-30-81; 8:45 am]

BILLING CODE 4810-22-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD5 81-08R]

Drawbridge Operation Regulations: Wrightsville Beach, N.C.

AGENCY: Coast Guard, DOT.

ACTION: Proposed Rule.

SUMMARY: At the request of the Town of Wrightsville Beach, North Carolina, the Coast Guard is considering the establishment of regulations that would limit the opening of the drawbridge across the Atlantic Intracoastal Waterway, mile 283.1, at Wrightsville Beach, North Carolina. This proposal is being made in order to reduce vehicular traffic congestion in the vicinity of the bridge. This action will reduce vehicular traffic congestion and still provide for the reasonable needs of navigation.

DATE: Comments must be received on or before November 16, 1981.

ADDRESS: Comments should be submitted to and are available for review from 8 a.m. to 4:30 p.m., Monday through Friday at the office of the Commander (oan), Fifth Coast Guard District, Federal Building, 431 Crawford Street, Portsmouth, Virginia 23705.

FOR FURTHER INFORMATION CONTACT: Wayne J. Creed, Bridge Administrator, Aids to Navigation Branch, Fifth Coast Guard District, Federal Building, 431 Crawford Street, Portsmouth, Virginia 23705 (804–398–6222).

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this proposed rule making by submitting written comments. Persons submitting comments should include their name and address, and give reasons for concurrence with or any recommended change in the proposal. Persons desiring acknowledgement of their comments should enclose a stamped, self-addressed postcard or envelope.

The Commander, Fifth Coast Guard District, will evaluate all communications received and determine a course of final action on this proposal. The proposed regulations may be changed in the light of comments received.

This proposed regulation has been reviewed under the provisions of E.O. 12291 and has been determined not to be a major rule. In addition, the proposed regulation is considered to be nonsignificant in accordance with guidelines set forth 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 proposal has not been conducted because the expected economic impact is so minimal as to not warrant the evaluation. In accordance with Section 605(b) of the Regulatory Flexibility Act (94 Stat. 1164), it is also certified that this regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities.

These conclusions are supported in the following discussion of the Proposed Regulations.

DRAFTING INFORMATION: The principal person involved in drafting this proposal is: Wayne J. Creed, Project Manager, Fifth Coast Guard District, Aids to Navigation Branch.

DISCUSSION OF THE PROPOSED REGULATIONS: The proposed regulations would restrict the bridge to one opening an hour for the passage of pleasure craft from 7 a.m. to 7 p.m. every day from May 1 through October 30. At all other times the bridge would open on signal for the passage of pleasure craft. Commercial vessel traffic would not be affected by the proposed regulations. The proposed regulations would be in effect only during the tourist season and the restrictions would be in effect during daylight hours for the most part. It is during daylight hours from May 1 through October 30 that vehicular traffic across the bridge is the heaviest according to data provided by the bridge owner. It is felt that the proposed regulations would reduce vehicular traffic congestion in the vicinity of the bridge and still provide for the reasonable needs of navigation. With this in mind, it is reasonable to assume that the proposed regulations are in the best interest of the public.

There are no known businesses that will be significantly impacted by the proposed regulations. Since the regulations only affect pleasure craft, the only costs will be those of time delays and fuel used by these entities. This cost is considered insignificant because the time delays will be less than one hour in most cases.

PART 117—DRAWBRIDGE REGULATIONS

In consideration of the foregoing, it is proposed that Part 117 of Title 33 of the Code of Federal Regulations be amended by adding § 117.359 to read as follows.

§ 117.359 AICWW, Mile 283.1, Wrightsville Beach, NC; bridge

(a) From November 1 through April 30 the drawbridge shall open on signal for the passage of pleasure craft.

(b) From May 1 through October 31:

(1) The drawbridge shall open for the passage of pleasure craft on the hour from 7 a.m. to 7 p.m. every day.

(2) The drawbridge shall open on signal for the passage of pleasure craft from 7 p.m. to 7 a.m. every day.

(3) If a pleasure boat is approaching the drawbridge and cannot reach the draw exactly on the hour the drawtender may delay the hourly opening up to 10 minutes past the hour for the passage of the approaching pleasure boat and any other pleasure boats that are waiting to pass.

(c) The drawbridge shall open on signal at any time for public vessels of the United States, commercial vessels and any vessel in an emergency involving danger to life or property. The signal to request an emergency opening is four or more short blasts of a whistle or horn.

(d) A copy of the regulations in this section shall be posted on both sides of the bridge.

(Sec. 5. 28 Stat. 362, as amended (33 U.S.C. 499); Sec. 6(g)(2), Pub. L. 89-670, 80 Stat. 937, as amended (49 U.S.C. 1655(g)(2)); 49 CFR 1.46(c)(5), 33 CFR 1.05-1(g)(3))

Dated: September 28, 1981.

John D. Costello,

Rear Admiral, U.S. Coast Guard Commander, Fifth Coast Guard District.

[FR Doc. 81-28607 Filed 9-30-81; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-3-FRL 1936-7]

State of Maryland; Proposed Revision of the Maryland State Implementation Plan

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The purpose of this notice is to propose approval of several amendments of the Maryland Regulations submitted on May 18, 1981 as revisions to the State Implementation Plan. A public hearing was held on these amended regulations on December 15, 1980 in accordance with the requirements of 40 CFR 51.4. The regulations were adopted on April 8, 1981 and became effective State regulations on June 8, 1981. This proposed rule includes adoption of new regulations, for the control of Volatile Organic Compound (VOC) emissions and for the control of total reduced sulfur emissions from kraft pulp mills, as well as miscellaneous State-initiated regulation changes and revised stack test procedures. Additionally, EPA proposes changes to 40 CFR Part 52 pertaining to the transportation control plans. This notice solicits comments on EPA's proposed action.

DATE: Comments on these proposed SIP revisions must be submitted on or before November 2, 1981.

ADDRESSES: Copies of the proposed SIP revision and the accompanying support documents are available for inspection during normal business hours at the following offices:

U.S. Environmental Protection Agency, Region III, Air Programs Branch, Curtis Building, Tenth Floor, Sixth and Walnut Streets, Philadelphia, Pennsylvania 19106, ATTN: Edward A. Vollberg;

Maryland Department of Health and Mental Hygiene, Air Management Administration, 201 W. Preston Street, Baltimore, Maryland 21201, ATTN: George P. Ferreri;

Public Information Reference Unit, Room 2922, EPA Library, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460.

All comments should be directed to: Mr. Henry Sokolowski, Chief, MD-DE-DC Metro Section (3AH12), U.S. Environmental Protection Agency, Region III, Sixth and Walnut Streets, Philadelphia, PA 19106, ATTN: AH303MD, AH203MD, AH400(a)MD.

FOR FURTHER INFORMATION CONTACT: Mr. Edward A. Vollberg (3AH12), U.S. Environmental Protection Agency, Region III, Sixth and Walnut Streets, Philadelphia, Pennsylvania 19106, telephone: 215/597-8990.

SUPPLEMENTARY INFORMATION: On May 18, 1981, the Governor of the State of Maryland submitted numerous regulation changes as revisions to the Maryland State Implementation Plan. This revision identified by Maryland as Revision 81-1 includes State-initiated changes as well as new regulations adopted to meet specific EPA requirements including conditions of approval of the Part D plan. A public hearing on the changed and new regulations was held on December 15, 1980 in Baltimore, Maryland. The regulations were adopted on April 8, 1981 and became effective State regulations on June 8, 1981. These amendments have been developed and

submitted in accordance with the requirements of Title 40, Code of Federal Regulations, Part 51. Further, on January 20, 1981, the Governor of Maryland requested that the transportation measures in 40 CFR Part 52 that were obsolete be deleted. These deletions are consistent with EPA's action on the Maryland plan revision which satisfied the requirements of Part D of Title I of the Clean Air Act, as amended (45 FR 53470, August 12, 1980).

Background

The revision as submitted to EPA includes:

1. The adoption of reasonably available control technology (RACT) regulations for the Round II Control Techniques Guidelines for the control of VOC emissions.
2. Extension of the new source performance standards (NSPS) and national emission standards for hazardous air pollutants (NESHAPS) coverage through the 1979 edition of the Code of Federal Regulations.
3. The adoption of total reduced sulfur (TRS) regulations for kraft pulp mills.
4. Miscellaneous State regulation changes.
5. Revised stack test procedures.

Each of the above will be discussed individually in the following portions of this notice.

1. Part D of Title I of the Clean Air Act, as amended, required that States revise their State Implementation Plan (SIP) for all areas that have not attained the national ambient air quality standards (NAAQS). As a part of the Maryland control strategy for attainment of the NAAQS for ozone (O_3), the State revised its regulations to require additional control of volatile organic compounds (VOCs) in the Baltimore Metropolitan Intrastate Air Quality Control Region (AQCR) and the Maryland portion of the National Capital Interstate AQCR. The revisions to the State SIP control VOCs emitted from certain industrial sources covered by EPA's Group II Control Techniques Guidelines (CTGs). For States with O_3 nonattainment areas, EPA has stated that the minimum acceptable level of control for O_3 attainment includes RACT requirements for sources of VOC emissions for which EPA has published a CTG by January 1978 and additional reasonably available control technology (RACT) requirements on an annual basis for VOC sources covered by CTGs published by January of the proceeding year (see 44 FR 20372 [April 4, 1979] as supplemented at 44 FR 38583 [July 2, 1979]; 44 FR 50371 [August 28, 1979]; 44 FR 53761 [September 17, 1979]; and 44 FR 67182 [November 23, 1979]). Adoption and submittal of additional RACT regulations for sources covered by CTGs published between January 1978 and January 1979 (Group II CTGs) were due on July 1, 1980 (44 FR 50371, August 28, 1979). However, because State regulatory processes took longer than anticipated, and in most cases good faith efforts were being made to adopt the necessary regulations, EPA revised the July 1, 1980 deadline to January 1, 1981 (45 FR 78121, November 25, 1980).

EPA published the CTGs in order to assist the States in determining RACT. The CTGs provide information on available air pollution control techniques and provide recommendations on what EPA calls the "presumptive norm" for RACT. Group II CTGs cover the following source categories:

Factory Surface Coating of Flat Wood Paneling
Petroleum Refinery Fugitive Emissions (Leaks)
Manufacture of Synthesized Pharmaceutical Products
Manufacture of Pneumatic Rubber Tires
Surface Coating of Miscellaneous Metal Parts and Products
Graphic Arts (Printing)
Dry Cleaning (Perchloroethylene)
Gasoline Tank Trucks, Leak Prevention
Petroleum Liquid Storage, External Floating Roof Tanks

The State, in its submittal, included a statement that there is not pneumatic rubber tire manufacturing or flat wood paneling manufacturing in the ozone nonattainment areas and therefore no RACT regulations for these industries were adopted. For the remaining categories, Maryland has either made changes to currently-approved regulations or adopted new regulations as necessary.

2. Coverage of NSPA and NESHAPS are defined in the Maryland Regulations by reference to the Code of Federal Regulations. This requires updating of these regulations by the State as new or revised NSPS or NESHAPS regulations are promulgated by EPA. The changes proposed, update and expand coverage of the regulations to those sources that have been added to the Federal programs since the initial delegation of authority. These include all changes incorporated in the 1979 edition of the Code of Federal Regulations.

3. Control of kraft pulp mill total reduced sulfur emissions is required by Section 111(d) of the Clean Air Act, as amended. This section of the Act requires a plan for emission performance standards for non-criteria pollutants. In the case of kraft pulp mills, EPA has published a New Source Performance Standard for total reduced sulfur (TRS) emissions. Maryland's new regulation (10.18.14) has been developed to respond to this new standard. The regulation applies to only one facility in the State, the Westvaco Mill in Luke, Maryland.

4. Miscellaneous changes to the Maryland regulations are being made for clarification or correction of previous versions. These include changes to general definitions, changes to the incinerator regulations, changes to regulations on solid fuel-burning equipment, and establishment of a new regulation for the galvanizing industry. Additionally Maryland is exempting benzene emissions from the VOC regulations due to its low reactivity, however, the State intends to control benzene emissions under the NESHAPS regulations when EPA finalizes them.

5. Maryland, as a result of the new regulations and to satisfy the conditions of approval of the Part D plan, needed to revise the stack test procedures used by the State of Maryland. While these do not change the emission requirements, they do define the techniques to determine compliance and are therefore submitted as revisions to the SIP.

EPA Evaluation and Proposed Action

EPA has reviewed the amended regulations submitted by the Governor of the State of Maryland on May 18, 1981 as revisions to the State Implementation Plan. The amendments have been developed and submitted in accordance with the requirements of Title 40, Code of Federal Regulations, Part 51. Specific review of each amendment, as well as EPA's findings, is presented below:

1. COMAR 10.18.01

Section .01I. is amended to reference the 1979 edition of 40 CFR Part 61.

Section .01K is amended to add subsection (25) Kraft Pulp Mills and (26) Grain elevators.

EPA proposes to approve these changes since they merely update the Maryland regulations to be consistent with Federal requirements.

2. COMAR 10.18.06

Section .01B is amended to exempt benzene and methylene chloride.

Section .06A is repealed, since requirements are recodified in 10.8.13.

Section .12 is amended to change the reference to 40 CFR 1979 edition. The State in its cite for NSPS refers to 40 CFR Part 61. This was a typographical error; Part 60 is the appropriate part for NSPS requirements. Maryland is aware of this error and will correct it in the near future.

Section .13 is amended to change the reference to 40 CFR 1979 edition.

EPA proposes to approve these changes, noting the intent that Section .12 reference 40 CFR Part 60 rather than Part 61.

3. COMAR 10.18.08

This regulation was amended to be consistent with a Maryland Department of Health & Mental Hygiene interpretive guideline for disposal of infectious wastes. The regulation therefore has been changed to eliminate references to pathological and medical waste and to use only the term infectious waste. Additionally, an emission limit was established for infectious waste incinerators burning less than one ton of refuse per hour and less than eight tons of refuse per day which is 0.10 gr/SCFD.

EPA proposes to approve these changes, since they do not change the attainment demonstration for the approved Maryland SIP

4. COMAR 10.18.09

Section .04 and .06 and Table 1 are being revised to change the size limit on the prohibited sources. Since the emission limit for all existing sources will remain the same, the prviously approved attainment demonstration remains unchanged. Any new sources are required to obtain new source permits by Maryland's regulations which were adopted in accordance with 40 CFR 51.18 and will therefore be reviewed on a case-by-case basis.

Section .08 is amended to correct a previous error. The regulation is applicable to existing fuel-burning equipment yet it had incorrectly referred to new equipment, therefore the word "new" is deleted.

EPA proposes to approve these changes.

5. COMAR 10.18.10

This entire regulation is not a part of the approved SIP and is undergoing further revision by the State of Maryland. The State has held hearings on the new regulations and will be submitting them in the very near future. The changes in this revision being considered today will be superseded by the new regulations.

EPA is not acting on these changes at this time and will review and act on the entire new COMAR 10.18.10 when submitted by the State of Maryland in the near future.

6. COMAR 10.18.11

Section .02 was amended in response to the conditional approval of the Maryland SIP for the attainment of the ozone standard. The regulation now uses a monthly exemption to the prohibition of cutback asphalt use in place of the previous temperature-related exemption which was more difficult to enforce. This satisfies the concern raised in the previous conditional approval. Further, the definition for "emulsified asphalt" has been clarified to reference the designated ASTM or AASHTO specifications as amended through November 14, 1980, which satisfies EPA's other concern noted in the conditional approval. These amendments do not change the regulation requirements which are being met.

Section .04 was amended to include regulations for the control of refinery equipment leaks in response to the Round II CTG documents published between January 1978 and January 1979. EPA has noted some typographical errors in the regulation where a section D is referenced instead of the correct section C. The State of Maryland has been notified of these and will make the necessary corrections in the near future. EPA does not feel that this affects the approvability of the regulation.

Section .05 has been repealed as it is included in the requirements of a new chapter 10.18.13 which is discussed later in this notice.

EPA finds that the above changes satisfy previous concerns in conditional approval of the Part D plan and needed VOC controls to reflect RACT and therefore proposes to approve the amendments.

7 COMAR 10.18.12

This is a new regulation and establishes emission standards for the galvanizing industry. These were developed reflecting the status quo emissions for the sources presently located in Maryland. The current approved SIP attainment demonstration includes these emissions and is not changed by this regulation.

EPA proposes to approve COMAR 10.18.12 as a part of the State Implementation Plan.

8. COMAR 10.18.13

This is a new chapter which replaces regulations 10.18.11.05 and 10.18.06.06A and incorporates their combined requirements. Further, it adds control requirements which were based upon the Round II CTG documents. The definition of true vapor pressure used by Maryland in this chapter varies from the recommended EPA definition; however, Maryland has certified that the total emissions from the controlled category are the same no matter which definition is used. Therefore, the Maryland definition is satisfactory.

EPA proposes to approve COMAR 10.18.13 as a part of the Maryland State Implementation Plan.

9. COMAR 10.18.14

This chapter is a new regulation which was developed to meet the requirements of Section 111(d) of the Clean Air Act. Under this Section of the Act, EPA has published guidelines for the control of total reduced sulfur (TRS) emissions from kraft pulp mills. The only affected facility in the State of Maryland is the Westvaco Kraft Mill in Luke, Maryland. The regulation was developed considering the EPA guideline and the specifics of the Luke Mill. Maryland's emission standard is on a weight basis as opposed to the guideline standard which is a volume basis; however, the State has supplied the analysis showing the equivalency for its standard.

EPA proposes to approve 10.18.14 as the 111(d) plan for TRS emissions from kraft pulp mills.

10. COMAR 10.18.21

Section .01A is amended to included an exemption of benzene and methylene chloride from the definition of organic material.

Section .10 was amended to require RACT control of VOC emissions from graphics arts sources, developed in accordance with the Round II CTGs.

Section .12 is a new regulation for the control of VOC emissions from dry cleaning facilities. This regulation is consistent with the CTG document for this source category, with the exception of the size cutoff of 55 gallons per month. This size cutoff is significant larger than that adopted by most other states. While EPA proposes to approve this regulation, comments are specifically solicited on this size exemption.

Section .13 is a new regulation for the control of VOC emissions from miscellaneous metal coating. This regulation is an acceptable representation of RACT control for this category of sources in the State of Maryland.

Section .14 is a new regulation controlling VOC emissions from synthesized pharmaceutical manufacture. Maryland has chosen 40 lbs/day as a lower size cutoff. While this is higher than the EPA recommendation, the one affected source located in the State of Maryland emits more than 40 lbs/day, therefore there is not difference in total emissions even though a different cutoff size was

chosen. Also, § .14(B)(1)(c) contains a typographical error in referring to a vapor pressure of 1.0 psia. This should have read 1.5 psia. Maryland has noted this and has committed to change it at the most convenient future time. Therefore, EPA is proposing this rule on the basis that 1.5 psia is the proper vapor pressure.

EPA proposes to approve the amendments to COMAR 10.18.21, noting the intent in § .14(b)(1)(c) to refer to 1.5 psia as the vapor pressure.

11. Technical Memorandum TM-116

TM-116 the State of Maryland Stack Test Methods were amended to reflect the above regulation changes and the conditional approval of the Part D plan. They are consistent with EPA stack test requirements, and satisfy the conditional approval.

EPA proposes to approve TM-116 as amended November 1980 as a revision to the Maryland SIP

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

12. Changes to 40 CFR Part 52

Approval Status § 52.1073 will be revised to reflect the changes to §§ 52.1074, 52.1076, 52.1077, 52.1080, 52.1081, 52.1084, 52.1089, 52.1090, 52.1091, 52.1092, 52.1093, 52.1094, 52.1095, 52.1096, 52.1097, 52.1098, 52.1099, 52.1100, 52.1103, 52.1104, 52.1105, 52.1106, 52.1108, 52.1109, and 52.1111 due to the current approved SIP measures (45 FR 53460, August 12, 1980).

Legal Authority § 52.1074 will be revised to reflect the current SIP as proposed on August 1, 1979 (44 FR 45144) and approved August 12, 1980 (45 FR 53460).

Section 52.1076 is proposed to be repealed and reserved due to the indefinite suspension of the provisions of § 52.22(b).

Section 52.1077 (b) and (c) are proposed to be amended to reflect the approved SIP.

Section 52.1080(b)-(k) are proposed to be repealed since they are obsolete and the currently approved SIP measures replace them.

Section 52.1081—this section is proposed to be repealed since it has been made obsolete by the currently approved SIP.

Section 52.1083—this provision is proposed to be repealed as it has been satisfied with the current approved SIP measures.

Section 52.1084—this provision is proposed to be repealed as it has been satisfied with the current approved SIP

Section 52.1089—this provision is proposed to be repealed as it has been replaced by I/M provisions in the current approved SIP

Section 52.1090 is proposed to be repealed as it has been made obsolete by the current SIP measures.

Section 52.1091-.1094 are to be repealed as they are obsolete measures.

Section 52.1095 has been replaced by the current approved SIP I/M requirements and is proposed to be repealed.

Section 52.1096-.1100 are proposed to be repealed as they are obsolete measures.

Section 52.1103-52.1104, 52.1105, and 52.1106 have been replaced by current SIP measures and are proposed to be repealed.

Sections 52.1108-52.1109 have been replaced by a current SIP measure and is proposed to be repealed.

Section 52.1111 is proposed to be repealed, this measure is obsolete and its purpose has been achieved by other current SIP measures.

As noted in the Federal Register notice approving the Maryland Part D plan (45 FR 53470), these obsolete measures can be deleted; therefore, EPA proposes to amend 40 CFR Subpart V—Maryland in accordance with the above evaluation and in response to the request made by the Governor of Maryland on January 20, 1981.

Based upon the above evaluations it is the tentative decision of the Administrator to approve these proposed revisions to the Maryland State Implementation Plan as discussed in this notice.

The public is invited to submit comments on whether these amendments should be approved as revisions to the Maryland State Implementation Plan.

The Administrator's decision to approve or disapprove the proposed revision will be based upon the comments received and on a determination whether they meet the requirements of Part D of Title I and Sections 110(a)(2) and 111(d) of the Clean Air Act.

Under Executive Order 12291, EPA must judge whether a regulation is "Major" and therefore subject to the requirement of a Regulatory Impact Analysis. This regulation is not major because this action, if promulgated, only approves State actions and imposes no new requirements.

This regulation was submitted to the Office of Management and Budget for review as required by Executive Order 12291.

Pursuant to the provisions of 5 U.S.C. 605(b) the Administrator has certified that SIP approvals under Sections 110 and 172 of the Clean Air Act will not have a significant economic impact on a substantial number of small entities. See 46 FR 8709 (January 27, 1981). This action, if promulgated, constitutes a SIP approval under Sections 110 and 172 within the terms of the January 27 certification. This action only approves State actions. It imposes no new requirements.

Dated: August 25, 1981.

Alvin R. Morris,

Acting Regional Administrator.

[FR Doc. 81-28552 Filed 9-30-81; 8:45 am]

BILLING CODE 6560-38-M

---

40 CFR Parts 122 and 146

[WH-FRL-1921-3]

Underground Injection Control Program Criteria and Standards

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency is proposing amendments to its Consolidated Permit Regulations (40 CFR Part 122) and Technical Criteria and Standards for State Underground Injection Control Programs (40 CFR Part 146), as promulgated May 19, 1980 and June 24, 1980 respectively.

The Agency is proposing these amendments as part of a settlement agreement reached with a number of companies, trade associations and the State of Texas which have challenged the regulations in court.

DATES: EPA will accept public comments on the proposed amendments until November 16, 1981, either in writing or at the informal public hearings to be held at the time and place listed below.

ADDRESSES: Written public comments should be sent to the comment clerk, UIC Program Regulations, Office of Drinking Water (WH-550), EPA, Washington, DC 20460.

Public hearings will be held at the Humphrey Building, Humphrey Auditorium, 200 Independence Avenue, Washington, D.C., on November 2, 1981; and at the U.S. Post Office Building, 1828 Stout Street, Room 269, Denver Colorado, on November 5, 1981.

FOR FURTHER INFORMATION CONTACT: Thomas E. Belk, Chief, Ground-Water Protection Branch, Environmental Protection Agency, (202) 426-3934.

SUPPLEMENTARY INFORMATION:

I. Background

EPA originally proposed regulations to implement Part C of the Safe Drinking Water Act (SDWA) on August 31, 1976 (41 FR 36730–45). That proposal included the program regulations, the technical criteria and standards, and the related grant regulations for the Underground Injection Control (UIC) program. Numerous written comments were filed and many persons commented at three public hearings.

After careful review of those public comments, EPA determined that there were many ways that the initial proposal could be made generally more flexible and less burdensome without sacrificing the resulting environmental protection to any significant degree. Further, in the fall of 1978, the Agency decided to consolidate the regulations for its major permit protrams: the Hazardous Waste Management program under the Resource Conservation and Recovery Act (RCRA); the UIC program under the Safe Drinking Water Act (SDWA); and the National Pollutant Discharge Elimination System (NPDES) under the Clean Water Act (CWA).

As a consequence of these decisions the UIC program regulations were reproposed in four parts on April 20 and June 14, 1979:

- 40 CFR Part 122 reproposed the regulatory framework for the UIC program.
- 40 CFR Part 123 described the elements of an approvable State program and proposed the process for EPA approval of State participation in the UIC program.
- 40 CFR Part 124 described the procedures for permit application and issuance. Certain provisions of 40 CFR Part 124 would also be applicable to State UIC programs.
- 40 CFR Part 146 proposed the technical criteria and standards to be used by EPA or the State in implementing the UIC program.

After five public hearings and review of public comments the Agency promulgated final Consolidated Permits Regulations on May 19, 1980 (45 FR 33290 et seq.) and Technical Criteria for State Underground Injection Control Programs, on June 24, 1980 (45 FR 42472 et seq.).

A number of trade associations, mining companies, oil and gas producers, iron and steel producers, and the State of Texas petitioned for review of these regulations, insofar as they were promulgated pursuant to the Safe Drinking Water Act. In all a list of 93 issues was filed by the petitioners with the Court of Appeals for the District of Columbia Circuit. The Agency has discussed these issues with the litigants and has reviewed studies on which it relied to draft the regulations, reassessed comments received during rule making and reevaluated the cost and production impacts of the regulations in the light of these discussions. The proposed amendments are the result of these reevaluations. While EPA anticipates that the final promulgation of these proposed amendments in substantially the same form will provide a basis for settlement of the litigation affecting these regulations, EPA will consider carefully all public comments on this proposal before making its final decision.

II. Changes to the Major Program Concepts

A. Classification of Injection Wells

When the Agency originally proposed these regulations in 1976, injection wells were grouped into three categories:

- Waste Disposal and Engineering Wells, including industrial and municipal disposal wells, subsidence control wells, mining wells, storage and geothermal wells, etc;
- Injection Wells related to Oil and Gas Production; and
- Drainage Wells, including wells used to dispose of storm water runoff, irrigation return flow, and excess ponded surface waters.

In order to make technical requirements more specifically and appropriately applicable to particular injection practices, the Agency developed a more fully articulated classification scheme for the reproposal in 1979. Injection wells were grouped into five classes:

- Class I retained the industrial and municipal disposal wells and nuclear storage and disposal wells injecting below the deepest underground source of drinking water (USDW) in the area.
- Class II retained the injection wells related to oil and gas production.
- A new Class III contained mining, geothermal, and other special process wells.
- A new Class IV included wells used by generators of hazardous wastes or hazardous waste management facilities to inject into or above USDWs.
- Class V included all other wells (e.g., subsidence control, irrigation return flow, etc.) not included in Classes I–IV

This five-part classification scheme, with certain adjustments, was promulgated in 1980. These amendments propose to make several changes in the promulgated classification scheme.

Classes I and IV The Preamble to the 1979 reproposal pointed out that wells not injecting into, through or above USDWs were covered by the regulations in Class V and requested comment on this decision (44 FR 23740–1). Commenters seemed not to be opposed to this inclusion, but argued that the injection of hazardous waste, regardless of the injection zone, merited stricter regulation than that outlined for Class V The Agency agreed with this comment and categorized injection of hazardous wastes *not* into, through or above USDWs in Class I instead of Class V The possible choices for classifying such practices were either Class I or Class IV At that time, however, the Agency was contemplating a total ban on all Class IV operations. A ban was judged to be an overly stringent measure for the control of wells not injecting into, through or above USDWs. Therefore, such wells were placed in Class I in order to create a presumption that they could be authorized to operate with a permit. At that time the Agency realized that the technical requirements of Class I may not be applicable to each such injection practice. Partly to provide for such situations, the final regulations contained § 122.43(a) which allows the Director to ease virtually all requirements for such injections as long as doing so does not result in an increased risk of movement of fluids into an USDW (see Preamble to the final Part 146, 45 FR 42474 and 42479–80).

Several changes have occurred since the Agency made the decisions outlined above. *First,* in the course of the litigation, industry representatives sought clarification about whether an injection of hazardous waste into an exempted aquifer was a banned practice. This had not been the Agency's intent, and these amendments now clarify that such injections are not banned. *Second,* the Agency in the final regulation decided not to go ahead with a ban on all Class IV wells at the time the regulations were promulgated. The final regulations only ban the injection of hazardous wastes directly into an USDW. Requirements for other Class IV wells, those injecting above an USDW, were reserved and the Agency requested further public comment regarding appropriate regulation (45 FR 33331 *et seq.* and 42485 *et seq.). Third,* the final regulations did not provide for an interim rule to authorize the continued operation of existing Class IV wells for which requirements were reserved. This was because, at the time the final regulations were issued, the Agency expected to have final regulations promulgated within a few

months, well before any operational State programs raised the question of authorization for the continued operation of the reserved Class IV wells.

In light of the foregoing discussion these amendments propose two changes. One, the injection of hazardous wastes *not* into through or above USDWs is moved from Class I to Class IV Two, § 122.37 is amended to make it possible to authorize the continued operation of existing Class IV wells for which requirements have been reserved.

Class II. The Agency is proposing to broaden Class II to include wells in which waste waters from gas plants, which are an integral part of the production of gas from oil and gas fields, are injected along with produced brines, so long as these waste waters are not a hazardous waste at the time of injection. It has been pointed out to the Agency that it is a fairly common practice to dispose of blow-down waters from cooling towers and boilers used in the initial drying process of natural gas, along with the produced brine separated from the gas. EPA believes that adding this blow-down water which generally contains very low total dissolved solids levels to the brine does not increase the risk to underground sources of drinking water. It seems reasonable to reduce the administrative burden for the Director and the owners or operators which would result from requiring a separate Class I permit for these wells.

Class III. The major change to the Class III category is the shift of two types of wells currently in Class III to Class V Geothermal wells used for the production of electric power were considered Class III in the promulgated regulations. However, these wells really do not "inject for extraction of mineral or energy"; rather they are used to reinject brines from which heat has been extracted into the formations from which they were pumped. In many cases, such reinjection serves to recharge these formations. For this reason the Agency is proposing to place these wells in Class V to allow for an assessment of the practice.

In discussions with the litigants it was pointed out to EPA that the technical requirements for Class III wells were not appropriate for injection wells used for *in situ* recovery of lignite, coal, tar sands or oil shale. These are emerging technologies and the Agency does not wish at this time to impede their development by imposing technical requirements which may not fit the various practices or which may restrict their technical evolution. The Agency therefore proposes to place these wells in Class V where they can be further studied and assessed.

Class V Finally the Agency is proposing some language in § 122.31(d)(2) and is rewording the inclusions in Class V to exclude cesspools and septic systems used for non-residential establishments when they are used solely for the disposal of sanitary wastes and have a maximum capacity to serve fewer than 20 persons a day. The Agency thinks that these types of system would be similar to single residential systems which are excluded from the regulation and accordingly, is proposing to exclude them as well.

B. Underground Sources of Drinking Water

The Safe Drinking Water Act requires that the regulations protect drinking water sources, i.e., "underground water which supplies or can reasonably be expected to supply any public water system." In the promulgated regulations current underground sources of drinking water were defined as "aquifers or portions of aquifers which currently provide drinking water for human consumption. Aquifers in which the ground water contains fewer than 10,000 mg/1 were considered potential sources of drinking water. Aquifers which were not currently used for drinking water could be exempted if they were:

(1) Mineral, hydrocarbon or geothermal energy producing;

(2) Situated at a depth or location which makes recovery of water for drinking purposes economically or technologically impractical;

(3) So contaminated that it would be economically or technologically impractical to render the water fit for human consumption; or

(4) Located over a Class III mining area subject to subsidence or catastrophic collapse.

After discussion with the litigants and a review of the record on the subject the Agency is proposing to amend this definition to reflect more closely the intent of the Safe Drinking Water Act. This proposal defines current underground sources of drinking water as aquifers or their portions which currently supply public water systems. Aquifers in which the ground water contains fewer than 10,000 mg/l are still considered potential sources of drinking water if they supply water for human consumption or can yield a sufficient quantity of water to supply a public water system.

The Agency has reviewed the current information on the drinking water use of aquifers containing high levels of total dissolved solids (TDSs). This review found that the use of water containing up to 3,000 mg/l TDS is fairly widespread. The Agency has also found that ground water containing as much as 9,000 mg/l TDS is currently supplying public water systems. EPA also believes that technology for treating water containing high levels of TDS is advancing. Therefore, based on this review and the legislative history of the Safe Drinking Water Act, the Agency still believes that it is reasonable to protect aquifers containing water with fewer than 10,000 mg/l TDS as potential sources of drinking water.

At the same time the Agency believes that the use of aquifers containing water between 3,000 and 10,000 mg/l of TDS is likely to be a function of economics and specific local hydrogeologic circumstances. Therefore, the Agency is proposing to provide flexibility to the Director for exempting such aquifers.

A new criterion in Section 146.04 would allow for exemption if "the total dissolved solids content of the ground water is more than 3,000 and less than 10,000 mg/l and it is not reasonably expected to supply a public water system." As part of the flexibility afforded the Director, subsequent to State program approval such exemptions will not be considered program revisions. Rather the Director, after notice and opportunity for a public hearing, must notify the Administrator in writing of the designations and the exemptions will become final unless the Administrator disapproves of them within 45 days. However, there are no changes for designation of exempted aquifers which are part of a State program submission.

The Agency is also proposing to modify the first exemption criterion which could have been construed as prohibiting mineral exploitation of previously unproduced areas. The Agency still wants to prevent the possibility of wholesale exemption of aquifers over large areas of the country simply because they are mineral bearing. However, EPA is proposing a modification to allow for exemption of aquifers if they are expected to yield commercially-producible minerals or hydrocarbons.

A subsection is being added to § 122.35 which details specific information which the Director should require from permit applicants in order to make a judgement that an aquifer contains commercially-producible minerals or hydrocarbons.

C. "No Migration" Standard

The basic purpose of the UIC regulations is to provide a framework for State programs which assures that underground injections will not

"endanger" drinking water sources. Section 1421(b)(1) states that regulations published by the Agency under Section 1421 "shall contain minimum requirements for effective programs to prevent underground injection which endangers drinking water sources " In the course of developing these regulations, the Agency has attempted to develop a standard for "endangerment" which would both meet the intentions of the Act and provide a usable, measurable test for use by injectors and regulatory agencies.

The 1976 proposal provided that underground injection operations found to endanger should be discontinued and offered the following definition:

> * * *Underground injection endangers underground sources of drinking water if (1) such injection may make it necessary for a public water system using an underground drinking water source to increase treatment of the water; or (2) if such injection might make it necessary for a public water system which uses the source in the future to use more extensive treatment of the water than would otherwise have been necessary, or (3) if such injection may otherwise adversely affect the health of persons such as by adding a substance that would make water from the source unfit for human consumption. (41 FR 36737)* * *

Many commenters argued, and EPA agreed, that this definition was vague and confusing. Therefore in the 1979 reproposal the Agency decided to avoid a definition of engangerment and to provide instead an operational standard to meet the statutory goal. As explained in the preamble [The test in these reproposed regulations is whether injection operations will cause the migration of injected or formation fluids into an underground source of drinking water. If injection into a well can cause such migration, the owner/operator must take appropriate action to eliminate the fluid migration (44 FR 23740).] The Agency believed that this standard, applicable to Class I–III wells, was achievable through sound engineering practices. However, the 1979 reproposal provided for two exemptions to the strict "no migration" standard. First, for casing and cementing of Class II wells, the Director could grant relief from the requirements for existing wells if injection would "not result in the migration of fluids into an underground source of drinking water so as to create a significant risk to the health of persons using the source of drinking water" (44 FR 23762). Second, Class V wells were subject to the different standard of "no significant risk to the health of persons" (44 FR 23766).

In the promulgated regulations there was a blanket prohibition at § 122.34 against movement of fluid into underground sources of drinking water for Class I, II or III wells. No Class IV or V wells were authorized if they caused or allowed movement of fluid containing any contaminant into underground sources of drinking water, and the presence of that contaminant could cause a violation of any primary drinking water regulation under 40 CFR Part 142 or adversely affect the health of persons.

In Part 146 the specific technical requirements were stated so as to be achievable through good engineering practices.

In §§ 146.06 and 146.07 the goal was to determine the area in which injection pressure could cause the upward vertical movement of formation or injection fluids via improperly plugged or completed wells and apply necessary remedies.

Similarly in § 146.10(a), Plugging and Abandonment of Class I–III Wells, and in the definition of plugging in § 146.03, the Agency was specifically concerned with vertical movement of fluids through a borehole or well which could lead to communication between aquifers.

In current §§ 146.12, 146.22 and 146.32 the requirement is that wells be cased and cemented to prevent movement of fluids into or between underground sources of drinking water. The goal of this requirement is two-fold: one, to prevent movement of injected fluids from the well into USDWs which would occur if the tubular goods were leaking; and two, to prevent vertical movement of injected or formation fluids through the bore hole which could occur if the casing, cement and packer were not properly set. The test of proper construction is set by § 146.08, Mechanical Integrity. A well is properly constructed if there is no significant leak in the casing, tubing or packer, and properly cemented if there is no significant fluid movement through *vertical* channels adjacent to the well bore.

In §§ 146.13, 146.23 and 146.33 the requirement is that the injection pressure be calculated so that there is no fracturing of the confining zone and no movement of injection or formation fluids into underground sources of drinking water. This prohibition is against movement which could occur if the confining zone were fractured, or the injection pressure resulted in a zone of endangering influence greater than that used in setting the corrective action requirements. The only exception to this would be in certain Class III operations such as uranium mines which operate in exempted aquifers. There the concern would be with lateral movement of fluid into the protected portions of the aquifers. The "no migration" standard is achievable through net withdrawal of water from the mined zone, during the life of the mining operation. The Agency therefore thought that the promulgated regulations had achieved an appropriate and feasible standard.

Discussions with the litigants, however, pointed out one remaining problem. Paragraph 146.10(d) established two requirements with respect to the abandonment of a Class III well field which underlies or is in an aquifer which has been exempted under 40 CFR 146.04. First, the plugging and abandonment plan to be prepared by the permittee was to demonstrate that no movement of contaminants from the mined zone into an USDW would occur. Second, the Director was to prescribe such aquifer cleanup and monitoring measures as necessary and feasible on a case-by-case basis to insure that no migration from the mined zone into an USDW would occur.

It has been called to the Agency's attention that a "no migration" standard may not be technically or economically feasible to achieve in the case of at least some abandoned Class III sites. It may be extremely difficult to remove all residues of the mining activity, for example, ammonia, from the mining site. As the natural flow of the aquifer is reestablished after abandonment, such residues may be dissolved or eluted over time and carried into protected portions of the aquifer.

To solve this problem, this amendment proposes to change the standard in § 146.10(d) from "no migration" to one of "adequate protection." The plugging and abandonment plan to be submitted by the permittee would have to demonstrate an adequate level of protection for USDWs. Similarly, the Director would be empowered to prescribe necessary aquifer cleanup and monitoring to assure an adequate level of protection for USDWs.

The proposal of a different standard for § 146.10(d) reflects EPA's judgment that the abandonment of Class III mining operations which underly or inject into aquifers exempted under § 146.04 represents a sufficiently unique situation that a different standard for the protection of USDWs is appropriate.

The "adequate protection" standard is intended to require all efforts on the part of the operator that are necessary to assure that there will be no movement of fluids into an underground source of drinking water so as to create a significant risk to the health of persons. EPA does not believe that it is either

possible or even prudent to prescribe a more specific standard as part of these minimum national requirements. The appropriate level of protection is best determined by the Director in each individual case. In establishing the specific requirements, EPA expects the Director to take the particular circumstances of the mining site into account—for example, the nature and concentration of the residuals, the hydrogeology of the aquifer, the economic and technical feasibility of cleanup actions, the importance of the aquifer, the proximity of water wells, and the number of people relying on the USDW down-gradient from the mining site.

The Agency also believes that since the "no migration" standard does not fit all the technical requirements it is not appropriate to keep it in § 122.34(a) as a general requirement and is proposing to amend this section to provide that [no authorization by permit or rule shall allow the movement of fluid containing any contaminant into underground sources of drinking water, if the presence of that contaminant may cause a violation of any primary drinking water regulation under 40 CFR Part 142 or may otherwise adversely affect the health of persons] The same language is also used in § 122.31(d) "Scope of the Permit or Rule Requirements" where that section refers to § 122.34.

Finally, a change is proposed for § 122.34(b) which requires the Director to take certain steps when monitoring indicates movement of fluids. This has been reworded to specify that this section only applies if there is movement of contaminants into an underground source of drinking water and that movement is not authorized under Part 146.

D. Mechanical Integrity

The mechanical integrity requirement in the promulgated regulations was the result of consideration by the Agency of comments and contractors' reports prepared for the Agency. However, after discussions with the litigants and reevaluation of available information, the Agency is proposing some modifications of this requirement.

The regulations now require Class II wells to show that there is no significant leak in the casing, tubing or packer by continuous monitoring of annulus pressure, or by periodic pressure tests with liquid or gas which can only be done in wells completed with tubing and packer where the annulus can be filled with fluid and pressure applied to the annulus. EPA proposes to amend this requirement for two reasons:

One, the periodic pressure test is burdensome in wells completed without a packer. In order to provide some relief to operators of such wells the Agency is willing to accept instead records of injection pressure and flow rate, provided that these data are available and that an initial pressure test was performed. The Agency still expects owners or operators to run one pressure test at a time when the well is shut down and running the test would not cause loss of production.

Two, the pressure test cannot be preformed in certain wells completed without long string casings. In such cases the Director is to require a ground-water monitoring program and inspection of annular space where possible in addition to the pressure and flow rate data, to verify the absence of fluid movement into underground sources of drinking water.

These proposed changes only apply to enhanced recovery wells since EPA believes that shutting down these wells in order to run a pressure test could have a substantial impact on oil and gas production. Further for these wells a strong economic incentive exists for the operator to insure that the wells function properly, i.e., that there are no significant leaks from the well. There are no changes proposed for salt water disposal wells since shutting these wells down for a few days every five years in EPA's view would only have minimal impact on oil and gas production.

Finally it has come to the Agency's attention that in the case of Class III wells the logging techniques prescribed to verify the absence of fluid movement behind the casing of a well are not reliable when PVC casing is used. For such wells this proposal now only requires that the operator submit cementing records showing the presence of adequate cement to prevent migration. The monitoring program prescribed by § 146.33(b) shall be designed to verify the absence of significant fluid movement.

E. Area Permits

This proposal contains one amendment to the Area Permit requirements. The current regulations require that all wells covered by an area permit be of one class as defined in § 122.32. It has been called to EPA's attention, however, that certain operations, for example storage of hydrocarbon in salt domes, may employ more than one type of well (Class III wells for mining the salt and Class II wells to inject the hydrocarbons). The same wells may also be used as Class II at certain times and Class III at others. It seems reasonable for these operations to be placed under a single permit and therefore the Agency is proposing to delete the requirement that all wells in an area permit be of a single class. The permit will specify construction, operation, and monitoring and reporting requirements applicable to each type of well covered. However, because the Agency believes injection of hazardous waste deserves to be treated differently from other types of injection, the regulations limit this relief to wells which are not used to inject hazardous waste.

A definition related to area permits has been added to §§ 122.3 and 146.03. These sections now include the term "project" defined to mean a group of wells in a single operation. This term is now used in a number of places throughout the regulations in connection with the requirements applicable to operations authorized under an area permit.

III. Changes to Class II Requirements

The promulgated regulations set out the information which had to be considered by the Director in specifying casing and cementing requirements (§ 146.22(b)) and issuing permits (§ 146.24(a)). After discussions with the litigants the Agency has reassessed the amount of information required and is proposing to delineate more precisely the information which it feels is indispensable for setting requirements, from the information which it is desirable to take into account. The items previously included in §§ 146.22(b) and 146.24(a) have been retained in the proposal except for some clarifying terminology. However, the requirements have been reorganized to distinguish the information the Director may consider from the information he must consider. The requirements in § 146.22(g) have been streamlined and reworded to make it clear that the information required is for the project in general and need not be repeated for every single will authorized by an area permit.

EPA is proposing that the logging requirements in § 146.22(f) be modified in two ways. First, the proposal allows the use of electric logs intead of only resistivity and spontaneous potential logs. This proposed change would allow the Director and owner or operator to use the most effective logging program in any given situation instead of being limited to only two specific logs. Second, for surface casing, the logging requirements would now only apply in areas where the lithology is unknown. Shallow logs are not usually run for oil and gas wells since the information obtained is of little use to the

companies, and the logging requirements would be burdensome without corresponding environmental benefit where enough information on the shallow zones is readily available from other sources.

Finally, these proposed amendments would reduce the monitoring requirements by allowing for observation instead of monitoring (which imples recording) of injection pressure, flow rate and cumulative volumes at the time intervals which were specified in the regulation at § 146.23(b). These observations would have to be recorded once a month and summaries submitted to the Director annually as now required. If at any time the injection pressure or the flow rate exceed the limits imposed in the permits the operator will be in non-compliance and must make an immediate report to the Director according to the requirement of § 122.41(d). Imposing on the operator the burden of recording these data daily or weekly when he is in compliance with the terms of the permit could result in unnecessary paperwork. Monthly records, however, are useful in providing information on the overall performance of the well.

IV. Changes to Class III Requirements

Despite the care the Agency had taken in drafting the Class III requirements, discussions with the litigants have pointed out particular instances where the requirements could be modified, to make them more appropriate for particular operations, without any loss of environmental benefits.

The Agency is proposing to amend § 146.10 to allow discretion to the Director in the choice of plugging material for Class III wells. The cement required by the promulgated regulations is not necessary, for example, to form the bottom plug in wells used in the Frasch sulfur mining process since sulfur left at the bottom of the well will harden when hot water injection ceases and forms an adequate plug.

The Agency is also proposing in § 146.32(a) to allow discretion to the Director as to whether or not to cement the casing of new wells in existing fields where historical practice and available data may show that cementing is not necessary to protect underground sources of drinking water. Similarly, the Agency not realizes that some shallow wells are constructed by a pilot hole and reaming technique. For those wells which will be cased and cemented by circulating cement to the surface, the Agency does not believe that deviation checks are necessary since the cementing method will effectively plug off any diverging hole. Section 146.32(b) has been reworded to provide for this alternative.

The proposal would amend the monitoring requirements of § 146.33 to bring them closer to existing practices and require monitoring of injection pressure and either flow rate or injected volumes, or metering of injected and produced volumes, depending on the type of operation monitored. The proposal also liberalizes the frequency of monitoring. An important factor in protecting underground sources of drinking water from the impact of Class III operations is that certain limits for injection pressure, flow-rate, or in the case of shallow operations such as uranium mines, levels of certain indicator parameters in the monitoring wells, be established as permit conditions. Since noncompliance with any of these conditions must be reported to the Director immediately and corrrective measures taken, continuous monitoring and recording does not appear to be indispensable to ensure protection of the USDWs. The greater discretion provided will allow the Director to select the monitoring requirements which will provide the greatest environmental safeguards while reducing the burden on owners or operators.

Finally, discussions with the litigants brought out the fact that some of the information required for permitting in § 146.34(a)(7) concerning the analysis of injected fluids was of a highly confidential nature and may not be necessary for the Director to know in order to protect underground sources of drinking water. Accordingly, it is proposed that the requirement for a specific qualitative and quantitative analysis of injected fluids be relaxed to require only qualitative analysis and ranges in concentrations of constituents of the injected fluids. If the information is deemed proprietary the applicant may submit only data on the maximum concentration of certain constituents which are not to be exceeded.

The applicant for a permit can request that this information be treated as confidential. In § 122.19 the Agency has set out the requirements for confidentiality claims. Nothing in the UIC program is intended to override protection which is afforded proprietary information under State law, except insofar as Federal statutes or regulations require disclosure of information.

In keeping with the proposed change to § 146.34(a)(7), EPA is proposing that the monitoring requirements at § 146.33(b)(1) be changed to require monitoring of the nature of injected fluids rather than a more detailed analysis of the physical and chemical characteristics of the injected fluids so long as the original analysis has not been rendered incorrect or, incomplete.

In addition, two minor changes are being proposed to § 146.34(a): first, maps and cross sections need not show the lateral limits of underground sources of drinking water which could have required maps and cross-sections covering several miles; and second, the extent of the formation testing program would be clarified by referencing it to § 146.32(c). This section would be revised in a manner consistent with the revisions proposed for Class II wells to make it clear that the information required is for the project in general and need not be repeated for every single well authorized by an area permit.

V. Changes to Part 122

A. 180-Day Notice of Abandonment

It has been pointed out to the Agency that the 180-day notice of abandonment of a well was not desirable since once a well is inactive, speedy plugging is important to protect underground sources of drinking water. The requirement could also have conflicted with State laws in some cases. Accordingly, the Agency is proposing that the Director be responsible for deciding when notice of abandonment needs to be given, and that specific time frames be set in the permits. Language in §§ 122.37, 122.39(c) and 122.41(e) would be revised to this effect.

B. Miscellaneous Changes

Section 122.10(a) would be revised to allow 30 days instead of 14 to submit progress reports after each interim or final date in compliance schedules.

Section 122.41 would be revised to require that records of the nature and composition of injected fluids be retained for 3 years instead of 5 years after completion of plugging and abandonment proceudres.

Section 122.42(g), Financial Responsibility, would be revised in order to make it clearer that surety bonds are not the only means of proving financial responsibility.

VI. Changes to Part 146

A. Definitions

The Agency proposes to amend the definition of "packer" by deleting the words "which can be expanded" from the current definition since it is aware that non-expandable packers are available. The type of packer used in a particular circumstance will be discussed as part of a permit application

process and the Director has the ultimate responsibility to approve or disapprove the use of a given packer.

The Agency is adding two definitions to that section, one for "conventional mines" and the other for "experimental technologies." These terms have been used in the recently promulgated technical amendments to the regulations and these definitions have been added for the benefit of the regulated community.

B. Plugging and Abandonment

Section 146.10(b) specifies that the placement of plugs during the abandonment of wells in Classes I–III must be accomplished by the use of one of three methods. The three methods named are currently the major acceptable methods for placing plugs. By specifying the use of one of the three methods, the Agency intended to assure the use of readily available and effective technology in the abandonment of wells.

It is, however, possible that new methods for the placement of plugs may be developed in the future which are as good as, or better than, the existing technology. Since § 146.10 does not provide for the use of any alternatives to the three specified methods, the wording of the requirement could work to frustrate the development and use of new technology. Such a result was not the Agency's intent. Therefore, this amendment would provide the Director the discretion to allow the use of a method for placing plugs, other than those specified, as long as the alternative can be shown to be at least as effective as the ones specified.

VII. Economic and Regulatory Impacts

A. Expected Economic Impact

The regulations being proposed today, if promulgated, will result in saving to owners and operators of approximately $70 million over five years over the costs they would have incurred under the existing regulations. These savings result from reductions in the requirements for mechanical integrity testing, monitoring and reporting, and permit application for Class II wells, as well as the removal of certain wells from coverage under Class III. The proposed regulations are not expected to have any impact on oil and gas production, or on production from Class III operations.

In addition to savings to owners and operators EPA expects the States to save $1.4 million over five years due to a reduced number of permits to review as well as less detailed information to evaluate in the application.

A detailed economic analysis of this proposal is available upon request.

B. Paperwork Reduction

The proposed regulations will result in a lesser paperwork burden on owners and operators, as well as State enforcement bodies, by reducing the amount of monitoring information which must be collected and the number of times per year the information is to be submitted. In addition, less detailed information will be required on permit applications, and applications for area permits can cover wells of various classes, not just wells of similar construction. These changes are expected to result in a reduction of 213,000 hours of monitoring and reporting time expended by owners and operators, and a reduction of 102,000 hours of permit processing time by the States, over a five-year period.

C. Impact on Small Businesses

Under the Regulatory Flexibility Act an agency is required to prepare an initial regulatory flexibility analysis whenever it is required to publish general notice of any proposed rule, unless the head of the agency certifies that the rule, if promulgated will not have a significant economic impact on a substantial number of small entities. These proposed regulations will reduce the costs to small Class II businesses. (The Agency knows of no small businesses affected by the changes in the Class III regulations.) As noted in the separate document discussing the economic effects of these proposed regulations, the Agency examined two potential definitions of a small entity for Class II operations. One involved a definition by the Department of Energy based on the production of a firm with a small oil and gas firm producing annually less than 400,000 barrels of oil or less than 2 billion cubic feet of gas. Approximately 97% of the firms producing oil and gas fall into this category. An alternative definition was based upon well production with stripper wells defined as those producing less than 10 barrels per day of oil. Stripper wells account for approximately 70% of all producing wells. Under both definitions it seems probable that the majority of resource savings from this proposed change could accrue to small entities. Therefore, the Administrator certifies that this regulation will not have a significant impact on a substantial number of small entities.

The economic effects of these proposed regulations on small businesses are discussed in greater detail in a separate background document available from the Agency.

D. Executive Order 12291

Under Executive Order 12291, EPA must judge whether the amendments to the regulation are major and therefore subject to the requirements of a regulatory impact analysis. These proposed amendments modify certain monitoring and reporting requirements, provide greater flexibility to operators and to State enforcement agencies and generally make the regulations more flexible and less burdensome for a savings of approximately $70 million over five years. They therefore do not constitute major rulemaking. This proposal was submitted to OMB for review as required by Executive Order 12291.

(Sec. 1421, 1422, 1423, 1431, 1445, 1447, 1450, Safe Drinking Water Act, as amended 42 U.S.C. 300(f) et. seq.)

Dated: September 19, 1981.

Anne M. Gorsuch,

Administrator.

40 CFR Part 122 is amended as follows:

PART 122—EPA ADMINISTERED PERMIT PROGRAMS: THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM; THE HAZARDOUS WASTE PERMIT PROGRAM: AND THE UNDERGROUND INJECTION CONTROL PROGRAM

1. In § 122.3 the definition for "underground source of drinking water" is revised and a definition of "Project" added to read as follows:

§ 122.3 Definitions.

* * * * *

Project means a group of wells in a single operation.

* * * * *

Underground source of drinking water (USDW) (RCRA and UIC) means an aquifer or its portion:

(1)(i) Which supplies any public water system; or

(ii) Which contains a sufficient quantity of ground water to supply a public water system; and

(A) Currently supplies drinking water for human consumption; or

(B) Contains fewer than 10,000 mg/1 total dissolved solids; and

(2) Which is not an exempted aquifer.

* * * * *

2. In § 122.10 paragraph (a)(4) is revised to read as follows:

§ 122.10 Schedules of compliance.

(a) * * *

(4) Reporting—A RCRA or NPDES permit shall be written to require that no later than 14 days following such interim date and the final date of compliance, the permittee shall notify the Director in writing of its compliance or noncompliance with the interim or final requirements. A UIC permit shall be written to require that if paragraph (a)(1)(ii) of this section is applicable, progress reports be submitted no later than 30 days following each interim date and the final date of compliance.

* * * * *

3. In § 122.31 the introduction to paragraph (d) is revised and paragraph (d)(2)(iii) is redesignated (d)(2)(iv) and a new (d)(2)(iii) is added to read as follows:

§ 122.31 Purpose and scope of subpart C.

* * * * *

(d) Scope of the permit or rule requirement. The UIC permit program regulates underground injections by five classes of wells (see definition of "well injection," § 122.3). The five classes of wells are set forth in § 122.32. All owners or operators of these injection wells must be authorized either by permit or rule by the Director. In carrying out the mandate of the SDWA, the Subpart provides that no injection shall be authorized by permit or rule if it results in the movement of fluid containing any contaminant into USDWs if the presence of that contaminant may cause a violation of any primary drinking water regulation under 40 CFR Part 142 or may adversely affect the health of persons (§ 122.34). Existing Class IV wells which inject hazardous waste directly into an underground source of drinking water are to be eliminated over a period of six months and new such Class IV wells are to be prohibited (§ 122.36). Class V wells will be inventoried and assessed and regulatory action will be established at a later date. In the meantime, if remedial action appears necessary, an individual permit may be required (§ 122.37) or the Director must require remedial action or closure by order (§ 122.34(c)). During UIC program development, the Director may identify aquifers and portions of aquifers which are actual or potential sources of drinking water (see § 123.4(g) for State programs). This will provide an aid to the Director in carrying out his or her duty to protect all USDWs. An aquifer is a USDW if it fits the definition, even if it has not been "identified." The Director may also designate "exempted aquifers" using criteria in § 146.04. Such aquifers are those which would otherwise qualify as "underground sources of drinking water" to be protected, but which have no real potential to be used as drinking water sources. Therefore they are not USDWs. No aquifer is an "exempted aquifer" until it has been affirmatively designated under the procedures in § 122.35. Aquifers which do not fit the definition of "underground sources of drinking water" are not "exempted aquifers." They are simply not subject to the special protection afforded USDWs.

* * * * *

(2) * * *

(iii) Nonresidential cesspools, septic systems or similar waste disposal systems if such systems (A) are used solely for the disposal of sanitary waste, and (B) have the capacity to serve fewer than 20 persons a day.

(iv) Any dug hole which is not used for emplacement of fluids underground.

* * * * *

4. In § 122.32 paragraphs (a)(1), (b)(1) and (d) are revised and (c)(4) and (5) are removed to read as follows:

§ 122.32 Classification of injection wells.

(a) *Class I.* (1) Wells used by generators of hazardous wastes or owners or operators of hazardous waste management facilities to inject hazardous waste beneath the lowermost formation containing, within one quarter mile of the well bore, an underground source of drinking water.

* * * * *

(b) *Class II.* (1) Which are brought to the surface in connection with conventional oil or natural gas production and may be commingled with waste waters from gas plants which are an integral part of production operations, unless those waters are classified as a hazardous waste at the time of injection.

* * * * *

(d) Class IV

(1) Wells used by generators of hazardous wastes or of radioactive wastes, by owners or operators of hazardous wastes management facilities, or by owners or operators of radioactive waste disposal sites to dispose of hazardous wastes or radioactive wastes into a formation which within one quarter (¼) mile of the well contains an underground source of drinking water.

(2) Wells used by generators of hazardous wastes or of radioactive wastes, by owners or operators of hazardous waste management facilities, or by owners or operators of radioactive waste disposal sites to dispose of hazardous waste or radioactive waste above a formation which within one quarter (¼) mile of the well contains an underground source of drinking water.

(3) Wells used by generators of hazardous wastes or owners or operators of hazardous waste management facilities to dispose of hazardous wastes, which cannot be classified under §§ 122.32(a)(1) or 122.32(d)(1) and (2) (e.g., wells used to dispose of hazardous wastes into or above a formation which contains an aquifer which has been exempted pursuant to § 146.04).

* * * * *

5. In § 122.34 paragraphs (a) and (b) are revised to read as follows:

§ 122.34 Prohibition of movement of fluid into underground sources of drinking water.

* * * * *

(a) No authorization by permit or rule shall allow the movement of fluid containing any contaminant into underground sources of drinking water, if the presence of that contaminant may cause a violation of any primary drinking water regulation under 40 CFR Part 142 or may otherwise adversely affect the health of persons. The applicant for a permit shall have the burden of showing that the requirements of this paragraph are met.

(b) For Class I, II, and III wells, if any water quality monitoring of an underground source of drinking water indicates the movement of any contaminant into the underground source of drinking water, except as authorized under Part 146 the Director shall prescribe such additional requirements for construction, corrective action, operation, monitoring, or reporting (including closure of the injection well) as are necessary to prevent such movement. In the case of wells authorized by permit, these additional requirements shall be imposed by modifying the permit in accordance with § 122.15, or the permit may be terminated under § 122.16 if cause exists, or appropriate enforcement action may be taken if the permit has been violated. In the case of wells authorized by rule, see § 122.37(a).

* * * * *

6. In § 122.35 paragraph (b) is revised and paragraph (c) is added to read as follows:

§ 122.35 Identification of underground sources of drinking water.

* * * * *

(b)(1) The Director may identify (by narrative description, illustrations, maps, or other means) and describe in geographic and/or geometric terms (such as vertical and lateral limits and gradient) which are clear and definite, all aquifers or parts thereof which the

Director proposes to designate as exempted aquifers using the criteria in 40 CFR 146.04.

(2) No designation of an exempted aquifer submitted as part of a UIC program shall be final until approved by the Administrator as part of the State program.

(3) Subsequent to program approval, the Director may, after notice and opportunity for a public hearing, identify additional exempted acquifers. Exemption of aquifers identified (i) under § 146.04(b) shall be treated as a program revision under § 123.13; (ii) under § 146.04(c) shall become final if the State Director submits the exemption in writing to the Administrator and the Administrator has not disapproved the designation within 45 days. Any disapproval by the Administrator shall state the reasons and shall constitute final agency action for purposes of judicial review.

(c)(1) For Class III wells, the Director shall require an applicant for a permit which necessitates an aquifer exemption under § 146.04(b)(1) to furnish the data necessary to demonstrate that the aquifer is expected to be mineral or hydrocarbon producing. Information contained in the mining plan for the proposed project, such as a map and general description of the mining zone, general information on the mineralogy and geochemistry of the mining zone, analysis of the amenability of the mining zone to the proposed mining method, and a time-table of planned development of the mining zone shall be considered by the Director in addition to the information required by § 122.38(c). Approval of the aquifer exemption shall be treated as a program revision under § 123.13.

(2) For Class II wells, a demonstration of commercial producibility shall be made as follows:

(i) For a Class II well to be used for enhanced oil recovery processes in a field or project containing aquifers from which hydrocarbons were previously produced, commercial producibility shall be presumed by the Director upon a demonstration by the applicant of historical production having occurred in the project area or field.

(ii) For Class II wells not located in a field or project containing aquifers from which hydrocarbons were previously produced, information such as logs, core data, formation description, formation depth, formation thickness and formation parameters such as permeability and porosity shall be considered by the Director, to the extent such information is available.

7 In § 122.37 paragraphs (a)(1)(iii)(D), (a)(2)(i)(D), and (a)(3) are revised to read as follows:

§ 122.37 Authorization of underground injection by rule.

(a) * * *

(1) * * *

(iii) * * *

(D) Section 122.41(e)—(notice of abandonment);

* * * * *

(2) * * *

(i) * * *

(D) Section 122.41(e)—(notice of abandonment);

* * * * *

(3)(i) Injection into existing Class IV wells as defined in § 122.32(d)(1) may be authorized for a period not to exceed six months after approval or promulgation of the UIC program. Such rules shall apply the requirements of § 122.45(c).

(ii) Injection into existing Class IV wells as defined in § 122.32(d)(2) and (3) may be authorized until six months after approval or promulgation of an UIC program incorporating criteria and standards under Part 146, Subpart E applicable to Class IV injection wells. Such rules shall apply the requirements of § 122.45(c).

* * * * *

8. In § 122.39 paragraphs (a)(1), (a)(3), (a)(4) and (c)(1) and the introduction to (c) are revised to read as follows:

§ 122.39 Area permits.

* * * * *

(a) * * *

(1) Described and identified by location in permit application(s) if they are existing wells, except that the Director may accept a single description of wells with substantially the same characteristics;

* * * * *

(3) Operated by a single owner or operator; and

(4) Used to inject other than hazardous waste.

* * * * *

(c) The area permit may authorize the permittee to construct and operate, convert, or plug and abandon wells within the permit area provided:

(1) The permittee notifies the Director at such time as the permit requires.

* * * * *

9. In § 122.41 paragraphs (b) and (e) are revised to read as follows:

§ 122.41 Additional conditions applicable to all UIC permits.

* * * * *

(b) In addition to § 122.7(j)(2) (monitoring and records): the permittee shall retain records concerning the nature and composition of all injected fluids until three years after the completion of any plugging and abandonment procedures specified under § 122.42(f). The Director may require the owner or operator to deliver the records to the Director at the conclusion of the retention period.

* * * * *

(e) The permittee shall notify the Director at such times as the permit requires before conversion or abandonment of the well or in the case of area permits before closure of the project.

10. In § 122.42 paragraph (g) is revised to read as follows:

§ 122.42 Establishing UIC permits conditions.

* * * * *

(g) Financial responsibility. The permit shall require the permittee to maintain financial responsibility and resources to close, plug, and abandon the underground injection operation in a manner prescribed by the Director. The permittee must show evidence of financial responsibility to the Director by the submission of surety bond, or other adequate assurance, such as financial statements or other materials acceptable to the Director.

PART 146—UNDERGROUND INJECTION CONTROL PROGRAM: CRITERIA AND STANDARDS

40 CFR Part 146 is amended as follows:

1. In § 146.3 the definitions for "Conventional mine", "Experimental technology", and "Project" are added and the definitions for "packer" and "underground source of drinking water" are revised to read as follows:

§ 146.3 Definitions.

* * * * *

Conventional mine means an open pit or underground excavation for the production of minerals.

* * * * *

Experimental technology means a technology which has not been proven feasible under the conditions in which it is being tested.

* * * * *

Packer means a device lowered into a well to produce a fluid-tight seal within the casing.

* * * * *

Project means a group of wells in a single operation.

* * * * *

Underground source of drinking water (USDW) means an aquifer or its portion

(1)(i) Which supplies any public water system; or

(ii) Which contains a sufficient quantity of ground water to supply a public water system; and

(A) Currently supplies drinking water for human consumption; or

(B) Contains fewer than 10,000 mg/1 total dissolved solids; and

(2) Which is not an exempted aquifer.

* * * * *

2. In § 146.4 paragraph (b)(1) and (b)(4) are revised and (c) is added to read as follows:

§ 146.4 Criteria for exempted aquifers.

* * * * *

(b) * * *

(1) It is mineral, hydrocarbon or geothermal energy producing, or can be demonstrated by a permit applicant as part of a permit application for a Class II or III operation to contain minerals or hydrocarbons that considering their quantity and location are expected to be commercially producible.

* * * * *

(4) It is located over a Class III well mining area subject to subsidence or catastrophic collapse; or

(c) The Total Dissolved Solids content of the ground water is more than 3,000 and less than 10,000 mg/l and it is not reasonably expected to supply a public water system.

3. In § 146.5 paragraphs (a)(1), (b)(1), (d), (e)(2), (e)(9), (e)(12) and the introduction to paragraph (e) are revised, (e)(16) is added and (c) (4) and (5) are removed to read as follows:

§ 146.5 Classification of injection wells.

* * * * *

(a) * * *

(1) Wells used by generators of hazardous waste or owners or operators of hazardous waste management facilities to inject hazardous waste beneath the lowermost formation containing, within one quarter (¼) mile of the well bore, an underground source of drinking water.

* * * * *

(b) * * *

(1) Which are brought to the surface in connection with conventional oil or natural gas production and may be commingled with waste waters from gas plants which are an integral part of production operations, unless those waters are classified as a hazardous waste at the time of injection.

* * * * *

(d) *Class IV* (1) Wells used by generators of hazardous wastes or of radioactive wastes, by owners or operators of hazardous waste management facilities, or by owners or operators of radioactive waste disposal sites to dispose of hazardous wastes or radioactive wastes into a formation which within one quarter (¼) mile of the well contains an underground source of drinking water.

(2) Wells used by generators of hazardous wastes or of radioactive wastes, by owners or operators of hazardous waste management facilities, or by owners or operators of radioactive waste disposal sites to dispose of hazardous wastes or radioactive wastes above a formation which within ¼ mile of the well contains an underground source of drinking water.

(3) Wells used by generators of hazardous wastes or owners or operators of hazardous waste management facilities to dispose of hazardous wastes, which cannot be classified under §§ 146(a)(1) or 146.5(d)(1) and (2) (e.g., wells used to dispose of hazardous wastes into or above a formation which contains an aquifer which has been exempted pursuant to § 146.4).

(e) Class V—Injection wells not included in Class I, II, III, or IV Class V wells include: * * *

(2) Cesspools including multiple dwelling, community or regional cesspools, or other devices that receive wastes which have an open bottom and sometimes have perforated sides. The UIC requirements do not apply to single family residential cesspools nor to non-residential cesspools which receive solely sanitary wastes and have the capacity to serve fewer than 20 persons a day.

* * * * *

(9) Septic system wells used to inject the waste or effluent from a multiple dwelling, business establishment, community or regional business establishment septic tank. The UIC requirements do not apply to single family residential septic system wells, nor to non-residential septic system wells which are used solely for the disposal of sanitary waste and have the capacity to serve fewer than 20 persons a day.

* * * * *

(12) Injection wells associated with the recovery of geothermal energy for heating, aquaculture and production of electric power;

* * * * *

(16) Injection wells used for in situ recovery of lignite, coal, tar sands, and oil shale.

4. In § 146.8 the introduction to paragraph (b) is revised and paragraphs (b)(3), (c)(3) and (c)(4) added to read as follows:

§ 146.8 Mechanical integrity.

* * * * *

(b) One of the following methods must be used to evaluate the absence of significant leaks under paragraph (a)(1) of this section:

* * * * *

(3) Records of monitoring showing the absence of significant changes in the relationship between injection pressure and injection flow rate for the following Class II enhanced recovery wells:

(i) Existing wells completed without a packer provided that a pressure test has been performed and the data is available and provided further that one pressure test shall be performed at a time when the well is shut down and if the running of such a test will not cause further loss of significant amounts of oil or gas; or

(ii) Existing wells constructed without a long string casing, but with surface casing which terminates at the base of fresh water provided that local geological and hydrological features allow such construction and provided further that the annular space shall be visually inspected. For these wells, the Director shall prescribe a monitoring program which will verify the absence of significant fluid movement from the injection zone into an USDW.

(c) * * *

(3) For Class III wells where the nature of the casing precludes the use of the logging techniques prescribed at (c)(1) of this paragraph, cementing records demonstrating the presence of adequate cement to prevent such migration;

(4) For Class III wells where the Director elects to rely on cementing records to demonstrate the absence of significant fluid movement, the monitoring program prescribed by § 146.33(b) shall be designed to verify the absence of significant fluid movement.

* * * * *

5. In § 146.10 paragraphs (a) and (d) are revised and paragraph (b)(4) is added to read as follows:

§ 146.10 Plugging and Abandoning Class I-III Wells.

(a) Prior to abandoning Class I-III wells the well shall be plugged with cement in a manner which will not allow the movement of fluids either into or between underground sources of drinking water. The Director may allow Class III wells to use other plugging materials if he is satisfied that such materials will prevent movement of fluids into or between underground sources of drinking water.

(b) * * *

(4) or an alternative method approved by the Director, which will reliably provide a comparable level of protection to underground sources of drinking water.

* * * * *

(d) The plugging and abandonment plan required in 40 CFR 122.42(f) and 122.41(e) shall, in the case of a Class III project which underlies or is in an aquifer which has been exempted under 40 CFR 146.04, also demonstrate adequate protection of USDWs. The Director shall prescribe aquifer cleanup and monitoring where he deems it necessary and feasible to insure adequate protection of USDWs.

6. In § 146.22 paragraphs (b) (4), (5), (6), and (7) are removed; the introductory text to paragraph (b) is redesignated as paragraph (b)(1); the existing paragraph (b)(1) is redesignated as (b)(1)(i); paragraphs (b) (2) and (3) are redesignated (b)(1) (ii) and (iii) and revised; (b)(2) is added; the introduction to (f)(2)(i), paragraphs (f)(2)(i)(A), (f)(2)(ii)(A), and (g) are revised to read as follows:

§ 146.22 Construction requirements.

* * * * *

(b)(i) * * *

(ii) Depth to the bottom of all USDWs;

(iii) Estimated maximum and average injection pressures;

(b)(2) In addition the Director may consider information on:

(i) Nature of formation fluids;

(ii) Lithology of injection and confining zones;

(iii) External pressure, internal pressure, and axial loading;

(iv) Hole size;

(v) Size and grade of all casing strings;

(vi) Class of cement.

* * * * *

(f) * * *

(2) * * *

(i) For surface casing intending to protect underground sources of drinking water in areas where the lithology has not been determined:

(A) Electric and caliper logs before casing is installed; and

* * * * *

(ii) * * *

(A) Electric, porosity and gamma ray logs before the casing is installed;

* * * * *

(g) At a minimum, the following information concerning the injection formation shall be determined or calculated for new Class II wells or projects:

(1) Fluid pressure;

(2) Estimated fracture pressure;

(3) Physical and chemical characteristics of the injection zone.

7 In § 146.23 the introduction to paragraph (b)(2) is revised and a paragraph is added at the end of (b)(2) to read as follows:

§ 146.23 Operating, monitoring and reporting requirements.

* * * * *

(b) * * *

(2) Observation of injection pressure, flow rate, and cumulative volume at least with the following frequencies:

* * * * *

And recording of one observation of injection pressure, flow rate and cumulative volume at reasonable intervals no greater than 30 days.

* * * * *

8. In § 146.24 paragraphs (b) and (c) are redesignated (c) and (d) respectively; paragraphs (a) (10) through (14) are removed; paragraphs (a) (4)(iii), (5), (6), (8) and (9) are revised; and a new paragraph (b) is added to read as follows:

§ 146.24 [Amended]

* * * * *

(a) * * *

(4) * * *

(iii) Source and an appropriate analysis of the chemical and physical characteristics of the injection fluid.

(5) Appropriate geological data on the injection zone and confining zone including lithologic description, geological name, thickness and depth;

(6) Geologic name and depth to bottom of all underground sources of drinking water which may be affected by the injection;

* * * * *

(8) In the case of new injection wells the corrective action proposed to be taken by the applicant under 40 CFR 122.44;

(9) A certificate that the applicant has assured through a performance bond or other appropriate means, the resources necessary to close, plug or abandon the well as required by 40 CFR 122.42(g);

(b) In addition the Director may consider the following:

(1) Proposed formation testing program to obtain the information required by § 146.22(g);

(2) Proposed stimulation program;

(3) Proposed injection procedure;

(4) Proposed contingency plans, if any, to cope with well failures so as to prevent migration of contaminating fluids into an underground source of drinking water;

(5) Plans for meeting the monitoring requirements of § 146.23(b).

* * * * *

9. In § 146.32 the introduction to paragraph (a), and paragraphs (b), (c) and (d) are revised to read as follows:

§ 146.32 Construction requirements.

(a) All new Class III wells shall be cased and cemented to prevent the migration of fluids into or between underground sources of drinking water. The Director may waive the cementing requirement for new wells in existing projects or portions of existing projects where he has substantial evidence that no contamination of underground sources of drinking water would result. The casing and cement used in the construction of each newly drilled well shall be designed for the life expectancy of the well. In determining and specifying casing and cementing requirements, the following factors shall be considered:

* * * * *

(b) Appropriate logs and other tests shall be conducted during the drilling and construction of new Class III wells. A descriptive report interpreting the results of such logs and tests shall be prepared by a knowledgeable log analyst and submitted to the Director. The logs and tests appropriate to each type of Class III well shall be determined based on the intended function, depth, construction and other characteristics of the well, availability of similar data in the area of the drilling site and the need for additional information that may arise from time to time as the construction of the well progresses. Deviation checks shall be conducted on all holes where pilot holes and reaming are used, unless the hole will be cased and cemented by circulating cement to the surface. Where deviation checks are necessary they shall be conducted at sufficiently frequent intervals to assure that vertical avenues for fluid migration in the form of diverging holes are not created during drilling.

(c) Where the injection zone is a formation which is naturally water-bearing the following information concerning the injection zone shall be determined or calculated for new Class III wells or projects:

(1) Fluid pressure,

(2) Fracture pressure, and

(3) Physical and chemical characteristics of the formation fluids.

(d) Where the injection formation is not a water bearing formation, the information in paragraph (c)(2) of this section must be submitted.

* * * * *

10. In § 146.33 paragraphs (b)(1), (b)(2), (b)(3) and (b)(4) are revised to read as follows:

§ 146.33 [Amended]

* * * * *

(b) * * *

(1) Monitoring of the nature of injected fluids with sufficient frequency to yield representative data on its characteristics. Whenever the injection fluid is modified to the extent that the analysis required by § 146.34(a)(7)(iii) is incorrect or incomplete, a new analysis as required by § 146.34(a)(7)(iii) shall be provided to the Director.

(2) Monitoring of injection pressure and either flow rate or volume semi-monthly, or metering and daily recording of injected and produced fluid volumes as appropriate.

(3) Demonstration of mechanical integrity pursuant to § 146.08 at least once every five years during the life of the well for salt solution mining.

(4) Monitoring of the fluid level in the injection zone semi-monthly, where appropriate and monitoring of the parameters chosen to measure water quality in the monitoring wells required by § 146.32(e), semi-monthly.

* * * * *

11. In § 146.34 paragraph (a)(4), (a)(7)(iii), (a)(8) and (b)(2), are revised to read as follows:

§ 146.34 Information to be considered by the Director.

* * * * *

(a) * * *

(4) Maps and cross sections indicating the vertical limits of all underground sources of drinking water within the area of review, their position relative to the injection formation, and the direction of water movement, where known, in every underground source of drinking water which may be affected by the proposed injection;

(7) * * *

(iii) Qualitative analysis and ranges in concentrations of all constituents of injected fluids. The applicant may request Federal confidentiality as specified in 40 CFR Part 2. If the information is proprietary an applicant may, in lieu of the ranges in concentrations, choose to submit maximum concentrations which shall not be exceeded. In such a case the applicant shall retain records of the undisclosed concentrations and provide them upon request to the Director as part of any enforcement investigation.

(8) Proposed formation testing program to obtain the information required by § 146.32(c).

* * * * *

(b) * * *

(2) A satisfactory demonstration of mechanical integrity for all new wells and for all existing salt solution wells pursuant to § 146.08;

* * * * *

[FR Doc. 81-28164 Filed 9-30-81; 8:45 am]
BILLING CODE 6560-29-M

---

40 CFR Parts 122 and 146

[SW-FRL-1943-7]

Underground Injection Control Program Criteria and Standards; Hearings

AGENCY: Environmental Protection Agency.

ACTION: Notice of public hearings.

SUMMARY: The U.S. Environmental Protection Agency (EPA has proposed a set of amendments to the regulations establishing the Underground Injection Control (UIC) Program under the Safe Drinking Water Act (SDWA). The proposed regulations represent changes to 40 CFR Part 122 (procedural requirements under the Consolidated Permit regulations) and 40 CFR Part 146 (Technical Criteria and Standards, State UIC Programs) which were promulgated on May 19, 1980 and June 24, 1980. Most of the proposed amendments are part of a settlement the Agency reached as a result of a suit filed by trade associations, mining companies, oil and gas producers, iron and steel producers, and the State of Texas. In addition, the Agency proposes to provide greater flexibility in establishing the requirements for plugging and abandoning wells. To meet the tight schedule contained in the settlement stipulations and also satisfy the public notice requirements of 40 CFR Part 25, EPA hereby gives notice of its intention to hold two one-day public hearings in November 1981 at the locations listed below.

The Agency also intends to publish a proposal amending 40 CFR Part 122 to allow more flexibility in developing an UIC program for Class II wells located on Indian lands. If practical, the Agency will receive comments on this proposal at the above scheduled public hearings. Those wishing to participate should confirm the dates and locations at the address given below, before attending either hearing.

DATES: The hearings will be held in Washington, D.C. on November 2, 1981 and in Denver, Colorado on November 5, 1981. In addition to the public hearings, EPA will accept written public comments on the proposed amendments until 45 days after they are published in the Federal Register.

ADDRESSES: The November 2, 1981 hearing will be held at the Humphrey Building, Humphrey Auditorium, 200 Independence Avenue, Washington, D.C. The November 5, 1981 hearing will be held in the U.S. Post Office Building, 1823 Stout Street, Room 269, Denver, Colorado. The hearings will begin at 8:30 a.m. on both days. The agenda is shown in the Supplementary Information section of this document.

Comments and request to speak at the public hearings should be addressed to Mr. Thomas E. Belk, Chief, Ground Water Protection Branch, Office of Drinking Water (WH-550), U.S. EPA, 401 M Street, SW., Room 1045 East Tower, Washington, D.C. 20460. Copies of the proposed amendments will also be available at this location.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas E. Belk, (202) 426-3934.

SUPPLEMENTARY INFORMATION: In general, the proposed amendments attempt to increase flexibility of State Programs, reduce paperwork and reporting burdens, and solve some problems which would have made compliance difficult for specific industries. The Agency believes that these actions are possible without sacrificing the environmental benefits expected from the program.

The Agency proposes to make the following changes to the regulations (See FR Doc. 81-28164 in the Proposed Rules Section of this issue).

- Amend the definition of underground source of drinking water (USDW) to reflect more closely the language of the Safe Drinking Water Act (SDWA). Under the proposed definition, an USDW would be an aquifer that (1) currently supplies any public water system (PWS); or (2) a formation that contains a quantity of ground water sufficient to supply a PWS, and either currently supplies drinking water or contains fewer than 10,000 mg/1 TDS.
- Provide increased flexibility for exempting aquifers between 3,000 and 10,000 mg/1 TDS which could be exempted by the State Director if they were not reasonably expected to supply a public water system. Designation of exempted aquifers, under this new criterion, would become effective within 45 days of a written notification of such designation by the State Director to the Administrator unless the Administrator disapproves of the submission in writing.
- Modify the "no migration" standard as defined in Section 122.34. The standard as now proposed would be tied to the statutory language. However, the prohibition against migration has been retained in Part 146 when appropriate, except for a change of

wording in Section 146.10(d) to call for "adequate protection" after abandonment of certain Class III operations.

• Clarify that existing Class IV wells injecting into exempted aquifers may continue operations, and provide for authorization by rule for Class IV wells for which requirements were reserved in the promulgated regulations.

• Reclassify several types of wells:

Non-residential septic systems serving fewer than 20 people would be exempted from control.

—Gas "blow down" wells located in producing fields would be in Class II.

—Certain brine disposal wells for halogen recovery processes would be in Class V

—Geothermal wells would be in Class V

• Amend the mechanical integrity testing requirements to allow for increased flexibility where appropriate, specifically:

—Monitoring of pressure and volume for Class II enhanced recovery wells could be used as a valid demonstration after an initial test.

—Certain wells cannot test using conventional methods could monitor USDWs and submit data on operating parameters in lieu of the tests now listed in the regulations.

—Class III wells could demonstrate mechanical integrity through cementing records.

• Allow for the use of materials other than cement for plugging of Class III wells provided that the Director is satisfied (through historical practices, for example) that the alternative is effective.

• Clarify requirements for area permits.

• Ease information requirements:

—The logging requirements would be eased where local lithology is known.

—Area permit applications would only require description of typical wells rather than each well.

—Specificity of analysis of injected fluids would be reduced.

—Applicants would only be responsible for information reasonably available.

• Amend the monitoring requirements to bring them closer to current practices.

Public Hearing Agenda:

The agenda for the hearings is as follows:

Registration—8:30 AM–9:00 AM
Proposed Amendments to UIC Regulations and Proposed amendment for UIC Programs on Indian Lands—9:00 AM–5:00 PM or until all speakers have been heard

Background Documents

Background documents in support of the proposed rule are available for review in all EPA Regional office libraries, in the EPA Headquarters (Public Information Reference Unit), Room 1404, Waterside Mall, 401 M Street, SW, Washington, DC, and in the docket located in Room 1045, East Tower, 401 M Street, SW, Washington, DC.

Dated: September 23, 1981.

Bruce R. Barrett,

Acting Assistant Administrator for Water.

[FR Doc. 81-28656 Filed 9-30-81; 8:45 am]

BILLING CODE 6560-29-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA-6074]

National Flood Insurance Program; Proposed Flood Elevation Determinations; Massachusetts

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule; correction.

SUMMARY: This document corrects a Notice of Proposed Determinations of base (100-year) flood elevations previously published at 46 FR 30121 on June 5, 1981. This correction notice provides a more accurate representation of the Flood Insurance Study and Flood Insurance Rate Map for the Town of Ayer, Middlesex County, Massachusetts.

EFFECTIVE DATE: October 1, 1981.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, P.E., Federal Emergency Management Agency, National Flood Insurance Program (202) 287-0270, Washington, D.C. 20472.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the correction to the Notice of Proposed Determinations of base (100-year) flood elevations for selected locations in the Town of Ayer, Middlesex County, Massachusetts, previously published at 46 FR 30121 on June 5, 1981, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR 67.4(a).

Pursuant to the provisions of 5 U.S.C. 605(b), the Associate Director, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that the proposed flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. A flood elevation determination under section 1363 forms the basis for new local ordinances, which, if adopted by a local community, will govern future construction within the flood plain area. The elevation determinations, however, impose no restriction unless and until the local community voluntarily adopts flood plain ordinances in accord with these elevations. Even if ordinances are adopted in compliance with Federal standards, the elevations prescribe how high to build in the flood plain and do not proscribe development. Thus, this action only forms the basis for future local actions. It imposes no new requirement; of itself it has no economic impact.

The location descriptions listed below have been amended to read as follows:

Source of flooding	Location	Elevation in feet National Geodetic vertical datum
Bennetts Brook.	Second upstream Corporate Limits.	251
	Third upstream Corporate Limits	266

In addition, the following stream names have been changed:

Current	Former
Nonacoicus Brook 1	Nonacoicus Brook
Tributary to Nonacoicus Brook 1	Long Pond Brook
Nonacoicus Brook 2	Bowers Brook

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; Executive Order 12127, 44 FR 19367; and delegation of authority to the Associate Director).

Issued: September 21, 1981.

John E. Dickey,

Acting Associate Director, State and Local Programs and Support.

[FR Doc. 81-28494 Filed 9-30-81; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 67

[Docket No. FEMA-6079]

National Flood Insurance Program; Proposed Flood Elevation Determinations; Massachusetts

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule; correction.

SUMMARY: This document corrects a Notice of Proposed Determinations of base (100-year) flood elevations previously published at 46 FR 31685 on June 17, 1981. This correction notice provides a more accurate representation of the Flood Insurance Study and Flood Insurance Rate Map for the Town of Westminster, Worcester County, Massachusetts.

EFFECTIVE DATE: October 1, 1981.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, P.E., Federal Emergency Management Agency, National Flood Insurance Program, (202) 287-0270, Washington, D.C. 20472.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the correction to the Notice of Proposed Determinations of base (100-year) flood elevations for selected locations in the Town of Westminster, Worcester County, Massachusetts, previously published at 46 FR 31685 on June 17, 1981, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR 67.4(a).

Pursuant to the provisions of 5 U.S.C. 605(b), the Associate Director, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that the proposed flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. A flood elevation determination under section 1363 forms the basis for new local ordinances, which, if adopted by a local community, will govern future construction within the flood plain area. The elevation determinations, however, impose no restriction unless and until the local community voluntarily adopts flood plain ordinances in accord with these elevations. Even if ordinances are adopted in compliance with Federal standards, the elevations prescribe how high to build in the flood plain and do not prescribe development. Thus, this action only forms the basis for future local actions. It imposes no new requirement; of itself it has no economic impact.

Under the Source of Flooding, Tributary to Round Meadow Pond, the base flood elevation for the location "State Route 2 (Upstream)" has been amended to read 1,005 feet in elevation (National Geodetic Vertical Datum).

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; Executive Order 12127, 44 FR 19367; and delegation of authority to the Associate Director).

Issued: September 15, 1981.

John Dickey,

Acting Associate Director, State and Local Programs and Support.

[FR Doc. 81-28495 Filed 9-30-81; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 67

[Docket No. FEMA-6124]

National Flood Insurance Program; Proposed Flood Elevation Determinations; Michigan

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule; correction.

SUMMARY: This document corrects a Notice of Proposed Determinations of base (100-year) flood elevations for selected locations in the Township of Caledonia, Shiawassee County, Michigan, previously published at 45 FR 41113 on August 14, 1981.

EFFECTIVE DATE: October 1, 1981.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, National Flood Insurance Program (202) 287-0270, Federal Emergency Management Agency, Washington, D.C. 20472.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of corrections to the Notice of Proposed Determinations of base (100-year) flood elevations for selected locations in the Township of Caledonia, Shiawassee County, Michigan, previously published at 45 FR 41113 on August 14, 1981, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 44 CFR 67.4(a)).

Pursuant to the provisions of 5 U.S.C. 605(b), the Associate Director, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that the (proposed) flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. A flood elevation determination under section 1363 forms the basis for new local ordinances, which, if adopted by a local community, will govern future construction within the flood plain area. The elevation determinations, however, impose no restriction unless and until the local community voluntarily adopts flood plain ordinances in accord with these elevations. Even if ordinances are adopted in compliance with Federal standards, the elevations prescribe how high to build in the flood plain and do not proscribe development. Thus, this action only forms the basis for future local actions. It imposes no new requirement; of itself it has no economic impact.

The listing appears correctly as follows:

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
Michigan	(Twp.) Caledonia Shiawassee County	Shiawassee River	About 500 feet upstream of Gould Street	*733
			About 1.5 miles upstream of Gould Street	*734

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; Executive Order 12127, 44 FR 19367; and delegation of authority to the Associate Director).

Issued: September 21, 1981.

John E. Dickey,

Acting Associate Director, State and Local Programs and Support.

[FR Doc. 81-28496 Filed 9-30-81; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 67

[Docket No. FEMA-6080]

National Flood Insurance Program; Proposed Flood Elevation Determinations; Pennsylvania

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule; correction.

SUMMARY: This document corrects a Notice of Proposed Determinations of base (100-year) flood elevations previously published at 46 FR 31689 on June 17, 1981. This correction notice provides a more accurate representation of the Flood Insurance Study and Flood Insurance Rate Map for the City of Coatesville, Chester County, Pennsylvania.

EFFECTIVE DATE: October 1, 1981.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, P.E., Federal Emergency Management Agency, National Flood Insurance Program (202) 287-0270, Washington, D.C. 20472.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the correction to the Notice of Proposed Determinations of base (100-year) flood elevations for selected locations in the City of Coatesville, Chester County, Pennsylvania, previously published at 46 FR 31689 on June 17, 1981, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR 67.4(a).

Pursuant to the provisions of 5 USC 605(b), the Associate Director, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that the proposed flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. A flood elevation determination under section 1363 forms the basis for new local ordinances, which, if adopted by a local community, will govern future construction within the flood plain area. The elevation determinations, however, impose no restriction unless and until the local community voluntarily adopts flood plain ordinances in accord with these elevations. Even if ordinances are adopted in compliance with Federal standards, the elevations prescribe how high to build in the flood plain and do not proscribe development. Thus, this action only forms the basis for future local actions. It imposes no new requirement; of itself it has no economic impact.

The following location has been amended to read as follows:

Source of Flooding	Location	*Elevation in feet (NGVD)
West Branch Brandywine Creek.	Upstream of Conrail Spur Crossing.	*321

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; Executive Order 12127, 44 FR 19367; and delegation of authority to the Associate Director).

Issued: September 15, 1981.

John Dickey,

Acting Associate Director, State and Local Programs and Support.

[FR Doc. 81-28497 Filed 9-30-81; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 67

[Docket No. FEMA-6080]

National Flood Insurance Program; Proposed Flood Elevation Determinations; Vermont

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule; correction.

SUMMARY: This document corrects a Notice of Proposed Determinations of base (100-year) flood elevations previously published at 46 FR 31691 on June 17, 1981. This correction notice provides a more accurate representation of the Flood Insurance Study and Flood Insurance Rate Map for the Town of Wolcott, Lamoille County, Vermont.

EFFECTIVE DATE: October 1, 1981.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, P.E., Federal Emergency Management Agency, National Flood Insurance Program (202) 287-02790, Washington, D.C. 20472.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the correction to the notice of Proposed Determinations of base (100-year) flood elevations for selected locations in the Town of Wolcott, Lamoille County, Vermont, previously published at 46 FR 31691 on June 17, 1981, in accordance with Section 110 of the Flood Disaster Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR 67.4(a).

Pursuant to the provisions of 5 U.S.C. 605(b), the Associate Director, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that the proposed flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. A flood elevation determination under section 1363 forms the basis for new local ordinances, which, if adopted by a local community, will govern future construction within the flood plain area. The elevation determinations, however, impose no restriction unless and until the local community voluntarily adopts flood plain ordinances in accord with these elevations. Even if ordinances are adopted in compliance with Federal standards, the elevations prescribe how high to build in the flood plain and do not proscribe development. Thus, this action only forms the basis for future local actions. It imposes no new requirement; of itself it has no economic impact.

Under the Source of Flooding of Wild Branch, the location description "90 feet upstream of Town Highway 15" should be amended to read "90 feet downstream of Town Highway 15". The corresponding elevation is correct as published. Also, due to a typographical error, Town Highway 13 was incorrectly referred as Town Highway 12.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; Executive Order 12127, 44 FR 19367; and delegation of authority to the Associate Director)

Issued: September 21, 1981.

John E. Dickey,

Acting Associate Director, State and Local Programs and Support.

[FR Doc. 81-28498 Filed 9-30-81; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 67

[Docket No. FEMA-5845]

National Flood Insurance Program; Proposed Flood Elevation Determinations; Wisconsin

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule; revision.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the

Village of Ettrick, Trempealeau County, Wisconsin.

Due to recent engineering analysis, this proposed rule revises the proposed determinations of base (100-year) flood elevations published in the *Blair Press* on June 19, 1980 and June 26, 1980, and at 45 FR 46120 on July 9, 1980, and hence supersedes those previously published rules.

DATES: The period for comment will be ninety (90) days following the second publication of this notice in a newspaper of local circulation in the above named community.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, National Flood Insurance Program (202) 287-0270, Federal Emergency Management Agency, Washington, D.C. 20472.

SUPPLEMENTAL INFORMATION: Proposed base (100-year) flood elevations are listed below for selected locations in the Village of Ettrick, Trempealeau County, Wisconsin, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 44 CFR 67.7(a)).

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

Pursuant to the provisions of 5 U.S.C. 605(b), the Associate Director, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that the (proposed) flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. A flood elevation determination under section 1363 forms the basis for new local ordinances, which, if adopted by a local community, will govern future construction within the flood plain area. The elevation determinations, however, impose no restriction unless and until the local community voluntarily adopts flood plain ordinances in accord with these elevations. Even if ordinances are adopted in compliance with Federal standards, the elevations prescribe how high to build in the flood plain and do not proscribe development. Thus, this action only forms the basis for future local actions. It imposes no new requirement; of itself it has no economic impact.

The proposed base (100-year) flood elevations for selected locations are:

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
Wisconsin	(V) Ettrick Trempealeau County	North Fork Beaver Creek	About 1500 downstream of State Street	*765
			About 100 feet downstream of 1st Street	*769
			About 370 feet upstream of 1st Street	*771
			About 3,000 feet upstream of 1st Street	*774
		South Fork Beaver Creek	About 1,000 feet downstream of South Main Street	*765
			Just upstream of South Main Street	*766
			About 2,300 feet upstream of 1st Street	*773

Maps available for inspection at the Village Office, 117 North Main Street, Ettrick, Wisconsin. Send comments to Honorable D.W. Erickson, Village President, Village of Ettrick, Village Office, 117 North Main Street, Ettrick, Wisconsin 54627.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; Executive Order 12127, 44 FR 19367; and delegation of authority to the Associate Director).

Issued: September 21, 1981.

John E. Dickey,

Acting Associate Director, State and Local Programs and Support.

[FR Doc. 81-28499 Filed 9-30-81; 8:45 am]

BILLING CODE 6718-03-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[BC Docket No. 81-487; RM-3915]

FM Broadcast Station in Marco, Florida; Proposed Change in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action proposes the assignment of FM Channel 276A to Marco, Florida, in response to a petition filed by Sunshine Broadcasting, Inc. The proposed station would provide for a second FM broadcast service to Marco.

DATES: Comments must be filed on or before November 23, 1981, and reply comments on or before December 14, 1981.

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

FOR ADDITIONAL INFORMATION CONTACT: Montrose H. Tyree, Broadcast Bureau (202) 632-7792.

SUPPLEMENTARY INFORMATION: In the matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations. (Marco, Florida); Notice of proposed rule making.

Adopted: September 17, 1981.

Released: September 23, 1981.

By the Acting Chief, Policy and Rules Division:

1. The Commission herein considers a petition for rule making [1] filed by Sunshine Broadcasting, Inc. ("petitioner"), proposing the assignment of Channel 276A to Marco, Florida, as its second FM assignment. Supporting comments were filed by Dean J. Maitlen and by the petitioner, both stating an intent to apply for the channel, if assigned. Opposing comments were

[1] Public Notice of the petition was given on June 19, 1981, Report No. 1293.

filed by Collier Broadcasting Company ("Collier"), licensee of AM Station WMIB, Marco, Florida, to which petitioner responded.

2. Marco (population 8,500) [2] in Collier County (population 85,791) [3], is located on Marco Island, off the southwestern coast of Florida. It is served locally by daytime only AM Station WMIB and Channel 266 (construction permit issued).

3. Petitioner contends that due to the tremendous growth that Marco is experiencing, it has a definite need for an additional programming source. The population increased from 1,500 in 1970 to an estimated 8,500 in 1980, and the peak winter population is estimated to be approximately 12,000 persons. Marco's economy is based on construction related to real estate and other activities usually associated with resorts.

4. Collier, in opposing comments, claims that Collier County has nine aural broadcast facilities, and that the instant proposal exceeds the Commission's population criteria, and will preclude future assignments to deserving communities, while it will not provide a demonstrated first, second or third aural service to anyone. Collier states that although it is not a requirement at the rule making stage, the facts here dictate the need for petitioner to demonstrate the availability of a suitable site. Most of Marco Island is owned by Deltona Corporation (permittee of the FM construction permit on Channel 266 at Marco), who would probably be reluctant to allow another station to use its property.

5. Petitioner, in reply comments, argues that Collier's allegations are without merit and provide no basis for the Commission to deny the proposed rule making. With regard to the proposal being in violation of the population guidelines, it notes that these are applicable to the community rather than the county. A second allocation is within the guidelines for a community the size of Marco. The suggestion of the unavailability of a transmitter site should be regarded as completely speculative and the economic impact resulting from the proposal should be resolved at the application stage.

6. *Preclusion Consideration:* According to the information submitted by the petitioner, the only preclusion caused to a community of over 1,000 population will be on Channel 275 at Key West, Florida, which currently has three FM assignments, with additional channels available for assignment, if needed. Collier states that concern should also be shown for smaller communities with a potential for growth. However, it has not been Commission policy to consider communities under 1,000 population as needing a reserved channel for future demand.

7 We are satisified from the information submitted by the petitioner, that sufficient showing has been made to justify proposing a second FM assignment to Marco, Florida. Collier argues that the proposal exceeds the population guidelines for the county. However, the criteria relates to communities and provides up to two channels for communities under 50,000 in population. The assignment of Channel 276A to Marco would result in an intermixture of a Class A channel and Class C channel (266). The Commission has a policy permitting such intermixture where no other Class C channels are available for assignment and (as here) the petitioner is willing to apply for the Class A channel in spite of the unfavorable competitive situation.

8. In view of the foregoing information and the fact that the assignment would provide a second local FM broadcast service, the Commission proposes to amend the FM Table of Assignments, 73.202(b) of the Rules, with regard to Marco, Florida, as follows:

City	Channel No.	
	Present	Proposed
Marco, Florida	266	266, 276A

9. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

10. Interested parties may file comments on or before November 23, 1981, and reply comments on or before December 14, 1981.

11. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules. *See, Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules,* 46 FR 11549, published February 9, 1981.

12. For further information concerning this proceeding, contact Montrose H. Tyree, Broadcast Bureau, (202) 632-7792. However members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission.

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

Federal Communications Commission.

Martin Blumenthal,

Acting Chief, Policy and Rules Division, Broadcast Bureau.

Appendix

1. Pursuant to authority found in Sections 4(i), 5(d)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Section 0.281(b)(6) of the Commission's Rules, it is proposed to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice,* they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to assign a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures

[2] According to petitioner.

[3] Population figures are taken from the 1980 U.S. Census.

set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D.C.

[FR Doc. 81-28390 Filed 9-30-81; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 81-10, Notice 1]

Federal Motor Vehicle Safety Standards; Impact Protection for the Driver from the Steering Control System

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

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes an amendment to Standard No. 203, *Impact Protection for the Driver from the Steering Control System,* which would modify the current limitation on the amount of force imposed on the steering column during a simulated crash. This proposal responds to a petition for rulemaking filed by General Motors (GM). Based on a review of GM test data, NHTSA has tentatively concluded that allowing the force measured on the steering column to exceed 2,500 pounds for a cumulative duration of 3 milliseconds would not cause serious injury.

EFFECTIVE DATE: Since this amendment would relieve a restriction in the current standard, the proposed effective date is the date of publication of the final rule in the Federal Register. Comments on the proposal must be received on or before November 16, 1981.

FOR FURTHER INFORMATION CONTACT: Mr. William Smith, Office of Vehicle Safety Systems, National Highway Traffic Safety Administration, Washington, D.C. 20590 (202-426-2242).

SUPPLEMENTARY INFORMATION: Standard No. 203, *Impact Protection for the Driver from the Steering Control System,* sets performance requirements to protect the driver from steering assembly-related injuries in a crash. The standard establishes an impact test in which a block simulating the human torso strikes the steering assembly at 15 mph. The force measured on the steering column during the impact cannot exceed 2,500 pounds for any time interval.

In September 1976, General Motors (GM) petitioned the agency to amend the standard to permit the force measured on the steering column during the impact test to exceed 2,500 pounds for time intervals that do not exceed a cumulative duration of 3 milliseconds. NHTSA originally denied the petition because GM did not provide sufficient biomechanical justification for allowing the greater force. GM subsequently submitted additional test data, copies of which are in the docket, to justify the proposed change. Based on a review of the GM test data, the agency tentatively has decided to amend the standard as requested by GM.

GM Tests

GM conducted Standard No. 203's body block impact test on tilting and telescoping steering wheels, which allow a driver to tilt the steering wheel several degrees upward and downward and move the wheel forward and rearward. It found that within 15 to 20 milliseconds of when the column was impacted, the force measured on the steering column exceeded 2,500 pounds for a short duration when the wheel was telecoped all the way rearward and titled 15 degrees downward. The forces do not exceed 2,500 pounds at any other time during the impact. (At present, GM restricts the amount of telescoping and limits the tilting of the steering wheel to 10 degrees of movement.)

GM argues that forces of such short during do not pose a risk of injury to the driver. To support this argument, GM conducted three sled tests simulating 30 mph frontal barrier crashes with an unrestrained Part 572 anthropomorphic test dummy. In one of the tests, GM used a steering wheel with restricted tilting and telescoping. In the other two tests, GM used wheels without those restrictions.

GM instrumented the steering columns to measure the forces on the column during the tests. In addition, the test dummy was instrumented with a chest accelerometer to measure the forces on its chest.

In the two tests using wheels without any tilting and telescoping restrictions, GM found that the forces measured on the column briefly exceeded 2,500 pounds, just as in the Standard 203 impact test, within approximately 70 milliseconds of when the unrestrained test dummy struck the steering wheel. In the test with the wheel with restricted tilting and telescoping, the force was well under 2,500 pounds within 70 milliseconds of impact.

The force measured by the accelerometer within the dummy's chest in the two tests with the unrestricted steering wheels did not show a corresponding abrupt, short duration, high force on the chest at approximately 70 milliseconds. The accelerometer did show that the chest resultant acceleration at 70 milliseconds had gradually risen to approximately 25 g's. That force is far below the limitation on test dummy chest resultant acceleration of 60 g's set in Standard No. 208, *Occupant Crash Protection,* to reduce occupant injuries. Thus, the abrupt, short duration forces GM found in the Standard No. 203 impact testing apparently do not transmit potential injuries to the driver.

The 30 mph sled testing did show that the forces on the test dummy's chest between approximately 110 to 130 milliseconds after impact exceeded 60 g's in one test and were very close to 60 g's in the other tests. This high force level occurs regardless of whether GM restricts the amount of telescoping and tilting of the wheel. The agency is currently considering the feasibility of setting additional performance requirements in Standard No. 203.

The agency has assessed the economic and other effects of this proposal and determined that they are neither major within the meaning of Executive Order 12291 nor significant within the meaning of the Department of Transportation's regulatory policies and procedures. Based on that assessment, the agency has concluded further that the economic and other consequences of this proposal are so minimal that a regulatory evaluation is not required by the DOT policies and procedures. The impact is minimal since the proposed amendment relieves a restriction contained in the current standard and thus will not require manufacturers to make any design changes to their

vehicles. Any resultant cost savings would be very small.

The agency has also considered the effect of this proposal on small businesses, small governmental jurisdictions and small organizations as required by the Regulatory Flexibility Act (the Act). The agency has determined that the proposed amendment, if adopted, would not have a significant economic effect on a substantial number of small entities and thus an initial regulatory flexibility analysis is not necessary. The primary effect of this proposal is to relieve a restriction for motor vehicle manufacturers, virtually none of which are small business entities for the purposes of the Act. The proposed amendment would have no effect on small organizations and small government jurisdictions.

Finally, the agency has analyzed this proposal for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this action would not have any significant effect on the human environment.

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies by submitted.

All comments must be limited not to exceed 15 pages in length. Necessary attachments may be appended to these submissions without regard to the 15 page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. Any claim of confidentiality must be supported by a statement demonstrating that the information falls within 5 U.S.C. section 552(b)(4), and that disclosure of the information is likely to result in substantial competitive damage; specifying the period during which the information must be withheld to avoid that damage; and showing that earlier disclosure would result in that damage. In addition, the commenter or, in the case of a corporation, a responsible corporate official authorized to speak for the corporation must certify in writing that each item for which confidential treatment is requested is in fact confidential within the meaning of section 552(b)(4) and that a diligent search has been conducted by the commenter or its employees to assure that none of the specified items has previously been disclosed or otherwise become available to the public.

All comments received before the close of business on the comment closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. However, the rulemaking action may proceed at any time after that date, and comments received after the closing date and too late for consideration in regard to the action will be treated as suggestions for future rulemaking. The NHTSA will continue to file relevant material as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose, in the envelope with their comments, a self addressed stamped postcard. Upon receiving the comments, the docket supervisor will return the postcard by mail.

The principal authors of this notice are Mr. William Smith, Office of Vehicle Safety Systems, and Mr. Stephen Oesch, Office of Chief Counsel.

In consideration of the foregoing, it is proposed that Standard No. 203, *Impact Protection for the Driver From the Steering Control System* (49 CFR 571.203) be revised as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

§ 571.203 [Amended]

1. Section S5.1 of Standard No. 203 would be revised to read as follows:

When the steering control system is impacted by a body block in accordance with Society of Automotive Engineers Recommended Practice J944, "Steering Wheel Assembly Laboratory Test Procedure," December 1965, or an approved equivalent, at a relative velocity of 15 miles per hour, the impact force developed on the chest of the body block transmitted to the steering control system shall not exceed 2,500 pounds, except for intervals whose cumulative duration is not more than 3 milliseconds.

(Sec. 103, 119, Pub. L. 89-563, 80 Stat. 718 (15 U.S.C. 1392, 1407); delegations of authority at 49 CFR 1.50 and 501.8)

Issued on September 22, 1981.

Michael M. Finkelstein,

Associate Administrator for Rulemaking.

[FR Doc. 81-28160 Filed 9-24-81; 2:40 pm]

BILLING CODE 4910-59-M

---

49 CFR Part 571

Federal Motor Vehicle Safety Standards; Power-Operated Window Systems

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Grant of petition for rulemaking.

SUMMARY: The purpose of this notice is to grant a petition for rulemaking filed by Mr. Paul A. Reneau regarding Safety Standard No. 118, *Power-Operated Window Systems*. Mr. Reneau requests that the standard be amended to permit the use of power windows that automatically close under certain conditions unless the windows contact an obstruction. The petitioner has patented a device that automatically closes vehicle windows if it rains or snows when the vehicle is unoccupied, the doors are closed, and the ignition is in an "off" position. At present, Standard No. 118 does not permit the use of such a device, because the rule requires that the power windows not be movable once the ignition is in an "off" position or the key is removed from the lock. Mr. Reneau suggests that the standard be amended to specify that when the key that controls activation of the vehicle's engine is in an "off" position or is removed from the lock, no power window shall be movable when the vehicle is occupied, any door is open or ajar, or an obstruction comes into contact with an exposed edge of a window.

The NHTSA believes that the petition filed by Mr. Reneau has merit, and it is hereby granted. The agency will commence rulemaking to determine the safety consequences of the proposed amendments. The granting of a petition does not mean that a rule will necessarily be issued. The determination whether to issue a rule is made in the course of the rulemaking proceeding, in accordance with statutory criteria.

FOR FURTHER INFORMATION CONTACT: Michael M. Finkelstein, (202) 426-1810.

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

Issued: September 24, 1981.
Michael M. Finkelstein,
Associate Administrator for Rulemaking.
[FR Doc. 81-28360 Filed 9-30-81; 8:45 am]
BILLING CODE 4910-59-M

---

49 CFR Part 581

[Docket No. 73-19; Notice 27]

Federal Motor Vehicle Safety Standards; Bumper Standard

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of proposed rulemaking; announcement of public meeting.

SUMMARY: This notice proposes several alternative amendments to the Part 581 Bumper Standard. These alternatives involve reducing to varying degrees the level of impact speed for barrier and pendulum testing from the 5.0 mph currently required under the regulation. In addition, the notice proposes the elimination of current damage resistance criteria which set forth the degree of damage which may be incurred by the bumper system in test impacts.

The agency has tentatively concluded that the statutory requirement of the Motor Vehicle Information and Cost Savings Act that any bumper standard "seek to obtain the maximum feasible reduction of costs to the public and to the consumer" is not met by the existing standard. Stated differently, the current standard costs consumers more than it saves them. Therefore, the interests of consumers and the public are not served by retention of the standard at current levels, and the statute requires modification of the standard. The agency intends by modifications pursuant to this proposal to ensure that any Federal bumper standard meets the statutory criteria of the Motor Vehicle Information and Cost Savings Act, and seeks the maximum feasible reduction of public and consumer costs.

DATES: Comments must be received on or before November 30, 1981. A public meeting will be held at a date to be announced shortly. Persons wishing to make oral presentations should notify the agency by 10 days prior to the date of the public meeting.

ADDRESSES: Comments 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. The docket room is open to the public from 8:00 a.m. until 4:00 p.m., Monday through Friday, except holidays. The time and location of the public hearing will be announced at a later date through notice in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Steven Zaidman, Office of Automotive Ratings, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590, 202-426-1740.

SUPPLEMENTARY INFORMATION: The "Part 581" Bumper Standard (49 CFR Part 581) sets forth damage resistance requirements for passenger motor vehicles involved in low-speed collisions. The standard imposes limits on the damage which may be caused to specified components and vehicle exterior surfaces by a series of 5.0 mph front and rear barrier and pendulum impacts, and by 3.0 mph corner pendulum impacts.

Prior to the Part 581 standard, former Federal motor vehicle safety standard (FMVSS) 215, Exterior Protection, had since September 1, 1973, required standardization of bumper heights and the protection of various safety-related components of the vehicle itself in low speed impacts. Phase I of Part 581 became effective on September 1, 1978. Phase I incorporated and replaced the damage resistance criteria of FMVSS 215, and extended the required levels of protection to components and exterior surfaces of the vehicle other than the bumper face bar itself, and to the components and associated fasteners of the bumper which attach it to the vehicle.

Phase II of the Part 581 standard became effective on September 1, 1979. It extended the damage resistance criteria to include the bumper face bar itself and its components and fasteners.

The Part 581 standard implements the mandate of Congress expressed in section 102 of the Motor Vehicle Information and Cost Savings Act (Cost Savings Act) (15 U.S.C. 1912) that this agency promulgate bumper standards applicable to passenger motor vehicles. The term "bumper standard" is therein defined to include a property loss reduction standard intended to eliminate, or reduce substantially, damage to the front or rear end, or both, of a passenger motor vehicle in a low-speed collision. As noted above, the statute specifically requires that any such standard "seek to obtain the maximum feasible reduction of costs to the public and to the consumer", taking into account a number of factors. The specified factors include the standard's costs and benefits, its effects on insurance and legal costs and fees, savings in consumer time and inconvenience, and health and safety considerations.

This combination of statutory requirements has become one of the most complex and difficult mandates of the agency. At the time of enactment and of adoption of the current standard, virtually nothing was known of the economic values required to be taken into account. Little direction was afforded as to how the agency might assess or quantify elements of cost related to consumer convenience. Information as to the extent and frequency of unreported damage actually incurred in consumer experience was non-existent. Finally, the direction that any such standard seek to "maximize" savings can be inferred to require that one and only one standard level might in fact comply with the will of the Congress. The absence of real-world experience with bumpers designed to meet the full range of possible impact levels made literal achievement of that mandate difficult if not impossible. Accordingly, since the late 1970's, and in order to assure that the Bumper Standard is consistent with the letter and intent of the statute, the National Highway Traffic Safety Administration (NHTSA) has expended considerable time and effort evaluating and reevaluating the costs and benefits of the standard, taking into account changes in vehicle design, energy, and materials costs, and other relevant factors.

An initial reevaluation, the "Final Assessment of the Bumper Standard", was published in June 1979. Docket 73-19, Notice 25, No. 190. This document estimated the net benefits of alternative bumper standards specifying test impact speeds of 2.5 mph, 5.0 mph and 7.5 mph. The 1979 Final Assessment concluded that based upon then available data the net benefits of the existing 5.0 mph standard appeared to exceed those of a 2.5 mph alternative by an amount equal to $39. Estimates regarding the 7.5 mph alternative were considered at that time to be too unreliable to form the basis for regulatory action. The 1979 Final Assessment was based on (1) cost and weight data derived for the agency under contract; (2) information gathered from motor vehicle manufacturers, insurance companies and other industry sources; and (3) estimates based on the agency's own engineering analyses.

After receiving extensive comments from auto and insurance industry sources, NHTSA updated this 1979 Final Assessment in December 1979. Docket 73-19, Notice 25, No. 249. Based upon data then available, the agency concluded that a standard based on a test impact speed of 5.0 mph continued to provide the greatest net benefits,

although the difference between the net benefits of the 5.0 mph and the 2.5 mph alternatives, was found to be far smaller than originally estimated (between $11 and $29 compared to the $39 net benefit of the 5 mph alternative originally estimated).

In addition, the bumper regulation was being studied independently as part of the long-term program adopted by the agency in 1976 to evaluate the cost-effectiveness of all regulations. In order to develop data for use in this evaluation, the agency commissioned a nationwide driver survey to better quantify the incidence and extent of unreported damage resulting from low speed collisions. NHTSA's initial analyses had estimated unreported damage based only upon studies involving observation of damaged vehicles in parking lots, thus not accounting for possible double-counting due to reporting of damage not followed by actual repair. The agency also updated its bumper cost information, and conducted a new analysis of insurance claims data which incorporated previously unavailable data on damage to vehicles which had been manufactured so as to meet early Part 581 requirements.

The findings from these now additional sources were incorporated in a NHTSA report, "Evaluation of the Bumper Standard", published in April 1981. Docket 81-07, Notice 1, No. 007 This Evaluation attempts to analyze the costs and benefits of each phase of the agency's bumper requirements, beginning with the initial FMVSS 215 requirements and extending to the present Part 581, Phase II standard. Based upon this new analysis and data then available, the 1981 Evaluation concludes that the 5.0 mph *frontal* test impact requirements, considered alone, result in net benefits to consumers. However, the document also observes that the present 5.0 mph *rear* impact test standard, alone, provides consumers with negative net benefits, i.e., imposes costs upon consumers greater than the total benefits realized.

As a result of its analyses, NHTSA has concluded that a rulemaking proceeding is necessary to determine that bumper performance level which would best fulfill the statutory mandate to seek to maximize net benefits to the public and the consumer. At the same time, the agency wishes to carry out, to the extent consistent with the statute, the direction of Executive Order 12291 that each rulemaking maximize net benefits, and arrive at the regulatory alternative involving the least net cost to society.

In furtherance of these goals, a Preliminary Regulatory Impact Analysis has been prepared by NHTSA which estimates the changes in both costs and benefits, relative to the present standard, which would be likely to occur under several alternative levels of bumper standards. Docket 73-19, Notice 27, No. 001. The analysis employs cost benefit methodology to provide a comparison of alternatives based on the best available data and assumptions. NHTSA intends through this rulemaking proceeding, to further refine its analysis by incorporating additional data, estimates, and viewpoints, and to adopt that bumper requirement which best meets applicable statutory and regulatory objectives.

NHTSA's Approach to Bumper Standard Analysis

In estimating the net benefits of the Bumper Standard alternatives proposed in this notice, NHTSA has evaluated a number of factors which contribute to bumper cost-effectiveness. In so doing, the agency specifically notes that although significant new data has been obtained, many of the uncertainties and complex economic variables which tended to reduce the certainty of earlier agency actions and estimates still exist, and desirable levels of certitude are still not assured as to many alternatives to the current standard. Action at this time is deemed necessary, however, because of the degree of agency confidence in the conclusion that each alternative under consideration is superior in statutory terms to the current standard.

The primary measure of *benefits* resulting from a bumper standard is the economic cost of the avoided damage which would otherwise have been incurred in the presence of an unregulated bumper, or a bumper regulated at a different level of impact. This figure is computed for each putative standard by estimating the frequency of damage to the bumper system in question, and the cost to repair that system when it is damaged. These estimates are based on available information from which may be inferred the number (frequency), and severity of both accidents which have been reported to insurance companies or police, and accidents for which no such report was filed. Federal Highway Administration and Bureau of Census figures on vehicle miles traveled are used to estimate the likely distribution of accidents over the life of the car for purposes of discounting benefits received.

The agency's calculation of *benefits* also takes into account insurance cost savings beyond the value of the damage avoided by the subject regulated bumper system. These savings result from a reduction in administrative expenses, e.g., agent's fees and claim processing costs associated with a decrease in the number of collision and liability insurance claims submitted. Savings are estimated from information submitted by insurers in response to NHTSA special orders, and are assumed to be passed on to the consumer through reduced premiums.

In accordance with the statutory direction, savings in consumer time and inconvenience associated with upgraded bumper system performance are also considered as *benefits* of the regulation. Such benefits are measured in terms of time saved by not having to survey avoided damage, obtain repair estimates, and have the avoided low-speed collision damage repaired. Time saved has been analyzed by NHTSA on the basis of experience and common sense estimates, while economic savings are quantified by application of the United States hourly wage rate to such time values.

Finally, although they are difficult to quantify, the agency has considered as benefits the possible effects of revised bumper requirements on vehicle occupant safety. These effects would result from changes in the crash management characteristics of vehicles as affected by different bumper systems. Thus, while a more substantial bumper system might reduce damage at low speeds, the extra weight or relative rigidity could adversely affect safety, or increase actual vehicle damage, and the cost of repair, in crashes at higher speeds.

The most important *cost* impact of bumper regulation is reflected in the marginal increase in new car prices attributable to the use of bumper systems providing greater damage resistance. These costs consist of, first, the cost of the bumper system itself (i.e., the cost of primary weight), and second, the cost of upgrading other vehicle components to support the weight of the more damage resistant bumper system (i.e., the cost of secondary weight). NHTSA's estimates of these values are based on the assumption that in the absence of a bumper standard, vehicles would still be equipped with some type of bumper system. Given this baseline system, the costs used in NHTSA's analyses are the marginal costs by which heavier regulated bumpers exceed a hypothetical totally unregulated system.

In addition to the initial cost of purchasing a regulated bumper system, the added operating *cost* of driving a car

with a heavier bumper system has been taken into account. In this regard, the agency has estimated the added fuel costs incurred in carrying the additional primary and secondary weight associated with the heavier regulated bumper. Fuel costs are based on projections of national average pump prices for gasoline, while the marginal increase in fuel consumption associated with the addition of each pound of primary and secondary weight associated with the bumper system is based on industry estimates (i.e., lifetime fuel consumption drops 1.1 gallons for every one pound reduction in vehicle weight).

Estimates of increased repair costs for more substantial bumper systems which are damaged and must be repaired or replaced after crashes at higher than design speed are also relevant. Although difficult to quantify, they must be taken into account.

Evolving Application of the Bumper Analysis Methodology

NHTSA's published analytical work on the costs and benefits of the Bumper Standard has consistently applied the methodology described above. The agency's conclusions have been modified over time, as additional data and updated estimates have become available. Thus, the various analyses differ in several important respects relating to application of the analytical framework.

A notable example of these differences is found on the subject of damage avoidance related to differing levels of bumper design. In estimating low speed accident frequency, and the value of damage caused by those accidents, the 1979 Final Assessment relied on engineering estimates of damage as a function of speed of impact.

To estimate the extent of damage resulting from low speed accidents, NHTSA relied on a series of parking lot surveys conducted by Ford Motor Company between 1971 and 1976. These surveys involved observation of damage on Ford vehicles parked in 75 lots in 11 cities. Based on the damage observed on these vehicles, Ford estimated the barrier equivalent velocity of the collisions which had caused the damage. This estimate of the relationship between impact speed and lifetime damage formed the foundation for NHTSA's 1979 estimates of lifetime damage as a function of impact speed. This data suffered from the subjectivity of the impact speed estimates used in this approach, and from the exclusive focus on Ford products and vehicles in use in urban areas.

To obtain the cost of repaired accident damage, the agency in its 1979 Final Assessment examined insurance claim data supplied by the State Farm Insurance Company. From this data, the agency was able to determine the average repair cost of automobiles involved in front and rear end collisions. Estimates of unreported damage were also based on information submitted by State Farm. These estimates were derived by State Farm through damage appraisals in a series of parking lot surveys.

In its 1981 Evaluation of the Bumper Standard, the agency used newly developed data which has required it to modify substantially its damage avoidance estimates. The first major new data source incorporated into the 1981 Evaluation is an analysis of insurance claims data prepared for NHTSA by KLD Associates. Docket 81-07, Notice 1, Nos. 004, 005. This study analyzed reports of roughly 65,000 property damage claims, covering model years 1972 through 1979, contained in the records of State Farm Insurance Company. Data was classified on the basis of vehicle model year, impact points, bumper and parts damage, bumper type, and other factors. Results were checked against damage frequency and cost of repair data collected by the Highway Loss Data Institute. An additional study examined the effects of the Part 581 standard on 1979 model year vehicles. In applying this data in the 1981 Evaluation, NHTSA grouped all accidents leading to bumper repairs as low speed accidents and all accidents leading to bumper replacement as high speed accidents.

A second significant source of new data used in the 1981 Evaluation was a nationwide survey of drivers and vehicles conducted for NHTSA by Westat, Inc., and designed to assess the frequency and severity of low-speed collisions. Docket 81-07, Notice 1, No. 003. This survey permitted for the first time the use of empirical data in place of the subjective and limited estimates relied on in the 1979 Final Assessment. They survey also produced data on the performance of 1979 and 1980 model year bumper systems.

The Westat study involved a random telephone survey of over 10,000 households, supplemented by a follow-up contact with 4,949 households. A separate update survey focused on model year 1979 and 1980 vehicles. Results were checked against a smaller number of personal inteviews and vehicle inspections.

The new information derived from the insurance data analysis and the driver survey differed from the values arrived at in the 1979 Final Assessment, with respect to both reported and unreported damage. For example, the new data suggests that an average vehicle will be involved in 2.45 accidents over the course of its lifetime, whereas an estimate of 3.63 accidents per vehicle life was used in the 1979 Final Assessment.

Although the Westat and KLD studies were important steps in quantifying the damage avoidance characteristics of bumper systems, engineering estimates are still required to play a major role in NHTSA's analysis of this issue. The 1981 Evaluation focused on the cost effectiveness of the present bumper regulation. Bumper systems providing differing levels of damage protection were not examined. The Westat and KLD studies focused on 5.0 mph bumpers since, with the exception of model year 1973 rear bumpers, no bumper specifically designed to meet a different damage resistance standard had ever been used in production vehicles in this country.

In applying the new data to its examination of alternative damage resistance levels, data from pre-standard vehicles, i.e., model year 1972 and earlier, are now being used to estimate the performance of bumpers meeting a height only requirement. Also, NHTSA has extrapolated from the 1973 rear bumper data and derived estimates of damage costs for 2.5 mph front bumpers. (Some uncertainty is introduced by such use of model year 1973 rear bumpers to reflect 2.5 mph bumper performance, since such bumpers were required to meet a 2.5 mph barrier impact standard providing only for protection of safety equipment.) Due to this uncertainty, the Preliminary Regulatory Impact Analysis includes estimates of potential benefits based on both the 1979 Assessment's engineering estimates and the 1973 rear bumper approach used in the 1981 Evaluation.

Another area in which the agency's initial estimates have been supplemented with new data is the estimation of bumper system cost and weight. The 1979 Final Assessment estimates on these items were based on teardown studies of a small number of representative vehicles equipped with 5.0 mph bumper systems. Docket 73-19, Notice 25, No. 025. To determine the cost and weight of a projected 2.5 mph system, the agency applied a scaling factor to the cost and weight figures for a representative 5.0 mph system among those examined. The resulting estimate was checked for reasonableness against estimates submitted by motor vehicle manufacturers.

The 1981 Evaluation made use of more extensive teardown study results involving 94 representative pre- and post-standard vehicles. Docket 81-07, Notice 1, Nos. 001, 002, 006. In applying these results to the alternatives bumper systems evaluated in the Preliminary Regulatory Impact Analysis, NHTSA uses the pre-standard teardown data as representative of the height only alternative. For the 2.5 mph alternative, the agency applies a sensitivity analysis based on estimates of manufacturing cost reductions submitted by manufacturers in response to agency special orders. Docket 73-19, Notice 25, Nos. 105A, 163, 184, 289. Such claimed cost reductions are, in the judgment of NHTSA engineers, consistent with and supportable on the basis of the reduced levels of component material and complexity by which a 2.5 mph bumper requirement may be met.

The final major points on which NHTSA's estimates have been most recently refined are the methodology for computation of secondary weight and the cost associated with that weight. Based on the agency's own engineering judgment, a secondary weight factor of .35 was employed in the June 1979 Final Assessment. This factor represented the number of pounds of supporting structure which was felt must be added to the vehicle to carry each additional pound of bumper weight.

Based on comments on the 1979 Final Assessment, the agency's December 1979 Commentary on Critiques of that Assessment revised judgment on the appropriate secondary weight factor to a range of .50 to .75, reflecting the differing results of an independent analysis conducted by the Transportation Systems Center (TSC) and a second analysis by NHTSA using a methodology supplied by General Motors. The 1981 Evaluation broadened this range to .35 to 1.00, to take into account both NHTSA's original estimate and additional estimates and clarifications received from the auto industry. To permit analysis based on the most recent and reliable information, the Preliminary Regulatory Impact Analysis has now adopted and applied alternative secondary weight factors of .50 and 1.00.

Also based on developing data, the agency's estimate of the economic cost of such secondary weight has evolved from the initial estimate in the 1979 Final Assessment of $1.46 per pound. This figure was based on the then current average consumer cost per pound of a new car. After reviewing comments on the 1979 Final Assessment, the agency noted that its original estiamte was artificially inflated because the base value included costs associated with complex electrical and electronic equipment, glass, and other relatively expensive items not affected by bumper weight. In its Commentary on Critiques, the agency substituted a secondary weight cost of $.55 per pound, in 1978 dollars, based on the materials cost associated only with structural components of the bumper system.

The 1981 Evaluation considered both of these approaches to computation of secondary weight costs, and used alternative secondary weight cost figures of $.60 and $1.60 per pound, in 1979 dollars. The figure of $.60 represents the cost of added structural materials, manufacturers' and sales overhead, and profit. The $1.60 estimate is an estimate of the consumer cost per pound of a 1979 model year vehicle. The Preliminary Regulatory Impact Analysis utilizes the structural materials approach, employing a $.72 per pound figure in 1981 dollars, based on the agency's *tentative judgment*, in light of comments received, that this figure most realistically represents the true cost of secondary weight associated with the bumper alone.

As NHTSA has incorporated additional data and comments in its analyses of the Bumper Standard, the agency has progressively revised its estimation of the relative *benefits* of various alternative standards. The 1979 Final Assessment stated that the 5.0 mph bumper test requirement of Part 581 resulted in net benefits of $189 relative to the performance of pre-standard bumper systems. Net benefits of bumpers meeting a 2.5 mph standard were estimated at $150. A net benefit projection of $196 for 7.5 mph bumpers was also included, although the agency noted that this figure was not considered reliable in view of certain unsupported assumptions on which it was based. The 5.0 mph and 2.5 mph estimates were modified slightly in the Commentary on Critiques of the 1979 Final Assessment to net benefit levels of $179 to $167 for 5.0 mph bumpers and $156 to $150 for 2.5 mph bumpers.

The 1981 Evaluation significantly refined NHTSA's estimates by providing separate net benefit estimates for front and rear bumpers. NHTSA stated in the 1981 Evaluation that 5.0 mph front bumpers provided positive net benefits, since they were first required in model year 1973. The agency calculated that for a new model year 1979 vehicle, the 5.0 mph bumper requirement would provide net benefits of $44 over the life of the vehicle. This estimate was based on assumptions of a .50 secondary weight ratio and a $.60 per pound cost of secondary weight. At the same time, the 1981 Evaluation stated that rear bumpers had never been cost effective since the advent of bumper regulations and that, based on the above assumptions, model year 1979 rear bumpers resulted in a negative net benefit, or cost to the consumer, of $46 compared to an unregulated bumper.

Thus, using a .50 secondary weight ratio and a secondary weight cost assumption of $.60 per pound, NHTSA observed in its 1981 Evaluation that the net benefits of the combined 5.0 mph front and rear requirements are near zero. Any net benefit would increase if the estimated secondary weight ratio were reduced, and would immediately become clearly negative if the assumed ratio were increased. Based on available data, the agency also stated that vehicle downsizing, in terms of weight reduction and materials substitution, has not affected the damage resistenace or cost-effectiveness of bumper systems. Only the direct costs and benefits of the standard were included in the 1981 Evaluation. Indirect effects, such as the value of time spent obtaining repairs, were not estimated.

NHTSA's Preliminary Regulatory Impact Analysis is based largely on the 1981 Evaluation, with the addition of certain estimates from the 1979 Assessment and still other newly developed estimates. This Analysis indicates that the net benefits available under any level of bumper regulation do not differ greatly. Considerable uncertainly exists regarding the relative and optimal level of bumper performance in terms of costs and benefits. For example, the Analysis reveals that, when an average of repair cost estimates is used, and a 30% variable cost reduction and a 1.0 secondary weight ratio is assumed, the present 5.0 mph standard results in a negative net benefit (or cost) of $2 relative to a height only bumper standard, and generally provides fewer net benefits than all alternative standards considered.

However, because of the complexity of the issues, relatively small changes in assumptions can produce major variations in results. In the above example, if a secondary weight ratio of .5 is used, the present standard shows net benefits of $43 compared to a height only requirement. The 2.5 mph front/2.5 mph rear alternative provides an extreme example of the possible variation in results. The Analysis indicates that the net benefits for that alternative relative to the present standard range from a positive increase

in benefits of $123 to a negative benefit of $143, depending on the specific assumptions used in analysis.

Recognizing that legitimate differences of opinion may exist regarding competing assumptions and data sources, the Analysis includes net benefit computations based on a variety of damage repair cost estimates, secondary weight ratios, and changes in other variables. Sensitivity analyses are used to compute ranges in possible net benefits for various alternatives.

When these computations are compared, several alternatives to the present standard appear promising under various sets of assumptions. The alternative of a 2.5 mph test impact speed, front and rear, provides the greatest estimated net benefits across the board when cost of repair estimates from the 1979 Assessment are used. A 2.5 mph front/height only rear requirement exhibits similar net benefits in this context. If the model year 1973 2.5 mph rear bumper damage data used in the 1981 Evaluation are substituted, however, the 5.0 mph front/height only rear alternative generally provides slightly greater net benefits than the other alternatives considered. When cost of repair estimates are averaged, the alternative of 5.0 mph front/2.5 mph rear shows the greatest increase in net benefits relative to the present standard, regardless of which of the two secondary weight assumptions is used.

While the bulk of NHTSA's analysis to date has focused on the costs and benefits of alternative impact speed requirements, the agency has also considered the effects of modification of the existing damage criteria of the bumper standard. After review of all available data, the agency finds singificant uncertainty as to the relative merits of the Phase I and Phase II damage criteria.

The costs and benefits of the Phase II requirements were first analyzed by NHTSA in its "Final Impact Assessment-Part 581 Bumper Standard", completed in November 1977 Docket 73-19, Notice 20, No. 010. That analysis predicted net benefits of $45 to $100 for the Phase II criteria relative to the Phase I requirements. Using a similar methodology, the agency noted in its 1979 Final Assessment that the Phase II requirements would provide an additional $37 to $79 in net benefits. It should be remembered, however, that both of these analyses were completed before any real world data on Part 581 bumper systems were available.

Data on model year 1979 and 1980 vehicles required to meet Phase I and II requirements, respectively, were developed for use in NHTSA's 1981 Evaluation of the regulation. These data indicated that there existed no weight and little cost difference between model year 1979 and model year 1980 vehicles. Moreover, the Westat household survey results showed no difference in incidence of damage between model year 1979 and 1980 vehicles when adjustments for driving exposure were made. However, these apparent similarities may be attributable to manufacturers installing Phase II bumpers on their 1979 models, instead of redesigning once to meet Phase I and again a year later to comply with Phase II.

In contrast, the Bureau of Labor Statistics, in reports on quality changes for 1979 and 1980 model year passenger cars, has estimated the cost of structural changes to meet the Phase II bumper requirements to be $12.23 per vehicle. Docket 73-19, Notice 27, No. 002. The cost of changes to meet the Phase I requirements was estimated as a much lower figure.

Still other data, produced NHTSA's Office of Vehicle Safety Compliance, indicates that, while repair costs for 1978 model year vehicles in compliance testing to the FMVSS No. 215 requirements averaged $280, costs for model year 1980 vehicles in Part 581 testing averaged only $111. Docket 73-19, Gen. Ref. No. 082. Although no bumper systems required to meet only Phase I criteria were tested, substantial similarity exists between the FMVSS No. 215 and the Phase I damage criteria. The data, thus, seem to suggest a substantial improvement in damage resistance attributable to the Phase II requirements as compared to other alternatives. However, the effects of vehicle downsizing or other factors may have contributed to this difference. In view of this uncertainty and seemingly conflicting data, NHTSA has determined that Phase I and Phase II damage criteria should be proposed in the alternative for the test impact speed combinations proposed in this notice.

Proposed Alternatives

In its efforts to identify the bumper standard which will most effectively seek to maximize net benefits to the public and the consumer, NHTSA has examined several alternative test impact speeds and combinations of test impact speeds. Based on the latest available data and analyses, it appears that the alternative bumper standards considered differ only very slightly in the level of net benefits which they provide. Moreover, the absolute amount of benefits available under any of the various alternatives is limited. When an average of repair cost estimates is used, no alternative offers more than $4 per year in net benefits over the average life of a vehicle. Furthermore, uncertainties regarding data and assumptions tend to limit even the apparent confidence with which the agency can identify the standard best meeting the statutory requirements and the Administration's regulatory goals.

So that a decision can be made based on all available data and analyses, NHTSA has chosen to propose several alternative bumper standards employing differing test impact speeds and damage criteria. In this way, the agency hopes to encourage the broadest possible exchange of information and viewpoints on the issues involved in this proceeding. Thus, NHTSA proposes the following alternative amendments to the Part 581 Bumper Standard:

Alternative IA—Amend the test impact speeds for rear bumpers only to 2.5 mph for longitudinal impacts and 1.5 mph for corner impacts. Maintain the test impact speed for front bumpers at the present level. (5.0 mph front, 2.5 mph rear; Phase II).

Alternative IB—Amend the test impact speeds as described in Alternative IA, and substitute Phase I damage criteria for both the front and rear bumper. (5.0 mph front, 2.5 mph rear; Phase I).

Alternative IIA—Eliminate the damage criteria for rear bumpers only with the exception of the criterion which requires bumper contact with a pendulum test device within a specified height range. Maintain the test impact speed and damage criteria for front bumpers at their present levels. (5.0 mph front, Phase II; height only rear).

Alternative IIB—Amend the damage criteria and test impact speed requirements as described in Alternative IIA, and substitute Phase I damage criteria for the front bumper. (5.0 mph front, Phase I; height only rear).

Alternative IIIA—Amend the test impact speeds for both front and rear bumpers to 2.5 mph for longitudinal impacts and 1.5 mph for corner impacts. (2.5 mph front and rear, Phase II).

Alternative IIIB—Amend the test impact speeds as described in Alternative IIIA, and substitute Phase I damage criteria for both the front and rear bumper. (2.5 mph front and rear, Phase I).

Alternative IVA—Amend the test impact speeds for front bumpers to 2.5 mph for longitudinal impacts and 1.5 mph for corner impacts. Eliminate the damage criteria for rear bumpers only with the exception of the criterion which requires bumper contact with a pendulum test device within a specified

height range. (2.5 mph front, Phase II; height only rear).

Alternative IVB—Amend the damage criteria and test impact speed requirements as described in Alternative IVA, and substitute Phase I damage criteria for the front bumper. (2.5 mph front, Phase I; height only rear).

Alternative V—Eliminate the damage criteria for both front and rear bumpers with the exception of the criterion which requires bumper contact with a pendulum test device within a specified height range. (height only front and rear).

Several of the proposed alternatives involve elimination of damage criteria for one or both bumpers, with the exception of the criterion, § 581.5(c)(7), which requires bumper contact with the pendulum test device within a specified height range. While such a requirement is commonly referred to as a height only standard, a test impact speed of 1.5 mph is specified in the proposal for this alternative. The 1.5 mph impact speed is intended to represent roughly the design speed of unregulated bumpers based on past approximations by industry sources. In the absence of such a minimum speed requirement, NHTSA believes there would be difficulty in judging whether a vehicle is equipped with a functioning bumper system. However, the agency also wishes to consider the possible effects of a height only requirement specifying no impact speed.

Topics of Particular Interest

The agency notes that, in spite of the extensive analyses completed to date, considerable uncertainty still exists regarding certain underlying data and assumptions used in the Preliminary Regulatory Impact Analysis. This fact is reflected in the Analysis by computation of ranges of possible net benefits for each alternative standard. In order to further refine its estimates and to provide the most comprehensive basis upon which to choose among available standard alternatives, NHTSA requests that commenters give particular consideration to the following issues of importance to the agency's analysis and supply andy current data on these subjects.

1. As noted above, the agency, in its Preliminary Regulatory Impact Analysis, based estimates of unregulated bumper system cost, weight, and damage reduction performance on studies and insurance and survey data relating to pre-standard bumpers. Similar estimates for future 2.5 mph bumpers were developed from model year 1973 2.5 mph rear bumpers. However, a number of factors exist which suggest that these earlier bumper systems may not be representative of bumpers of the future. For example, technological improvements in bumper design, vehicle downsizing, safety considerations, international standards, and consumer expectations and desires, may have changed since the establishment of bumper regulations. Any such changes could affect the design and performance of future bumper systems in comparison to pre-standard and model year 1973 designs. For example, model year 1973 rear bumpers were not required to meet a standard height pendulum impact test. This suggests that they were not designed to the same types and levels of performance that a 2.5 mph system based on current test procedures would be. Moreover, the performance data for model year 1973 bumpers may have been affected by the environment in which they were used, i.e., heavier vehicles, bumper height differences and contact with more aggressive 5.0 mph bumpers on later model vehicles. They could, thus, have performed less well (due to then current differences in bumper heights) than would future 2.5 mph bumpers. Benefit estimtes for future 2.5 mph bumpers based on such past performance could then be understated. How should the agency deal with this issue?

2. Calculations in the Preliminary Regulatory Impact Analysis are based on the assumption that future unregulated bumpers would be designed to provide a level of damage resistance similar to pre-standard bumpers. Is this assumption reasonable in view of the design restrictions imposed by safety considerations, consumer expectations, and international standards? To what extent would market pressures generated by insurance cost differentials affect design goals? In an unregulated environment, what would be the manufacturers' design goal for bumper system performance? How would this goal affect cost estimates for unregulated bumper systems?

3. As noted above, inclusion of a 1.5 mph test impact speed specification in the proposed height only requirement is intended to provide an objective standard which assures that vehicles are equipped with a functioning bumper system within the specified height range. The agency has tentatively concluded that this test impact speed provision will impose no additional regulatory burdens, as compared to a height only standard specifying no impact speed requirement at all. This conclusion is based on the assumption that, in the absence of an impact speed requirement, manufacturers would voluntarily design bumpers to provide protection in, at minimum, 1.5 mph impacts. Alternatively, the 1.5 mph impact speed could be eliminated in favor of a requirement that a vehicle merely be equipped with a bumper within a specified height range. Would such a requirement result in additional cost savings, e.g., savings in testing costs, relative to the 1.5 mph "height only" requirement? Would any other effects result from such a change? How could the term "bumper" be defined to eliminate subjectivity and ensure an enforceable bumper height requirement?

4. What percentage of the front and rear impact energy management capability of typical passenger motor vehicles is attributable to the bumper system? How would these percentages be affected by a reduction in bumper design speed to 2.5 mph or by a shift to height only bumper requirements? If bumper impact resistance requirements were lowered and bumpers were redesigned accordingly, would other vehicle components be required to be modified to compensate for this reduced bumper energy management capability? Which components would be modified and to what degree? What would be the cost of these changes? Would manufacturers achieve the same energy management levels now provided, and, if not, how much would performance be affected? Is there a minimum level of bumper system performance necessary to assure compliance with Federal motor vehicle safety stantards (FMVSS) for crashworthiness (e.g., FMVSS' 204 and 301) and, if so, what is that level? Have the more substantial bumpers now required created a need for different energy management diesigns or components not accounted for in current NHTSA cost estimates?

5. In the Preliminary Regulatory Impact Analysis, NHTSA assumes that a reduction in bumper design speed to 2.5 mph will affect manufacturers' variable costs only and will result in variable cost reductions of from 15 to 30 percent. Variable costs consist of direct labor and material costs and any indirect costs, e.g., equipment maintenance costs, which vary with production volume. NHTSA also assumes that these variable cost savings will be passed through to the consumer. Do these assumptions accurately reflect the variable cost savings to manufacturers and consumers which would result from modification of the bumper standard? What is the appropriate markup between variable cost and vehicle retail price?

6. Would any fixed cost savings, e.g., reduced amortization expense

associated with reduced investment in special tooling, result from reduction of required bumper damage resistance levels? Would any increased costs due to retooling be incurred if the bumper standard were modified? Is a secondary weight cost of $.72 per pound in 1981 dollars, together with a secondary weight ratio of .5 to 1.0, an accurate reflection of the consumer price impact of secondary weight changes? Will these figures be an accurate estimate for secondary weight effects on future down-sized vehicles?

7 NHTSA assumes that most new car purchases are financed. To account for the savings in finance charges associated with possible future reductions in new car prices resulting from modification of the Bumper Standard, the Preliminary Regulatory Impact Analysis adds the present discounted value of saved finance charges to estimates of lifetime cost savings. Is this an appropirate adjustment or does discounting adequately account for the value of money spent at different times?

8. NHTSA's Preliminary Regulatory Impact Analysis assumes that decreases in car prices would be a result of lower manufacturer variable costs and it makes use of a study of General Motors' X-car as a basis for estimating the percentage of bumper consumer cost represented by variable cost, i.e., 64 percent. Does this vehicle model provide a representative basis for estimating variable cost percentages? How does this estimate compare to figures for other new models such as the General Motors J-car, Ford Escort, and Chrysler K-car?

9. What effect would change to a 2.5 mph or unregulated bumper have on repair costs for components other than the bumper system in collisions at speeds greater than 5.0 mph? What increased costs might be incurred in repair or replacement of more substantial, e.g., 5.0 mph, bumper alternatives in such higher speed crashes? Would increased damage to vehicle safety systems, resulting form reduced bumper damage resistance performance, increase the number and severity of traffic accidents? If so, what would be the extent of this increase? The agency assumes that there would be no appreciable additional cost associated with a bumper system subject only to a height requirement, as compared to a totally unregulated bumper system. Apart from the limitations placed on vehicle styling, would there be any cost associated with a height only requirement? What are the costs of compliance testing associated with the current bumper standard? Would these costs be affected by modifications of the impact speed requirements?

10. Based on estimates supplied by the auto industry, NHTSA, in its Preliminary Regulatory Impact Analysis, bases its calculation of added fuel consumed due to heavier bumpers on the assumption that each pound of weight added results in the consumption of 1.1 gallons of fuel over the life of the car. This figure was used in Congressional testimony by General Motors. The agency has previously used this approach, as well as others, to compute fuel savings associated with reduction of vehicle weight. Under the other approaches, a mileage improvement factor is determined by dividing the vehicle's original weight by its reduced weight and multiplying this result to a fractional power. This factor multiplied by the vehicle's original fuel economy in miles per gallon yields a new fuel economy figure which can be used in computing lifetime fuel savings for the vehicle. Does this or some other procedure provide a better means of measuring vehicle lifetime fuel savings than the 1.1 factor used by NHTSA in its Analysis?

11. Fuel cost estimates play an important role in NHTSA's Preliminary Regulatory Impact Analysis in the computation of costs associated with the bumper system. The schedule of estimated gasoline cost figures relied on in the Analysis is derived from Department of Energy and Data Research, Inc. forecasts using a 1982 cost in 1981 dollars of $1.60 per gallon. Are these estimates reasonable in light of current gasoline prices, price decontrol, and other factors?

12. Among the alternative bumper standards under consideration by the agency are standards which would establish different test impact speeds for front and rear bumpers, e.g., 5.0 mph front, height only rear. Would such a damage resistance differential lead to increased repair costs resulting from more aggressive, i.e., less damageable, front bumpers striking less aggressive, i.e., more damageable, rear bumpers in car to car collisions?

13. The Ford Motor Company parking lot survey and the Westat telephone survey provide differing measurements of the frequency of low-speed accidents, i.e., unrepaired and unreported accidents. Which of these or other data sources provides the best measure of this parameter, and why?

14. NHTSA assumes in the Preliminary Regulatory Impact Analysis that unrepaired damage is properly valued at the full cost to repair that damage. However, the fact that such damage has not been repaired may suggest that the vehicle owner values the cost of the damage at something less than its full cost to repair. Should the value of unrepaired damage be considered on the basis of cost to repair or should some other figure be used?

15. Present value factors in the Preliminary Regulatory Impact Analysis are based on the assumption that accident frequency is distributed over a vehicle's lifetime in proportion to vehicle miles travelled each year. A vehicle's accident probability per mile travelled is thus assumed to be independent of the age of the vehicle. Is this assumption reasonable? If not, what data are available which would permit calculation of the probability of an accident at various stages of a vehicle's life?

16. NHTSA has examined bumper standard compliance test results for 1978 and 1980 model year vehicles and observed significant differences in repair cost estimates between vehicles of these model years. Docket 73–19, Gen. Ref. Nos. 082, 082–01, and 082–02. No compliance tests were run on model year 1979 vehicles. Can the repair cost difference be attributed to imposition of the Phase II requirements? Did certain 1978 models already comply with the Phase II standard? What weight should compliance test data be accorded in analysis of benefits of the Phase II standard?

17 If the bumper standard were amended to specify a test impact speed level lower than 5.0 mph, for either or both bumpers, what would be the economic impact on industries which supply bumper system components? In the same situation, what would be the economic impact on the automobile insurance industry?

18. NHTSA, in its Preliminary Regulatory Impact Analysis, places a value on consumer time saved by improved bumpers at $7.10 per hour, based on average hourly earnings in the private sector. Other studies have suggested that the actual amount which consumers are willing to pay to avoid delays is much lower than this figure. Docket 73–19, Notice 27, No. 003. What is the most reasonable approach to placing a value on time and inconvenience?

19. Also on the subject of time and inconvenience, the Analysis places a total value of $10 on the loss of use of a car while it is being repaired. Does this figure adequately account for the cost of alternative transportation, the value of aggravation suffered by the vehicle owner, and any other cost factors which

may be associated with obtaining repairs?

20. In recent years, automobile manufacturers have made significant changes in the design and fabrication of 5 mph bumper systems. For example, the number of cars having plastic material on the bumper face bar has increased from less than 10 percent of the fleet in model year 1979 to about 18 percent of the fleet in model year 1981. In addition, many passenger automobiles now have bumpers that are attached directly to the vehicle structure, thereby eliminating the need for energy absorbers. The current test procedures and requirements of the Bumper Standard are very specific in that each system must survive repeated 5 mph impacts from a pendulum device, and sustain virtually no damage when the vehicle strikes a rigid barrier. The Agency seeks information and comment on what specific new technologies and improvements in bumper construction are available, or could be available, but are precluded from use by the test procedures or Phase II requirements of the standard. Which new technologies could 1) reduce the weight of bumper systems 2) reduce the original costs of bumper systems, and/or 3) reduce repair costs for bumper systems damaged in low speed crashes? Which aspects of the bumper standard would have to be modified in order to allow introduction of these technologies and improvements? Would the permissibility of simple manual repositioning of components contribute to the availability of cost and weight saving designs? How could the prospective effects of modification of these requirements be evaluated?

21. Do different vehicle size classes differ in terms of net benefits obtained from improved bumper performance? Is there reason to believe that the optimum level of bumper performance may vary with vehicle size class? Could test procedures relating to mass effects or test impact speeds be altered or varied to increase net benefits for particular vehicle size classes? If size class differences exist, how could these differences best be accounted for through a single standard?

22. Regardless of the analyses of the costs and benefits of bumper standards at various levels, the ultimate decision on what level of bumper protection is most cost-beneficial would be made in a a free market by car buyers. Insurance premium discounts and surcharges based on vehicle damageability, which are increasingly being used, help to stimulate marketplace demand for optimal levels of damageability. If the requirements of the bumper standard are reduced, some manufacturers may continue to equp their cars with 5 mph, Phase II (limited damage) bumpers. Some cars buyers may be willing to pay for cars with this level of protection, and some insurance companies may offer discounts for such bumper protection. If the bumper standard were amended to reduce required bumper performance, to what extent would manufacturers continue to offer 5 mph Phase II bumpers? Would purchasers be sufficiently well-informed about differences in bumper performance to make intelligent purchase decisions? If not, would the availability of ratings on bumper protection levels be useful? If such information would be useful, what kind of information on bumper performance would be most valuable, and how could it be best provided?

23. Ford Motor Company has informed NHTSA that the present damage criteria of the bumper standards prevented it from equipping new motor vehicles with accessories, i.e., fog lamps, which must be attached to, or in the vacinity of, the bumper system. Do the existing damage criteria unduly restrict manufacturers' flexibility in offering optional equipment? If so, how could the standard be modified to ease this restriction?

24. Shielding panels typically are flexible, cosmetic components which lie between the bumper face bar of a vehicle and the vehicle's body sheet metal. These components may be displaced by the movement of the bumper during test impact and may not always return to the exact position they occupied prior to impact. Such minor changes in shielding panel position have given rise to difficult questions of interpretation regarding the level of shielding paneling "damage" permissible under the standard. In some situations, shielding panel damage may be correctable by manual repositioning of components. NHTSA has in the past rejected as unacceptably subjective suggestions that manual repositioning of shielding panels be permitted under the bumper test procedures. Does uncertainty exist regarding application of the bumper standard damage criteria to shielding panels? Do existing interpretations concerning shielding panel damage unreasonably restrict bumper design? If these problems exist, how could the bumper test procedures or damage criteria be modified to reduce the degree of uncertainty or permit greater design flexibility?

25. The Phase II damage criteria now in effect place limitations on the amount of "dent" (deviation from original contour in areas of contact) and "set" (deviation from original contour and position relative to the vehicle frame) which may be incurred by a bumper face bar in a series of test impacts. Can the costs and benefits of the dent and set requirements be isolated to permit separate analysis of the net benefits of these criteria? If so, what are the costs and benefits of the dent and set requirements of the present bumper standard and how would these costs and benefits change under the various alternative impact speed requirements described in this notice?

NHTSA has determined that this proposal involves a major rule within the meaning of Section 1, paragraph (b)(1) of Executive Order 12291 in that it is likely to result in an annual effect on the economy of $100 million or more. The agency estimates that current bumper requirements add as much as $100 to the cost of a new car. If test impact speed requirements were reduced as proposed in this notice for each of the roughly 11 million vehicles sold in this country annually, the resulting impact on the economy could far exceed $100 million. For this same reason, this proposal is considered significant for purposes of Department of Transportation procedures for internal review of proposals.

As discussed in greater detail above, the agency's Preliminary Regulatory Impact Analysis indicates that the present 5.0 mph bumper test impact speed requirements may actually be resulting in a net loss in consumer benefits as compared to a height only standard. At the same time, several alternative speed requirements provide greater net benefits than the present standard under various sets of assumptions. Thus, the analysis leads to the conclusion that several alternative test impact speed requirements should be proposed to assist in identification of the alternative which maximizes net benefits while meeting regulatory objectives.

Pursuant to the Regulatory Flexibility Act, the agency has considered in the Preliminary Regulatory Impact Analysis the impact of this proposed rulemaking action on small entities. The agency has determined that effects of this proposal on small entities will not be significant and that a regulatory flexibility analysis will not be required for this action. The agency has concluded that few, if any, manufacturers of motor vehicles and bumper components or vehicle insurers are small entities, and that the only small entities having an interest in the regulation, new car dealers, will not be significantly affected because the

proposed amendments are unlikely to significantly affect new car sales levels for individual dealerships. In developing this proposal, NHTSA considered the bumper standard promulgated by the International Standards Organization, but found that standard to be inappropriate for use in this country since it does not adequately deal with consumer cost saving considerations as required by the Motor Vehicle Information and Cost Savings Act.

NHTSA has prepared an Environmental Assessment of the likely environmental consequences of this proposal. This Assessment has been placed in the public rulemaking docket for this notice. Based on this Assessment, the agency has concluded that this action will not have a significant effect on the human environment and that, for this reason, an Environmental Impact Statement will not be prepared for this action.

PART 581—BUMPER STANDARD

In consideration of the foregoing, NHTSA proposes that 49 CFR Part 581 be amended as follows:

Alternative IA

1. Section 581.5(a) would be revised to read:

"(a) Each vehicle shall meet the damage criteria of §§ 581.5(c)(1) through 581.5(c)(7) and §§ 581.5(c)(9) through 581.5(c)(11) when impacted by a pendulum-type test device in accordance with the procedures of § 581.7(b) under the conditions of § 581.6, at an impact speed of 3.0 m.p.h. for the front bumper and 1.5 m.p.h. for the rear bumper, and when impacted by a pendulum-type test device in accordance with the procedures of § 581.7(b) under the conditions of § 581.6, at an impact speed of 3.0 m.p.h. for the front bumper and 1.5 m.p.h. for the rear bumper, and when impacted by a pendulum-type test device in accordance with the procedures of § 581.7(a) at 5.0 m.p.h. for the front bumper and 2.5 m.p.h. for the rear bumper, followed by impacts into a fixed collision barrier that is perpendicular to the line of travel of the vehicle, while traveling longitudinally forward at 5.0 m.p.h., then longitudinally rearward at 2.5 m.p.h., under the conditions of § 581.6.

2. Section 581.5(b) would be removed and reserved.

3. Section 581.5(c)(8) would be removed and reserved.

4. Section 581.5(c)(9) would be amended by substitution of the word "There" in place of the words "Except as provided in § 581.5(c)(8), there"

5. Section 581.5(c)(10) would be amended by substitution of the word "The" in place of the words "For vehicles manufactured on or after September 1, 1979, the"

Alternative IB

1. Section 581.5(a) would be revised to read:

(a) Each vehicle shall meet the damage criteria of §§ 581.5(c)(1) through 581.5(c)(9) when impacted by a pendulum-type test device in accordance with the procedures of § 581.7(b) under the conditions of § 581.6, at an impact speed of 3.0 m.p.h. for the front bumper and 1.5 m.p.h. for the rear bumper, and when impacted by a pendulum-type test device in accordance with the procedures of § 581.7(a) at 5.0 m.p.h. for the front bumper and 2.5 m.p.h. for the rear bumper, followed by impacts into a fixed collision barrier that is perpendicular to the line of travel of the vehicle, while traveling longitudinally forward at 5.0 m.p.h., then longitudinally rearward at 2.5 m.p.h., under the conditions of § 581.6.

2. Section 581.5(b) would be removed and reserved.

3. Section 581.5(c)(8) would be amended by substitution of the word "The" in place of the words "For vehicles manufactured from September 1, 1978 to August 31, 1979, the"

4. Section 581.5(c)(10) and 581.5(c)(11) would be removed and reserved.

Alternative IIA

1. Section 581.5(a) would be revised to read:

"(a) Each vehicle shall meet the damage criteria of §§ 581.5(c)(1) through 581.5(c)(7) and §§ 581.5(c)(9) through 581.5(c)(11) when impacted on the front bumper by a pendulum-type device in accordance with the procedures of § 581.7(b) under the conditions of § 581.6, at an impact speed of 3.0 m.p.h., and when impacted on the front bumper by a pendulum-type test device in accordance with the procedures of § 581.7(a) at 5.0 m.p.h., followed by an impact into a fixed collision barrier that is perpendicular to the line of travel of the vehicle, while traveling longitudinally forward, under the conditions § 581.6, at 5.0 m.p.h."

2. Section 581.5(b) would be revised to read:

* * * * *

"(b) Each vehicle shall meet the damage criteria of § 581.7(c)(7) when impacted on the rear bumper by a pendulum-type test device in accordance with the procedures of §§ 581.7(a) and 581.7(b) under the conditions of § 581.6, at an impact speed of 1.5 m.p.h."

3. Section 581.5(c)(8) would be removed and reserved.

4. Section 581.5(c)(9) would be amended by substitution of the word "There" in place of the words "Except as provided in § 581.5(c)(8), there".

5. Section 581.5(c)(10) would be amended by substitution of the word "The" in place of the words "For vehicles manufactured on or after September 1, 1979, the".

Alternative IIB

1. Section 581.5(a) would be revised to read:

"(a) Each vehicle shall meet the damage criteria of §§ 581.5(c)(1) through 581.5(c)(9) when impacted on the front bumper by a pendulum-type device in accordance with the procedures of § 581.7(b) under the conditions of § 581.6, at an impact speed of 3.0 m.p.h., and when impacted on the front bumper by a pendulum-type test device in accordance with the procedures of § 581.7(a) at 5.0 m.p.h., followed by an impact into a fixed collision barrier that is perpendicular to the line of travel of the vehicle, while traveling longitudinally forward, under the conditions of § 581.6, at 5.0 m.p.h."

2. Section 581.5(b) would be revised to read:

* * * * *

"(b) Each vehicle shall meet the damage criteria of § 581.5(c)(7) when impacted on the rear bumper by a pendulum-type test device in accordance with the procedures of §§ 581.7(a) and 581.7(b) under the conditions of § 581.6, at an impact speed of 1.5 m.p.h."

3. Section 581.5(c)(8) would be amended by substitution of the word "The" in place of the words "For vehicles manufactured from September 1, 1978 to August 31, 1979, the".

4. Sections 581.5(c)(10) and 581.5(c)(11) would be removed and reserved.

Alternative IIIA

1. Section 581.5(a) would be revised to read:

"(a) Each vehicle shall meet the damage criteria of §§ 581.5(c)(1) through 581.5(c)(7) and §§ 581.5(c)(9) through 581.5(c)(11) when impacted by a pendulum-type test device in accordance with the procedures of § 581.7(b) under the conditions of § 581.6, at an impact speed of 1.5 m.p.h., and when impacted by a pendulum-type test device in accordance with the procedures of § 581.7(a) at 2.5 m.p.h., followed by an impact into a fixed collision barrier that is perpendicular to

the line of travel of the vehicle, while traveling longitudinally forward, then longitudinally rearward, under the conditions of § 581.6, at 2.5 m.p.h."

2. Section 581.5(b) would be removed and reserved.

3. Section 581.5(c)(8) would be removed and reserved.

4. Section 581.5(c)(9) would be amended by substitution of the word "There" in place of the words "Except as provided in § 581.5(c)(8), there"

5. Section 581.5(c)(10) would be amended by substitution of the word "The" in place of the words "For vehicles manufactured on or after September 1, 1979, the"

Alternative IIIB

1. Section 581.5(a) would be revised to read:

"(a) Each vehicle shall meet the damage criteria of §§ 581.5(c)(1) through 581.5(c)(9) when impacted by a pendulum-type test device in accordance with the procedures of § 581.7(b) under the conditions of § 581.6, at an impact speed of 1.5 m.p.h., and when impacted by a pendulum-type test device in accordance with the procedures of § 581.7(a) at 2.5 m.p.h., followed by an impact into a fixed collision barrier that is perpendicular to the line of travel of the vehicle, while traveling longitudinally forward, then longitudinally rearward, under the conditions of § 581.6, at 2.5 m.p.h."

2. Section 581.5(b) would be removed and reserved.

3. Section 581.5(c)(8) would be amended by substitution of the word "The" in place of the words "For vehicles manufactured from September 1, 1978 to August 31, 1979, the"

4. Sections 581.5(c)(10) and 581.5(c)(11) would be removed and reserved.

Alternative IVA

1. Section 581.5(a) would be revised to read:

"(a) Each vehicle shall meet the damage criteria of §§ 581.5(c)(1) through 581.5(c)(7) and §§ 581.5(c)(9) through 581.5(c)(11) when impacted on the front bumper by a pendulum-type test device in accordance with the procedures of § 581.7(b) under the conditions of § 581.6, at an impact speed of 1.5 m.p.h., and when impacted on the front bumper by a pendulum-type test device in accordance with the procedures of § 581.7(a) at 2.5 m.p.h., followed by an impact into a fixed collision barrier that is perpendicular to the line of travel of the vehicle, while traveling longitudinally forward, under the conditions of § 581.6, at 2.5 m.p.h."

2. Section 581.5(b) would be revised to read:

* * * * *

"(b) Each vehicle shall meet the damage criteria of § 581.5(c)(7) when impacted on the rear bumper by a pendulum-type test device in accordance with the procedures of §§ 581.7(a) and 581.7(b) under the conditions of § 581.6, at an impact speed of 1.5 m.p.h."

3. Section 581.5(c)(8) would be removed and reserved.

4. Section 581.5(c)(9) would be amended by substitution of the word "There" in place of the words "Except as provided in § 581.5(c)(8), there"

5. Section 581.5(c)(10) would be amended by substitution of the word "The" in place of the words "For vehicles manufactured on or after September 1, 1979, the"

Alternative IVB

1. Section 581.5(a) would be revised to read:

"(a) Each vehicle shall meet the damage criteria of §§ 581.5(c)(1) through 581.5(c)(9) when impacted on the front bumper by a pendulum-type test device in accordance with the procedures of § 581.7(b) under the conditions of § 581.6, at an impact speed of 1.5 m.p.h., and when impacted on the front bumper by a pendulum-type test device in accordance with the procedures of § 581.7(a) at 2.5 m.p.h., followed by an impact into a fixed collision barrier that is perpendicular to the line of travel of the vehicle, while traveling longitudinally forward, under the conditions of § 581.6, at 2.5 m.p.h."

2. Section 581.5(b) would be revised to read:

* * * * *

"(b) Each vehicle shall meet the damage criteria of § 581.5(c)(7) when impacted on the rear bumper by a pendulum-type test device in accordance with the procedures of §§ 581.7(a) and 581.7(b) under the conditions of § 581.6, at an impact speed of 1.5 m.p.h."

3. Section 581.5(c)(8) would be amended by substitution of the word "The" in place of the words "For vehicles manufactured from September 1, 1978 to August 31, 1979, the"

4. Section 581.5(c)(10) and 581.5(c)(11) would be removed and reserved.

Alternative V

1. Section 581.4 would be amended by removal of the second sentence thereof.

2. Section 581.5(a) would be revised to read:

"(a) Each vehicle shall meet the damage criteria of § 581.5(c)(7) when impacted by a pendulum-type test device in accordance with the procedures of §§ 581.7(a) and 581.7(b) under the conditions of § 581.6, at an impact speed of 1.5 m.p.h."

3. Section 581.5(b), (c)(1) through (c)(6), and (c)(8) through (c)(11) would be removed and reserved.

4. Section 581.6(c) would be removed and reserved.

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must be limited not to exceed 15 pages in length. Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary argument in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. Any claim of confidentiality must be supported by a statement demonstrating that the information falls within 5 U.S.C. 553(b)(4), and that disclosure of the information is likely to result in substantial competitive damage; specifying the period during which the information must be withheld to avoid that damage; and showing that earlier disclosure would result in that damage. In addition, the commenter or, in the case of a corporation, a responsible corporate offical authorized to speak for the corporation must certify in writing that each item for which confidential treatment is requested is in fact confidential within the meaning of section 552(b)(4) and that a diligent search has been conducted by the commenter or its employees to assure that none of the specified items have previously been disclosed or otherwise become available to the public.

All comments received before the close of business on the comment closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. However, the rulemaking may proceed at any time after that date, and comments received after the closing date and too late for consideration in regard to the action will be treated as

suggestions for future rulemaking. NHTSA will continue to file relevant material as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rulemaking docket should enclose, in the envelope with their comments, a self addressed stamped postcard. Upon receiving the comments, the docket supervisor will return the postcard by mail.

In accordance with Section 102(e)(1) of the Cost Savings Act which requires that interested persons be given an opportunity to orally present their views on any rule amending a bumper standard, a public meeting is hereby scheduled to discuss the alternatives proposed by this notice.

Interested persons are invited to attend the meeting and to present oral or written comments. Persons making oral comments are encouraged to submit their comments in written form either at the meeting or by mail to the docket. All written comments are subject to the deadlines and page limitations noted above.

Persons who desire to make an oral statement should contact Mr. Steven Zaidman, Office of Automotive Ratings, at the address and phone number stated above so that time limitations, if necessary, and the need for any special equipment, such as projectors, can be discussed and final arrangements can be make. A general outline of each planned oral presentation should also be submitted to Mr. Zaidman. A schedule of the persons making oral presentations at the meeting will be available on the date of the meeting.

Persons whose presentations include slides, motion pictures, or any other visual aids should plan to submit copies of them for the record at the meeting. Persons making oral presentations are requested but not required to submit 25 written copies of the full text of their presentation to Mr. Zaidman not later than the beginning of the meeting.

No opportunity will be afforded for persons to question other participants. However, the presiding officials reserve the right to ask questions of all persons making presentations.

A transcript of the meeting will be made and will be abailable for examination, along with any written comments submitted, in the NHTSA Docket Section, as soon as possible after the meeting. The date of the public meeting will be announced in the near future by publication in the Federal Register. The time and location of the meeting will be announced in a subsequent notice in the Federal Register.

The principal author of this notice is Richard J. Hipolit of the Office of the Chief Counsel.

(Sec. 102, Pub. L. 92-513, 86 Stat. 947 (15 U.S.C. 1912; Secs. 103, 119, Pub. L. 89-563, 80 Stat. 718 (15 U.S.C. 1392, 1407); delegations of authority of 49 CFR 1.50 and 501.8)

Issued on: September 25, 1981.

Michael M. Finkelstein,

Associate Administrator for Rulemaking.

[FR Doc. 81-28437 Filed 9-28-81; 9:32 am]

BILLING CODE 4910-59-M

Notices

Federal Register
Vol. 46, No. 190
Thursday, October 1, 1981

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ACTION

Privacy Act of 1974; Notice of New System of Records

AGENCY: ACTION.

ACTION: Notification of Privacy Act System of Records.

SUMMARY: The Peace Corps proposes the establishment of a file system that will be comprised of members of the general public who by means of their professional positions/affiliations would be willing to refer prospective candidates in needed skill and/or emphasis areas for volunteer service.

DATES: Comments must be received on or before November 2, 1981. This system will become effective on November 30, 1981 unless ACTION publishes notice to the contrary.

ADDRESS: ACTION, P-307, 806 Connecticut Avenue, N.W., Washington, D.C. 20525.

FOR FURTHER INFORMATION CONTACT: Noel McCaman, 202-254-7520.

SUPPLEMENTARY INFORMATION: The individuals in the system would be contracted by mail only one to four times annually in order to inform them of the seasonal recruitment needs of the Peace Corps in their particular skill and/or emphasis area. The mailings will also highlight the technical or programmatic accomplishments of the Peace Corps which would be of interest.

SYSTEM NAME:

Peace Corps Volunteer Recruitment Resource File.

SYSTEM LOCATION:

ACTION, Office of Recruitment and Communications, 806 Connecticut Avenue, N.W., Washington, D.C. 20525.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who by means of their professional affiliations would be willing to refer prospective candidates to apply for Peace Corps service.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual records containing the following information about the particular individual: name, current business or home address, skill identifier, university or professional identifier; former volunteer identifier; special designations (i.e., senior citizens' organizations, skilled trades organizations).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Peace Corps Act, as amended (22 U.S.C. 2501, et. seq.).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Data maintained in this file will be used by:

1. ACTION/Peace Corps staff to involve members of the general public in an informal recruitment referral process.

2. In circumstances set forth in the following agency routine uses under numbers 5, 8, 9 and 10 as published in the Federal Register, Volume 44, at pages 55940-41 on September 26, 1979:

5. A record may be disclosed as a routine use to a Member of Congress submitting a request involving an individual who is a constituent of such member who has requested assistance from the member with respect to the subject matter of the record.

8. Information in any system may be used as a data source, for management information, for the production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related personnel management functions or manpower studies. Information may also be disclosed to respond to general requests for statistical information (without personal identification of individuals) under the Freedom of Information Act or the Privacy Act or to locate specific individuals for personnel research or other personnel management functions.

9. Information in any system of records may be disclosed to a Congressional office, in response to an inquiry from any such office made at the request of the individual to whom the record pertains.

10. A record from any system of records may be disclosed as a routine use to the National Archives and Records Service, General Services Administration in records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

A periodic mailing will be sent to persons in this file in an effort to maintain a level of awareness of Peace Corps program needs in particular skill and/or emphasis areas.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These computer files shall be stored in disc packs or tape with tape backup. All files will be maintained and filed in rooms or cabinets with manipulation proof combination locks when not in immediate use.

RETRIEVABILITY:

Files are retrievable through name.

SAFEGUARDS:

Records in the system are available only to appropriate officials of ACTION/Peace Corps with the need for access to such records for the performance of their duties.

RETENTION AND DISPOSAL:

Records in this system shall be maintained only for so long as necessary to carry out the recruitment functions for which they were collected. They shall then be destroyed. Records will be removed immediately upon request of the individuals.

SYSTEM MANAGER AND ADDRESS:

Terry Landolt, Director, Communications Division, Office of Recruitment and Communications, ACTION, 806 Connecticut Avenue, N.W., Washington, D.C. 20525.

NOTIFICATION PROCEDURE:

Individuals wishing to see information in their records should provide their name, any former name, current business and/or home address, university and/or professional affiliations, dates and type of record. Individuals should address their inquiries to: Director, Administrative Services Division, Office of Administration and Finance, ACTION, 806 Connecticut Avenue, N.W., Washington, D.C. 20525. All inquiries

should have "Privacy Act Request" noted on the envelope.

RECORD ACCESS PROCEDURES:

Individuals wishing to inquire if this system of records contains information about them should provide their name, any former name, current business and/or home address, university and/or professional affiliations, dates and type of record. Individuals should address their inquiries to: Director, Administrative Services Division, Office of Administration and Finance, ACTION, 806 Connecticut Avenue, N.W., Washington, D.C. 20525. All inquiries should have "Privacy Act Request" noted on the envelope.

CONTESTING RECORD PROCEDURES:

Individuals wishing to contest/correct information in their records should provide their name, any former name, current business and/or home address, university and/or professional affiliations, dates and type of record. Individuals should address their inquiries to: Director, Administrative Services Division, Office of Administration and Finance, ACTION, 806 Connecticut Avenue, N.W., Washington, D.C. 20525. All inquiries should have "Privacy Act Request" noted on the envelope.

RECORD SOURCE CATEGORIES:

Information will be obtained from the individual or persons dealing with ACTION/Peace Corps programs.

This Notice is issued in Washington, D.C. on September 23, 1981.

Winifred A. Pizzano,

Deputy Director, ACTION.

Loret Miller Ruppe,

Director, Peace Corps.

[FR Doc. 81-28653 Filed 9-30-81; 8:45 am]

BILLING CODE 6050-01-M

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Programmatic Agreement Regarding In-Lieu Exchange of Lands the Bureau of Land Management, Department of the Interior, and the State of California

AGENCY: Advisory Council on Historic Preservation.

ACTION: Notice.

SUMMARY: The Advisory Council on Historic Preservation proposes to execute a Programmatic Memorandum of Agreement pursuant to § 800.8 of the regulations for the "Protection of Historic and Cultural Properties" (36 CFR Part 800) with the U.S. Department of the Interior, Bureau of Land Management, and the California State Historic Preservation Officers. This Agreement will establish a system for identifying and avoiding or mitigating adverse effects on historic properties that would otherwise result from the Bureau's proposed exchange of land with the State of California as part of its "in lieu" selection program. Under this program, the State will select manageable land areas now held by the Bureau in lieu of certain specified parcels set aside for the State by the Federal Government when the former was created.

COMMENTS DUE: November 2, 1981.

ADDRESS: Comments should be addressed to Executive Director, Advisory Council on Historic Preservation, 44 Union Blvd., Suite 616, Lakewood, Colorado 80228.

FOR FURTHER INFORMATION CONTACT: Mr. Louis S. Wall, Chief, Western Division of Project Review, Advisory Council on Historic Preservation, 44 Union Blvd., Suite 616, Lakewood, Colorado 70228, (303-234-4946).

SUPPLEMENTARY INFORMATION: This notice of the proposed agreement invites comments from interested parties. Copies of the proposed agreement are available from the Council.

Dated: September 25, 1981.

Robert R. Garvey, Jr.,

Executive Director.

[FR Doc. 81-28622 Filed 9-30-81; 8:45 am]

BILLING CODE 4310-10-M

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Section 22 Import Fees; Determination of Quarterly Import Fees On Sugar

AGENCY: Office of the Secretary, USDA.

ACTION: Notice.

SUMMARY: Headnote 4(c) of Part 3 of the Appendix to the Tariff Schedules of the United States (TSUS) requires the Secretary of Agriculture to determine on a quarterly basis the amount of the fees which shall be imposed on imports of raw and refined sugar (TSUS items 956.05, 956.15, and 957.15) under the authority of Section 22 of the Agriculture Adjustment Act of 1933, as amended. This notice announces those determinations for the fourth calendar quater of 1981.

EFFECTIVE DATE: October 1, 1981.

FOR FURTHER INFORMATION CONTACT: William F Doering, Foreign Agricultural Service, Department of Agriculture, Washington, D.C. 20250 (202-447-6723).

SUPPLEMENTARY INFORMATION: By Presidential Proclamation No. 4631, dated December 28, 1978, Headnote 4 of Part 3 of the TSUS was amended to provide that quarterly adjusted fees shall be imposed on imports of raw and refined sugar (TSUS items 956.05, 956.15, and 957.15). Paragraph (c)(ii) of Headnote 4 provides that the quarterly adjusted fee for item 956.15 shall be the amount by which the average of the daily spot (world) price quotations for raw sugar for the 20 consecutive market days immediately preceding the 20th day of the month preceding the calendar quarter during which the fee shall be applicable (as reported by the New York Coffee and Sugar Exchange or, if such quotations are not being reported, by the International Sugar Organization), expressed in United States cents per pound, Caribbean ports, in bulk, adjusted to a United States delivered basis by adding the applicable duty and 0.90 cents per pound to cover attributed costs for freight, insurance, stevedoring, financing, weighing and sampling, is less than 15.0 cents per pound. However, whenever the average of the daily spot price quotations for 10 consecutive market days within any calendar quarter, adjusted to a United States delivered basis, plus the fee then in effect: (1) Exceeds 16.0 cents, the fee then in effect shall be decreased by one cent; or (2) is less than 14.0 cents, the fee then in effect shall be increased by one cent. The fee, in any event, may not be greater than 50 per centum of the average of such daily spot price quotations. Paragraph (c)(i) further provides that the quarterly adjusted fee for items 956.05 and 957.15 shall be the amount of the fee for item 956.15 plus .52 cents per pound.

The average of the daily spot (world) price quotations for raw sugar for the applicable period prior to the fourth calendar quarter of 1981 has been calculated to be 11.944 cents per pound. This results in a fee of 1.531 cents per pound for item 956.15, the amount by which the sum of the 11.944 cents average spot price +0.625 cents duty +.90 cents attributed costs is less than 15.0 cents. Accordingly, the fee for items 956.05 and 957.15 for the fourth calendar quarter of 1981 is 2.051 cents per pound.

Headnote 4(c) requires the Secretary of Agriculture to determine and announce the amount of the quarterly fees no later than the 25th day of the month preceding the calendar quarter during which the fees shall be applicable. The Secretary is also required to certify the amounts of such fees to the Secretary of the Treasury and file notice thereof with the Federal

Register prior to the beginning of the calendar quarter during which the fees shall be applicable. This notice is therefore being issued in order to comply with the requirements of Headnote 4(c).

Notice

Notice is hereby given that, in accordance with the requirements of Headnote 4(c) of Part 3 of the Appendix to the Tariff Schedules of the United States, it is determined that the quarterly adjusted fees for raw and refined sugar (TSUS items 956.05, 956.15, and 957.15) for the fourth calendar quarter of 1981 shall be as follows:

Item.	Fee (cents per lb.)
956.05	2.051
956.15	1.531
957.15	2.051

The amounts of such fees have been certified to the Secretary of the Treasury in accordance with paragraph (c)(iii) of Headnote 4.

Signed at Washington, D.C. on September 28, 1981.

John R. Block,

Secretary of Agriculture.

[FR Doc. 81-28638 Filed 9-30-81; 8:45 am]

BILLING CODE 3410-10-M

Meat Import Limitations; Fourth Quarterly Estimate

Public Law 88-482, approved August 22, 1964, as amended by the Meat Import Act of 1979 (hereinafter referred to as the "Act"), provides for limiting the quantity of fresh, chilled, or frozen meat of cattle, sheep except lambs, and goats (TSUS 106.10, 106.22, and 106.25), and certain prepared or preserved beef and veal products (TSUS 107.55, 107.61, and 107.62), which may be imported into the United States in any calendar year. Such limitations are to be imposed when it is estimated by the Secretary of Agriculture that imports of articles provided for in TSUS 106.10, 106.22, 106.25, 107.55 and 107.62 (hereinafter referred to as "meat articles"), in the absence of limitations under the Act during such calendar year, would equal or exceed 110 percent of the estimated quantity of meat articles prescribed by Section 2(c) of the Act.

As published on November 26, 1980 (45 FR 78740), the estimated aggregate quantity of meat articles prescribed by Section 2(c) of the Act during the calendar year 1981 is 1,315 million pounds.

In accordance with the requirements of the Act, the fourth quarterly estimate for 1981 of the aggregate quantity of meat articles which would, in the absence of limitations under the Act, be imported during calendar year 1981 is 1,235 million pounds.

Done at Washington, D.C. this 28th day of September 1981.

John R. Block,

Secretary.

[FR Doc. 81-28586 Filed 9-29-81; 10:37 am]

BILLING CODE 3410-10-M

Soil Conservation Service

Camp Grafton Recreation Area RC&D Measure, N. Dak.; No Significant Environmental Impact

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

FOR FURTHER INFORMATION CONTACT: Mr. J. Michael Nethery, State Conservationist, Soil Conservation Service, P.O. Box 1458, Bismarck, North Dakota 58502, telephone 701-255-4011.

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 Camp Grafton Recreation Area RC&D Measure, Ramsey County, North Dakota.

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. J. Michael Nethery, 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 the installation of earthfill for boat ramps 60 x 110 feet, three concrete log boat ramps, 2,000 feet of gravel access roads, five gravel units for handicapped parking, 50 gravel units for regular parking, 100 units of unimproved overflow parking, two 40 foot divider boat docks, two 100 foot tieup docks, 2,400 feet of control fence to enclose area, two vaulted comfort stations, one entrance or control building, and five entrance or control signs. Future plans include a day use picnicking and playground area, picnic shelters and tables, playground equipment, comfort stations, parking plus access roads, and control fencing.

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. J. Michael Nethery. 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 November 2, 1981.

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program. Office of Management and Budget Circular A-95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable.)

Dated: September 18, 1981.

David G. Unger,

Associate Chief, Soil Conservation Service.

[FR Doc. 81-28526 Filed 9-30-81; 8:45 am]

BILLING CODE 3410-16-M

Eminence School Land Drainage RC&D Measure, Indiana; No Significant Environmental Impact

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

FOR FURTHER INFORMATION CONTACT: Mr. Robert L. Eddleman, State Conservationist, Soil Conservation Service, 5610 Crawfordsville Road, Indianapolis, Indiana 46224, telephone 317-260-6515.

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 Eminence School Land Drainage RC&D Measure, Morgan County, Indiana.

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. Robert L. Eddleman, 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 drainage treatment on the Eminence School property. The planned

improvement includes the placement of 30 feet of 72-inch CMP, 2 side inlet pipes, 3 tile outlet pipes, 1,500 feet of 5-inch tile, and 900 feet of open ditch, and will need 900 cubic yards of fill next to the road. Approximately 1.5 acres of seeding, mulching, and fertilizing will be done after construction is completed.

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. Robert L. Eddleman. 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 November 2, 1981.

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program. Office of Management and Budget Circular A-95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable.)

Dated: September 18, 1981.

David G. Unger,

Associate Chief, Soil Conservation Service.

[FR Doc. 81-28527 Filed 9-30-81; 8:45 am]

BILLING CODE 3410-16-M

Jennings County Fairgrounds Land Draingage RC&D Measure, Indiana; No Significant Environmental Impact

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a Finding of No significant impact.

FOR FURTHER INFORMATION CONTACT: Mr. Robert L. Eddleman, State Conservationist, Soil Conservation Service, 5601 Crawfordsville Road, Indianapolis, Indiana 46224, telephone 317-269-5615.

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 Jennings County Fairgrounds Land Drainage RC&D Measure, Jennings County, Indiana.

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. Robert L. Eddleman, 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 land drainage. The planned works of improvement include the construction of 4,700 feet of surface drainage, 1,360 feet of subsurface drainage, six water control structures, one grade stabilization structure, and 24 acres of seeding and mulching.

The Notice of a Finding of No Significant Impact (FNSI) has been forwarded to the Environmental Protection Agency. The basic data development during theenvironmental assessment are on file and may be reviewed by contacting Mr. Robert L. Eddleman. 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 November 2, 1981.

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Developmenta Program. Office of Mangement and Budget Circular A-95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable.)

Dated: September 18, 1981.

David G. Unger,

Associate Chief, Soil Conservation Service.

[FR Doc. 81-28525 Filed 9-30-81; 8:45 am]

BILLING CODE 3410-16-M

South Branch of Cattaraugus Creek RC&D Measure, New York; No Significant Environmental Impact

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

FOR FURTHER INFORMATION CONTACT: Mr. Paul A. Dodd, State Conservationist, Soil Conservation Service, 100 South Clinton Street, Syracuse, New York 13260, telephone 315-423-5512.

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 South Branch Cattaraugus Creek RC&D Measure, Cattaraugus County, New York.

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. Paul A. Dodd, 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 to maximize the installation of agricultural waste management practices and conservation tillage on farms located in the South Branch of Cattaraugus Creek Watershed, Cattaraugus County, New York. The planned project includes installing waste management practices on 40 individual farms and installing 2,500 acres of conservation tillage.

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. Paul A. Dodd. 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 November 2, 1981.

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program. Office of Management and Budget Circular A-95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable.)

Dated: September 18, 1981.

David G. Unger,

Associate Chief, Soil Conservation Service.

[FR Doc. 81-28524 Filed 9-30-81; 8:45 am]

BILLING CODE 3410-16-M

CIVIL AERONAUTICS BOARD

Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits; Applications

In the matter of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits filed under Subpart Q of the Board's Procedural Regulations (see, 14 CFR 302.1701 et. seq.); week ended September 18, 1981.

Subpart Q Applications

The due date for answers, conforming applications, or motions to modify scope are set forth below for each application. Following the answer period the Board may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Date filed	Docket No.	Description
Sept. 14, 1981	40019	Challenge Air Transport, Inc., P.O. Box 52-2933, Miami, Florida 33152. Application of Challenge Air Transport, Inc., pursuant to 401 of the Act and Subpart Q of the Board's Procedural Regulations requests an amendment of its certificate of public convenience and necessity so as to engage in foreign charter transportation of property and mail, as follows: Between any point in any state of the United States, the District of Columbia, or any U.S. territory or possession, and (a) any point in South America; (b) any point in Australasia, Indonesia and Asia as far west as longitude 70° east via a transpacific routing; and (c) any point in Greenland, Iceland, the Azores, Europe, Africa and Asia as far east as (and including) India. Conforming Applications, motions to modify scope, and Answers may be filed by October 13, 1981.
Sept. 15, 1981	40023	Arizona Pacific, Inc. d/b/a/ Arizona Pacific Airline, 1500 E. Tropicana, Las Vegas, Nevada 89109. Application of Arizona Pacific, Inc. d/b/a/ Arizona Pacific Airline pursuant to Section 401 and Subpart Q of the Board's Procedural regulations requests the issuance of a certificate of public convenience and necessity authorizing it to engage in air transportation of persons, property and mail as follows: Between the terminal point of Albuquerque, New Mexico the intermediate points of Flagstaff and Phoenix, Arizona, Carlsbad, Lake Tahoe, Long Beach, Los Angeles, Ontario, San Diego and Santa Barbara, California, Durango, Colorado, Ft. Lauderdale, Miami and Orlando, Florida, San Antonio, Texas and the terminal point Tampa, Florida. Conforming Applications, motions to modify scope, and Answers may be filed by October 15, 1981.
Sept. 16, 1981	40035	Challenge Air Transport, Inc., P.O. Box 52-2933, Miami, Florida 33152. Application of Challenge Air Transport, Inc. pursuant to Section 401 of the Act and Subpart Q of the Board's Procedural Regulations requests a certificate of public convenience and necessity issued pursuant to Section 401 so as to authorize it to engage in scheduled foreign air transportation of property and mail on a permissive basis, as follows: Between a point or points in the United States, and a point or points in Argentina, Brazil, Colombia, the Dominican Republic, Peru and Venezuela. Answers may be filed by September 30, 1981.

Phyllis T. Kaylor,
Secretary.

[FR Doc. 81-28215 Filed 9-30-81; 8:45 am]

BILLING CODE 6320-01-M

CIVIL RIGHTS COMMISSION

Maine Advisory Committee; Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Maine Advisory Committee to the Commission will convene at 7:00 p.m. and will end at 9:30 p.m., on October 29, 1981, at the Maine Teacher's Association, 35 Community Drive, Augusta ME 04330. The purpose of this meeting is to make long range plans; review the draft of the annual report on 1981; and review responses to both the spousal assualt report and forum, and to the bilingual education statement.

Persons desiring additional information or planning a presentation to the Committee, should contact the Acting Chairperson, Ms. Lois Reckitt, 38 Myrtle Ave., 90 SO. Portland, Maine 04106, 207/799-8744, or the New England Regional Office, 55 Summer Street, 8th Floor, Boston, MA 02110, 617/233-4671.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, DC, September 25, 1981.

John I. Binkley,
Advisory Committee Management Officer.

[FR Doc. 81-28474 Filed 9-30-81; 8:45 am]

BILLING CODE 6335-01-M

Maine Advisory Committee; Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the Commission on Civil Rights, that a meeting of the Maine Advisory Committee to the Commission will convene at 10:00 a.m. and will end at 12:00 noon, on October 17, 1981, at the Downtown Holiday Inn, 88 Spring Street, Portland Maine, 04111. The purpose of this meeting is to have a brief report and recommendations on the spousal assault statute issued by the Maine Advisory Committee. Justice system representatives and other guests will make statements and respond to the report in forum format.

Persons desiring additional information or planning a presentation to the Committee, should contact the Acting Chairperson, Ms. Lois Reckitt, 38 Myrtle Ave., 90 SO. Portland, Maine 04106, 207/799-8744, or the New England Regional Office, 55 Summer Street, 8th Floor, Boston, MA 02110, 617/223-4671.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., September 24, 1981.

John I. Binkley,
Advisory Committee Management Officer.

[FR Doc. 81-28475 Filed 9-30-81; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

Applications for Duty-Free Entry of Scientific Articles

The following are notices of the receipt of applications for duty-free entry of scientific articles pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651; 80 Stat. 897). Interested persons may present their views with respect to the question of whether an instrument or apparatus of equivalent scientific value for the purposes for which the article is intended to be used is being manufactured in the United States. Such comments must be filed in triplicate with the Director, Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230, on or before October 20, 1981.

Regulations (15 CFR 301.9) issued under the cited Act prescribe the requirements for comments.

A copy of each application is on file, and may be examined between 8:30 A.M. and 5:00 P.M., Monday through Friday, in Room 2119 of the Department of Commerce Building, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Docket No. 81-00349. Applicant: University of Florida, Chemical Engineering Department, 227 CHE, Gainesville, FL 32611. Article: Vibrating Densimeter, Model 03-D with

Accessories, Manufacturer: Sodev, Canada. Intended use of article: The article is intended to be used to measure the density of solutions being studied to validate theory. These include salt solutions, coal, oils, and mixtures of petrochemicals. The experiment will be conducted over the entire range of temperature for the apparatus and the composition range from pure solvents to saturation. The objective is to confirm theoretical concepts concerning behavior of the components in mixtures and provide guidelines for development of quantitative models to correlate and predict this behavior in chemcial processes such as separations and reactions. The article will only be used for educational purposes in the research courses for BSCHE, MS and Ph. D. chemical engineers. Application received by Commissioner of Customs: August 21, 1981.

Docket No. 81-00350. Applicant: Stanford University, 851 Welch Road, Palo Alto, CA 94304. Article: Excimer Laser, EMG 200 with Accessories. Manufacturer: Lambda-Physik GMBH and Co., West Germany. Intended use of article: The article is intended to be used to develop a coherent, tunable source of vacuum ultraviolet (VUV) photons. This tunable VUV laser source is needed to study the quantum states of molecular hydrogen process: H_2(HD) [$\gamma''=O$ $J''=O$]+H(D)→H_2(HD) [γ'' O, J''O]+H(D). The quantum states (vibrational and rotational populations) of the products will be probed via laser-induced fluorescence resulting from the absorption of VUV photons. Application received by Commissioner of Customs: August 21, 1981.

Docket No. 81-00351. Applicant: National Eye Institute, National Institutes of Health, 9000 Rockville Pike, Bethesda, MD 20205. Article: Electron Microscope, Model JEM 100CX with Accessories. Manufacturer: JEOL Ltd., Japan. Intended use of article: The article is intended to be used in high resolution biological studies of eye tissues of normal and pathological materials. In addition, freeze etch replicas of lens cells will be studied. These studies are essential for the elucidation of the pathogenesis of blinding diseases. Experiments to be conducted will include a study on the turn-over mechanism of the photoreceptor outer segment, a new theory in visual physiology. The fate of phagocytosed outer segment in the pigment epithelium (PE) will be studied in various conditions of the eye which are experimented by alteration of the environmental illumination, the circadian cycle, toxic agents, vitamin A and E situation, and immunoreactivity of the PE cell, etc. Application received by Commissioner of Customs: August 21, 1981.

Docket No. 81-00352. Applicant: Northwestern University, 633 Clark Street, Evanston, IL 60201. Article: Electron Microscope, Model JEM 100-CX with Accessories. Manufacturer: JEOL Ltd., Japan. Intended use of article: The article is intended to be used to study cells, tissues and macromolecular structures in a variety of biological systems. Actual experiments and materials will vary greatly, inasmuch as the faculty of three departments in the Section of Biological Sciences will be utilizing the article. The article will also be used for individual instruction in electron microscopy provided by the professional staff to graduate students and post doctoral fellows in the courses: Bio. Sci. C-65 Submicroscopic Cytology, Bio. Sc. D-65 Techniques in Submicroscopic Cytology, and Mater. Sc. C-65 Electron Microscopy. Application received by Commissioner of Customs: August 21, 1981.

Docket No. 81-00353. Applicant: Massachusetts Institute of Technology, 77 Massachusetts Avenue, Cambridge, MA 02139. Article: Electron Microscope, Model JEM 200-CX with Accessories. Manufacturer: JEOL Ltd., Japan. Intended use of article: The article is intended to be used for studies of steels, nonferrous metals, ceramics, polymers, combustion products, etc. Experiments will consist of examination of thin foils of materials for determination of one or more of: crystal structure, faults in crystal structure, presence of and size and distribution of precipitates, size and distribution of particles in finely divided specimens, structure of grain boundaries, etc. These investigations will be conducted to relate the microstructure with microscopic properties to: (i) verify theoretical models of the structure of materials, and (ii) to provide empirical data concerning the microstructure of materials of commercial or research importance. Application received by Commissioner of Customs: August 21, 1981.

Docket No. 81-00354. Applicant: University of Wisconsin, H4/540 Clinical Science Center, 600 Highland Avenue, Madison, WI 53792. Article: Prototype Spectrophotometric Instrument for Determining O_2 Dissociation. Manufacturer: Rheinisch-Westfalische Technische, West Germany. Intended use of article: The article is intended to be used for studies of whole blood, isolated red cells, hemoglobin and other oxygen binding pigments from man, vertebrates, and invertebrates. The phenomena to be studied will involve the position of the oxyhemoglobin dissociation curve under a variety of conditions. Application received by Commissioner of Customs: August 21, 1981.

Docket No. 81-00355. Applicant: Georgia Institute of Technology, Engineering Experiment Station, 225 North Avenue, N.W., Atlanta, Georgia 30332. Article: VKB2445T1 Extended Interaction Oscillator. Manufacturer: Varian/Canada Ltd., Canada. Intended use of article: The article is intended to be used for millimeter wave radar measurements in radar research. Application received by Commissioner of Customs: August 21, 1981.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Stanley P. Kramer,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 81-28481 Filed 9-30-81; 8:45 am]

BILLING CODE 3510-25-M

Applications for Duty-Free Entry of Scientific Articles

The following are notices of the receipt of applications for duty-free entry of scientific articles pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Public Law 89-651; 80 Stat. 897). Interested persons may present their views with respect to the question of whether an instrument or apparatus of equivalent scientific value for the purposes for which the article is intended to be used is being manufactured in the United States. Such comments must be filed in triplicate with the Director, Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230, on or before October 20, 1981.

Regulations (15 CFR 301.9) issued under the cited Act prescribe the requirements for comments.

A copy of each application is on file, and may be examined between 8:30 A.M. and 5:00 P.M., Monday through Friday, in Room 2119 of the Department of Commerce Building, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Docket No. 81-00356. Applicant: Northwestern University/Medical School, Department of Cell Biology and Anatomy, 303 East Chicago Avenue, Ward 7-315, Chicago, IL 60611. Article: Electron Microscope, Model JEM 100S with Accessories. Manufacturer: JEOL Ltd., Japan. Intended use of article: The article is intended to be used in studies

of the molecular architecture of tissues, cells and isolated molecules obtained as part of the experimental data derived from biomedical research projects. Experiments will revolve around determining ultrastructural alterations in cells during different physiological activities. The article will also be used in the training of Ph. D. candidates, postdoctorals, medical and dental students in cell biology and anatomy. Application received by Commissioner of Customs: August 21, 1981.

Docket No. 81-00357. Applicant: North Carolina State University, Raleigh, North Carolina 27650. Article: Electron Microscope, Model EM 400-T with Accessories. Manufacturer: Philips Electronic Instrument Inc., The Netherlands. Intended use of article: The article will be used in studies of the ultrastructure of various muscle cells in normal and mutant cells. Included will be:

(1) The structure of thick filaments from both vertebrate and invertebrate muscles will be examined with negative staining and high resolution shadowing techniques, and

(2) The structure of muscle cells in thin sections will be compared in normal and mutant muscles obtained from the invertebrate *C. elegans:* In addition the article will be used to train the faculty, staff, postdoctoral fellows, and graduate students in high resolution electron microscopy. Application received by Commissioner of Customs: August 21, 1981.

Docket No. 81-00358. Applicant: Brookhaven National Laboratory, Upton, New York 11973. Article: Ultra High Vacuum Sample Manipulator. Manufacturer: VG Scientific, United Kingdom. Intended use of article: The article will be used to manipulate samples of metal, semiconductor, organic, and nonorganic crystals; and evaporated metal films into the National Synchrotron light beam for measurement. Application received by Commissioner of Customs: August 21, 1981.

Docket No. 81-00359. Applicant: University of Kentucky, Biochemistry Department, University of Kentucky Medical Center, Lexington, KY 40536. Article: Nanosecond Fluorometer System 2000 with Accessories. Manufacturer: Photochemical Research Associates, Canada. Intended use of article: The article is intended to be used to examine solutions of fluorescent compounds, such as drug-DNA complexes; fluorescent nucleotides in mRNA, DNA, or proteins; DNA-binding proteins containing tryptophan or tyrosine; europium or terbium ions bound to nucleic acids; amino, sulfhydryl or sialic acid fluorescent labels for membrane proteins; and photexcited carbanions. The experiments will include fluorescence depolarization measurements of drug-DNA complexes and the resulting data analyzed according to the predicted non-exponental decay law for the emission anisotropy. Also the interactions of cap-binding protein with mRNA "cap" and of phage and bacterial proteins with nucleic acids will be studied by time-resolved fluorescence techniques and the physical states of fluorescent-labeled proteins in erythrocyte membranes will be investigated by nanosecond fluorometry. It is intended to elucidate photochemical and photophysical processes in chemical and biological systems, including DNA flexibility, protein-nucleic acid interactions, alterations of membrane proteins in disease, and excited-state reactivity. Application received by Commissioner of Customs: August 21, 1981.

Docket No. 81-00360. Applicant: Smithsonian Institution, U.S. National Museum of Natural History, Washington, D.C. 20560. Article: Scanning Electron Microscope, Mark IIA with Accessories. Manufacturer: Cambridge Instruments, Ltd., United Kingdom. Intended use of article: The article will be used to study specimens, such as, dolphin teeth, mineral and rock samples, pollens, pieces of coral reef, diatoms, small fish, and palaeopathological bone from archaeological sites. Such specimens may range from several centimeters to less than a micrometer and the details observed may be measured in millimeters or nanometers. The properties which will be investigated are the gross and microscopic morphological features of these specimens and the underlying microcrystalline structure and include the chemical compositions within the specimens. The investigations are intended to provide interpretations and analyses of materials from the natural world, including the flora and fauna, man and his artifacts, and the physical and chemical structure of the earth. The article will also be used to train pre- and post-doctoral fellows and a number of Research Associates in the techniques, methodologies and other scientific tools and procedures appropriate to their specific fields under the supervision of a member of the Museum's curatorial staff. Application received by Commissioner of Customs: August 21, 1981.

Docket No. 81-00361. Applicant: Harper-Grace Hospitals, Harper Division, 3990 John R. Street, Detroit, MI 48201. Article: Electron Microscope, Model EM-10CA with Accessories. Manufacturer: Carl Zeiss, West Germany. Intended use of article: The article will be used to study normal, benign, and malignant human material, obtained either as surgical or autopsy specimens. The article will also be used to teach diagnostic electron microscopy. Application received by Commissioner of Customs: August 21, 1981.

Docket No. 81-00362. Applicant: SRI International, Department of Chemical Kinetics, 333 Ravenswood Avenue, Menlo Park, CA 94025. Article: Excimer Laser System, Model EMG-101. Manufacturer: Lambda-Physik, West Germany. Intended use of article: The article will be used to study free radicals in heterogeneous chemical reactions using low pressure photolysis of radical precursors to develop an understanding of heterogeneous radical reactions that occur in polluted atmospheres. Application received by Commissioner of Customs: August 21, 1981.

Docket No. 81-00292. Applicant: Brookhaven National Laboratory, Upton, NY 11973. Article: Electron Spectrometer used in ADES 400 System. Manufacturer: V.G. Scientific Instruments, United Kingdom. Intended use of article: The article is intended to be used in studying photoelectron spectroscopy from solid metal surfaces to study their electronic structures. It will also be used to study various molecules either alone or on the surfaces. These studies yield information on how catalysis works, why corrosion occurs and in similar studies using exotic semiconductors, how these work. The studies, therefore, embrace this rather specialized but fundamentally important area of Physics and Chemistry. Application received by Commissioner of Customs: June 30, 1980.

Docket No. 81-00363. Applicant: University of Delaware, Evans Hall, Room 229, Newark, Delaware 19711. Article: STEM attachment for Model EM 400 Electron Microscope. Manufacturer: Philips Electronic Instruments, The Netherlands. Intended use of article: The article is an attachment which will be added to an existing EM 400 HTG electron microscope that will be used for both undergraduate and graduate teaching. The article will be used in studies of a wide variety of metals, semi-conductors, ceramics, polymers and marine organisms. All experiments to be conducted can be classified into one or more of the following types:

1. Production of images and analyses of the internal or surface defect

structure of metals, ceramics, and polymers.

(2) Normal and micro-electron diffraction analyses of the constituents of metallic alloys, ceramics and polymers.

(3) Examination and photographic recording of tissue sections from marine organisms, both normal and experimentally altered.

(4) Microanalysis of constituents of metallic alloys, ceramics, polymers, and shells from marine organisms.

The courses in which the article will be used are Metallurgy 302; Material Science for Engineers, Metallurgy 401; Structure of Materials and Metallurgy 801; and Diffraction of Radiation by Matter. Application received by Commissioner of Customs: September 2, 1981.

Docket No. 81-00364. Applicant: Harrington Cancer Center, 1500 Wallace Blvd., Amarillo, TX 79106. Article: Electron Microscope, H-600-2. Manufacturer: Hitachi Ltd., Japan. Intended use of article: The article is intended to be used for studies of observations on the effect of various drugs and other methods of treatment such as hyperthermia, immunotherapy and hormonal therapy on cancers in animal and man. The article will also be used for educational purposes in cancer surgical pathology and educational programs for students and residents. Application received by Commissioner of Customs: September 2, 1981.

Docket No. 81-00365. Applicant: Harvard University, Purchasing Department, 75 Mount Auburn Street, Cambridge, MA 02138. Article: Nuclear Magnetic Resonance Spectrometer, Model JNM/FX-270. Manufacturer: JEOL Ltd., Japan. Intended use of article: The article is intended to be used in research which covers a number of different areas each requiring the study and structural characterization of complex organic molecules by NMR spectroscopy mainly involving ^{1}H and ^{13}C measurements. Much of this research deals with the total synthesis of complex, biologically active organic molecules, such as (1) antitumor, antiviral and antibiotic agents, (2) regulators of mammalian cell function, (3) plant- and marine-derived natural products, (4) enzyme inhibitors and, (5) chemotatic agents: A substantial part of the research might best be characterized as the application of organic chemistry to important areas of biological science and experimental medicine. A number of bioorganic topics including biosynthetic pathways, mechanisms of action of certain enzymes, enzyme and receptor blockade, rational design of biological antagonists, and chemical mimics of enzymic processes will also be investigated. Application received by Commissioner of Customs: September 2, 1981.

Docket No. 81-00366. Applicant: St. Elizabeth's Hospital, 736 Cambridge Street, Boston, MA 02135. Article: Electron Microscope, Model JEM 100S with Sheet Film Camera. Manufacturer: JEOL Ltd., Japan. Intended use of article: The article will be used to examine biological specimens including blood cells, individual protein molecules of complexes thereof, as well as tissue biopsy samples. Gross morphology and ultrastructure or tissues samples and blood cells will be examined. Associations between contractile proteins from blood cells will also be explored. In general these studies share the common goal of investigating the ultrastructure of normal and abnormal blood cells and their constituent proteins. The clinical objectives will be to better characterize abnormal tissue samples from a variety of disease states by means of ultrastructural analysis. Application received by Commissioner of Customs: September 1, 1981

Docket No. 81-00367 Applicant: University of California, Berkeley, Department of Chemistry, 529 Latimer Hall, Berkeley, CA 94720. Article: Circular Dichroism Spectrophotometer, Model J-500-C. Manufacturer: Japan Spectroscopic Co., Ltd., Japan. Intended use of article: The article is intended to be used for investigation of intrinsic optical activity in the metal binding sites of proteins using techniques involving metal substitutions as spectroscopic probes and difference CD measurements and elucidation of binding site stereo-chemistry. In addition the article will be used in courses requiring the measurement of optical activity of inorganic coordination complexes. Application recieved by Commissioner of Customs: September 1, 1981.

Docket No. 81-00368 Applicant: Stanford University, Procurement Services, AEF 109, Palo Alto, CA 94304. Article: Angle-Resolved Electron Spectrometer System, ADES-400. Manufacturer: VC Scientific Instruments, United Kingdom. Intended use of article: The article is intended to be used to perform angle-resloved photoelectron spectroscopy studies on solids samples, using both conventional and synchrotron radiation excitation. The article will be of vital importance to the training of researchs in the field of surface science. Graduate students, as well as post-doctoral fellows, from electrical engineering, applied physics, and materials science will use it in the course of pursuing the goals of their respective research programs. Application recieved by Commissioner of Customs: September 1, 1981.

Docket No. 81-00369. Applicant: National Bureau of Standards, Washington, D.C. 20234. Article: Field Emission Ion Source System, Model DC10-100. Manufacturer: Dubilier Scientific Ltd., United Kingdom. Intended use of article: The article is intended to be used to produce a well defined beam of ions (spot size approx. 0.1mm) of 1 to 10 keV energy (gallium, argon, and neon ions) which will be focused onto a target. Ejection of atoms, ions, and electrons from the target will be investigated as well as changes in the surface of the target itself. Application recieved by Commissioner of Customs: September 1, 1981.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

Stanley P. Kramer,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 81-28482 Filed 9-30-81; 8:45 am]

BILLING CODE 3510-25-M

[A-583-080]

Carbon Steel Plate From Taiwan; Final Results of Administrative Review of Antidumping Finding

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of final results of administrative review of antidumping finding.

SUMMARY: On May 22, 1981, the Department of Commerce published the preliminary results of its administrative review of the antidumping finding on carbon steel plate from Taiwan. The review covered the only known exporter of the merchandise to the United States, China Steel Corporation, for two consecutive time periods from February 14, 1979 through May 31, 1980.

Interested parties were given an opportunity to submit written comments or request a hearing on these preliminary results. We received written comments from the exporter and a domestic interested party. After our analysis of the comments, the results of the preliminary review remain unchanged.

EFFECTIVE DATE: October 1, 1981.

FOR FURTHER INFORMATION CONTACT: Susan Crawford or John Kugelman, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230 (202-377-2209/5289).

SUPPLEMENTARY INFORMATION:

Background

On June 13, 1979, a dumping finding with respect to carbon steel plate from Taiwan was published in the Federal Register (44 FR 33877–8). On May 22, 1981, the Department of Commerce ("the Department") published in the Federal Register (46 FR 13532–3) the preliminary results of its administrative review of the finding. The Department has now completed its administrative review of that finding.

Scope of the Review

Imports covered by this review are shipments of hot-rolled cargbon steel plate, 0.1875 inch or more in thickness, over 8" in width, not in coils, not pickled, not coated or plated with metal, not clad, and not pressed or stamped to nonrectangular shape. Carbon steel plate is currently classifiable under item 607.6615 of the Tariff Schedules of the United States Annotated (TSUSA). China Steel Corporation ("CSC") is the only known exporter to the United States of Taiwanese carbon steel plate. This review covers two consecutive time periods from February 14, 1979, the date of suspension of liquidation, through May 31, 1980. For the period July 1, 1979 through May 31, 1980, there were no known shipments to the United States.

Analysis of Comments Received

Both CSC and an interested domestic party, Armco Inc., submitted comments. CSC claimed the Department should have calculated the margin based on the methodology presented in its response. CSC proposed that only one foreign market value, calculated by adding a weighted-average base price plus a weighted-average extra price, be used as the basis of comparison for all dimensions of plate sold in the United States. The Department calculated separate foreign market values for each dimension based on the weighted-averge base price plus the individual home market list price of the extras included in the sales to the U.S. We believe our approach provides a more equitable basis of comparison.

Armco disagreed with additions to purchase price for harbor dues not collected on imported merchandise used for producing export merchandise and for taxes on the product (sales, stamp, and education) rebated upon exportation. Armco claimed that CSC's response did not provide sufficient information to justify either adjustment and that the response identified the taxes as indirect taxes, while 353.10(d)(1)(iii) of the Commerce Regulations requires that such taxes be direct. The Department maintains that adequate data were furnished to allow both adjustments. Further, pursuant to 353.10(d)(1)(iii), an adjustment is permissible for the rebate of indirect taxes which were imposed directly on the merchandise, to the extent that such taxes were incurred on and were added to or included in the price of such or similar merchandise sold in the home market.

Armco commented that the Department should not allow a circumstance of sale adjustment to foreign market value for differences in credit. Armco claimed the respondent did not establish that the difference between U.S. and foreign market price is due in whole or in part to the differences in credit. The Department maintains that its allowance of differences in credit costs is in accordance with 353.15(d) of the Commerce Regulations, which states reasonable allowances will be made for the costs to the seller of any differences in circumstances of sale. This regulation in turn is consistent with section 773(a)(4) of the Tariff Act of 1930 ("the Tariff Act"), which states that an allowance will be made for any difference "wholly or partly" due to differences in circumstances of sale. We conclude that differences in cost constitute a reasonable indication of the differences in price.

Armco also argued that we overstated the adjustment for differences in credit by not taking into account the time lag for receipt of actual payment in CSC's export transactions. CSC furnished clarifying information, stating that there is no time lag in payment on sales to the U.S. The steel plates were loaded on the carrier as soon as they were brought to the dock, and CSC received payment on its sight draft letter of credit within one day of the loading date. Since the credit period ran from the date the merchandise arrived on the dock to the date of final payment, the delay in payment was no longer than 1 or 2 days. The Department reduced the home market price to account for the cost of credit on home market sales due to delayed payment.

Finally, Armco alleged that the Department should not have taken the weighted-average base price for both general use plate and shipbuilding plate as the base for determining foreign market value. Armco believes that the available evidence demonstrates that shipbuilding plate is not identical in physical characteristics, and therefore not such or similar, to general plate, within the meaning of section 771(16) of the Tariff Act. CSC provided satisfactory information that, while the general and shipbuilding plate may not be identical in physical characteristics, the difference in base price is not due to these physical characteristics. They stated that the price difference is that the general use market price is determined by a formula which relates the price to the duty-paid, landed cost of steel imported from Japan, and the price of shipbuilding plate relates to a duty-free, landed cost of steel from Japan. Under Taiwanese customs, imported plate used for exported products may enter Taiwan duty free. Therefore, our use of the weighted-average base price is appropriate

Final Results of the Review

As a result of our analysis of these comments, the final results of our review are the same as our preliminary results of review. We therefore determine that for the period February 14, 1979 through June 30, 1980, a weighted-average margin of 19.97% exists, and that there were no shipments for the period July 1, 1979 through June 30, 1980.

The Department shall determine, and the U.S. Customs Service shall assess, duties on all entries, where appropriate, during the first period. Individual differences between purchase price and foreign market value may vary from the percent stated above. The Department will issue appraisement instructions separately to the Customs Service.

Further, as required by section 353.48(b) of the Commerce Regulations, a cash deposit based on the margin calculated above shall be required on all shipments of carbon steel plate from Taiwan entered, or withdrawn from warehouse, for consumption on or after the date of publication of these results. This deposit requirement shall remain in effect until publication of the final results of the next administrative review. The Department intends to conduct the next administrative review by the end of June 1982.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 353.53 of the Commerce Regulations (19 CFR 353.53).

Gary N. Horlick,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 81-28480 Filed 9-30-81; 8:45 am]

BILLING CODE 3510-25-M

Lamb Meat From Australia; Termination of Countervailing Duty Determination

AGENCY: International Trade Administration, Commerce.

ACTION: Termination of Countervailing duty investigation.

SUMMARY: The petitioners have withdrawn their petition concerning lamb meat from Australia. Therefore, we are terminating our countervailing duty investigation.

EFFECTIVE DATE: October 1, 1981.

FOR FURTHER INFORMATION CONTACT: Miguel Pardo de Zela, Import Administration, U.S. Department of Commerce, Washington, D.C. 20230, telephone (202) 377-1279.

SUPPLEMENTARY INFORMATION:

Termination of Countervailing Duty Determination

On April 23, 1981, we received a petition from the National Wool Growers Association, Inc. (NWGA), alleging that lamb meat from Australia benefited from subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended. On May 12, 1981, the National Lamb Feeders Association (NLFA) joined in this petition. On the basis of information contained in the NWGA's petition, we announced our initiation of a countervailing duty investigation on May 18, 1981 (46 FR 27151). The result of the investigation was a preliminary determination (46 FR 38,561 (1981)) "based upon the best information available at the time of the determination." (Section 703(a) of the Act). After the preliminary determination we anticipated reviewing anew the findings contained in the preliminary determination.

During the investigation we presented questionnaires to the respondents. Subsequent to receiving their responses, we then conducted a verification of the information. Our verification included an on site examination of the Sydney and New York offices of the AMLC, the Export Insurance Finance Corporation, the office of an American shipping line in Australia, a public abattoir, the Government of Australia's Departments of Trade and Resources and Primary Industry, and its Taxation Office. In addition we interviewed recipients of EMDG grants and AMLC personnel. All of the respondents rendered a high level of cooperation. We analyzed the information obtained for possible subsidies. Before we reached any final conclusions, counsel for the NWGA and NLFA submitted a letter on September 14, 1981, withdrawing the petition and requesting that we terminate the case. This letter is reproduced as an appendix to this notice. Under section 734(a) of the Act, upon the withdrawal of the petition by the petitioner, the administering authority may terminate an investigation after giving notice to all parties to the investigation.

We have decided to terminate this case in the public interest (19 CFR 355.30) and have notified all parties to the investigation of the petitioner's withdrawal. We have instructed Customs officers to refund any estimated countervailing duties collected and release any special bonds posted with respect to lamb meat from Australia.

For the purposes of the preliminary determination, we had to draw conclusions from abbreviated information in a limited time period. The subsidy findings contained in the preliminary determination were based on assumptions made in the absence of clarifying information. By virtue of the withdrawal of the petition and termination of the investigation, the determination and all preliminary conclusions reached therein, as to whether the programs investigated do or do not constitute subsidies, are without legal force or effect. Accordingly, no reliance can be placed upon the preliminary determination and the *status quo ante* the filing of the petition is restored.

Dated: September 25, 1981.

Gary Horlick,

Deputy Assistant Secretary for Import Administration.

Appendix

September 14, 1981.

By Hand

Mr. Lawrence J. Brady,

Assistant Secretary for Import Administration, International Trade Administration, Room 3826, U.S. Department of Commerce, Washington, D.C. 20230

Re: Countervailing Duty Investigation of Lamb From Australia.

Dear Mr. Brady: In accordance with 19 U.S.C. Sec. 1671c(a), the National Wool Growers Association, Inc. and the National Lamb Feeders Association, who are the petitioners in the above-captioned investigation, hereby withdraw their petition and therefore, the U.S. Department of Commerce should terminate this investigation.

Sincerely,

William Silverman,

John C. Jost,

Counsel for the National Wool Growers Association, Inc. and the National Lamb Feeders Association.

[FR Doc. 81-28483 Filed 9-30-81; 8:45 am]

BILLING CODE 3510-25-M

Articles of Quota Cheese; Quarterly Determination and Listing of Foreign Government Subsidies

AGENCY: International Trade Administration, Commerce.

ACTION: Quarterly update of foreign government subsidies on articles of quota cheese.

SUMMARY: The Department of Commerce, in consultation with the Secretary of Agriculture, has determined that the amounts of the subsidies listed in the Department's July 1, 1981, quarterly update to our annual list of foreign government subsidies on articles of quota cheese have changed. Therefore, we are publishing the current rates of those subsidies that we have determined exist.

EFFECTIVE DATE: October 1, 1981.

FOR FURTHER INFORMATION CONTACT: Patricia W. Stroup, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230, (202) 377-3691.

SUPPLEMENTARY INFORMATION: Section 702(a) of the Trade Agreements Act of 1979 (19 U.S.C. 1202 note) ("the TAA") requires the Department of Commerce ("the Department") to determine, in consultation with the Secretary of Agriculture, whether any foreign government is providing a subsidy with respect to any article of quota cheese, as defined in section 701(c)(1) of the TAA, and to publish an annual list and quarterly updates of the type and amount of those subsidies.

The Department has developed, in consultation with the Department of Agriculture, information on subsidies (as defined in section 702(h)(2) of the TAA) being provided either directly or indirectly by foreign governments on articles of quota cheese.

In the current quarter the Department has determined that the subsidy amounts have changed for each of the countries for which programs were identified in July 1, 1981, quarterly update to our annual subsidy list. The appendix to this notice lists the country, the subsidy program or programs, and the gross and net amount of each subsidy on which information is currently available.

The Department will incorporate any additional programs which are found to constitute subsidies, and additional information on the subsidy programs listed, as the information is developed.

The Department encourages any peson having information on foreign government subsidy programs which benefit articles of quota cheese to

submit such information in writing to the Deputy Assistant Secretary for Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

This determination and notice are in accordance with section 702(a) of the TAA (19 U.S.C. 1202 note).

Gary Horlick,

Deputy Assistant Secretary for Import Administration.

September 28, 1981.

APPENDIX.—QUOTA CHEESE SUBSIDY PROGRAMS

[In cents per pound]

Country and program(s)	Gross [1] subsidy	Net [2] subsidy
Belgium: European Community (EC) restitution payments	6.4	6.4
Canada:		
Export assistance on certain types of cheese	16.9	16.9
Indirect (milk) subsidy	20.2	20.2
Total	37.1	37.1
Denmark: EC restitution payments	4.5	4.5
Finland:		
Export subsidy	99.1	99.1
Indirect subsidies	20.8	20.8
Total	119.9	119.9
France: EC restitution payments	3.4	3.4
Ireland: EC restitution payments	2.0	2.0
Italy: EC restitution payments	34.0	34.0
Luxembourg: EC restitution payments	6.4	6.4
Netherlands: EC restitution payments	0.7	0.7
Norway:		
Indirect (milk) subsidy	22.7	22.7
Consumer subsidy	50.3	50.3
Total	73.0	73.0
Portugal:		
Indirect (milk) subsidy	29.4	29.4
Direct subsidy on all sales of Gouda Cheese	20.8	20.8
Total	50.2	50.2
Switzerland: Deficiency payments	72.4	72.4
United Kingdom: EC restitution payments	2.4	2.4
West Germany: EC restitution payments	7.4	7.4

[1] Defined in 19 U.S.C. 1677(5).
[2] Defined in 19 U.S.C. 1677(6).

[FR Doc. 81-28547 Filed 9-30-81; 8:45 am]

BILLING CODE 3510-25-M

National Oceanic and Atmospheric Administration

New England Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA.

SUMMARY: The New England Fishery Management Council, established by section 302 of the Magnuson Fishery Conservation and Management Act (Pub. L. 94-265), will meet to discuss the interim Groundfish Fishery Management Plan (FMP); amendment #3 to the Squid, Mackerel and Butterfish FMP; the proposed National Standards Guidelines, as well as other business as necessary.

DATES: The public meetings will convene on Tuesday, October 20, 1981, at approximately 10 a.m., and will adjourn on Wednesday, October 21, 1981, at approximately 5 p.m. The meetings may be lengthened or shortened, or agenda items rearranged depending upon progress on the agenda.

ADDRESS: The meetings will take place at the King's Grant Inn, Route 128 at Trask Lane, Danvers, Massachusetts.

FOR FURTHER INFORMATION CONTACT: New England Fishery Management Council, Suntaug Office Park, Five Broadway-Route One, Saugus, Massachusetts 01906.

Dated: September 28, 1981.

Jack L. Falls,

Chief, Administrative Support Staff, National Marine Fisheries Service.

[FR Doc. 81-28601 Filed 9-30-81; 8:45 am]

BILLING CODE 3510-22-M

South Atlantic Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA.

SUMMARY: The South Atlantic Fishery Management Council, established by section 302 of the Magnuson Fishery Conservation and Management Act (Pub. L. 94-265), will meet to discuss the application of enforcement costs by the U.S. Coast Guard for Fishery Management Plans (FMP's); decision on portions of the Snapper-Grouper, Mackerel, Coral and Billfish FMP's, as well as update on other FMP activity; presentation on Gray's Reef and Looe Key Marine Sanctuary by Coastal Zone; personnel performance review, as well as other management and administrative matters.

DATES: The public meetings will convene on Tuesday, October 27, 1981, at approximately 1:30 p.m., and will adjourn on Thursday, October 29, 1981, at approximately noon.

ADDRESS: The meetings will take place at the Indies Resort and Marina, Duck Key, Florida.

FOR FURTHER INFORMATION CONTACT: South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, South Carolina 29407, Telephone: (803) 571-4366.

Dated: September 28, 1981.

Jack L. Falls,

Chief, Administrative Support Staff, National Marine Fisheries Service.

[FR Doc. 81-28600 Filed 9-30-81; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjusting the Import Level for Certain Cotton Textile Products From Malaysia

September 28, 1981.

AGENCY: Committee for the Implementation of Textile Agreements.

ACTION: Reducing from 388,281 to 369,433 dozen the level of restraint established for cotton knit shirts and blouses in Category 338/339, produced or manufactured in Malaysia and exported during the agreement year that began on January 1, 1981, to account for 1980 exports of these products which exceeded the 1980 limit by 18,848 dozen.

(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), August 12, 1980 (45 FR 53506), December 24, 1980 (45 FR 85142) and May 5, 1981 (46 FR 25121).)

SUMMARY: Pursuant to the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of May 17 and June 18, 1978, as amended, between the Governments of the United States and Malaysia, the United States Government has advised the Government of Malaysia that 1980 exports of cotton textile products in Category 338/339 exceeded the level established for them during the agreement year which began on January 1, 1980 by 18,848 dozen and that amount is being charged to the 1981 level, reducing it to 369,433 dozen.

EFFECTIVE DATE: October 1, 1981.

FOR FURTHER INFORMATION CONTACT: Gordana Slijepcevic, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, Washington, D.C. 20230 (202/377-5423).

SUPPLEMENTARY INFORMATION: On May 5, 1981, there was published in the Federal Register (46 FR 25120) a letter dated April 23, 1981 from the Chairman of the Committee for the Implementation of Textile Agreements to the Commissioner of Customs, which established levels of restraint for certain specified categories of cotton, wool and man-made fiber textile products, including Category 338/339, produced or manufactured in Malaysia and exported to the United States during the twelve-month period which began on January 1, 1981 and extends through December 31, 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 terms of the

bilateral agreement to reduce the level of restraint established for Category 338/339 to 369,433 dozen.

Arthur Garel,

Acting Chairman, Committee for the Implementation of Textile Agreements.

September 28, 1981.

Commissioner of Customs,

Department of the Treasury, Washington, D.C.

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directive issued to you on April 23, 1981 by the Chairman, Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain cotton, wool and man-made fiber textile products, produced or manufactured in Malaysia.

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 May 17 and June 18, 1978, as amended, between the Governments of the United States and Malaysia; 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 October 1981, and for the twelve-month period beginning on January 1, 1981 and extending through December 31, 1981, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textile products in Category 338/339, produced or manufactured in Malaysia, in excess of 369,433 dozen.[1]

The action taken with respect to the Government of Malaysia and with respect to imports of cotton textile products from Malaysia has been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, the 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,

Arthur Garel,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 81-28538 Filed 9-30-81; 8:45 am]

BILLING CODE 3510-25-M

[1] The level of restraint has not been adjusted for any imports after December 31, 1980.

COMMODITY FUTURES TRADING COMMISSION

Chicago Board of Trade's Proposed Gasoline Futures Contracts

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions of proposed commodity futures contracts.

SUMMARY: The Chicago Board of Trade ("CBT") has applied for designation as a contract market in both leaded regular gasoline and unleaded regular gasoline. The Commodity Futures Trading Commission ("Commission") has determined that the terms and conditions of the proposed futures contracts are of major economic significance and that, accordingly, announcing the availability of these proposed contracts for public inspection and comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATE: Comments must be received on or before November 2, 1981.

ADDRESS: Interested persons should submit their views and comments to Jane K. Stuckey, Secretary, Commodity Futures Trading Commission, 2033 K Street, N.W., Washington, D.C. 20581. Reference should be made to the CBT Gasoline Futures Contracts.

FOR FURTHER INFORMATION CONTACT: Richard Shilts, Division of Economics and Education, Commodity Futures Trading Commission, 2033 K Street, N.W., Washington, D.C., (202) 254-7303; or George L. Garrow, Jr., Esq., Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street, N.W., Washington, D.C. 20581, (202) 254-8955.

SUPPLEMENTARY INFORMATION: A copy of the terms and conditions of CBT's proposed gasoline futures contracts will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, N.W., Washington, D.C. 20581. Copies can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254-6314.

Other materials submitted by CBT in support of its application for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1981)). Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Acts Compliance staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or arguments on the terms and conditions of the proposed futures contracts, or with respect to other materials submitted by CBT in support of its application, should send such comments to Jane K. Stuckey, Secretary, Commodity Futures Trading Commission, 2033 K Street, N.W., Washington, D.C. 20581, by November 2, 1981. Such comment letters will be publicly available except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9.

Issued in Washington, D.C., on September 28, 1981.

Jane K. Stuckey,

Secretary of the Commission.

[FR Doc. 81-28658 Filed 9-30-81; 8:45 am]

BILLING CODE 6351-01-M

Chicago Board of Trade's Proposed Gold Coins Futures Contract

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of proposed commodity futures contract.

SUMMARY: The Chicago Board of Trade ("CBT") has applied for designation as a contract market in gold coins. The Commodity Futures Trading Commission ("Commission") has determined that the terms and conditions of the proposed futures contract are of major economic significance and that, accordingly, announcing the availability of this proposed contract for public inspection and comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATE: Comments must be received on or before November 2, 1981.

ADDRESS: Interested persons should submit their views and comments to Jane K. Stuckey, Secretary, Commodity Futures Trading Commission, 2033 K Street, N.W., Washington, D.C. 20581. Reference should be made to the CBT Gold Coins Futures Contract.

FOR FURTHER INFORMATION CONTACT: Richard Shilts, Division of Economics and Education, Commodity Futures Trading Commission, 2033 K Street, N.W., Washington, D.C. (202) 254-7303; or George L. Garrow, Jr., Esq., Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street, N.W., Washington, D.C. 20581, (202) 254-8955.

SUPPLEMENTARY INFORMATION: A copy of the terms and conditions of CBT's proposed gold coins contract will be available for inspection at the Office of

the Secretariat, Commodity Futures Trading Commission, 2033 K Street; N.W., Washington, D.C. 20581.Copies can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254–6314.

Other materials submitted by CBT in support of its application for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1981)). Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Acts Compliance staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or arguments on the terms and conditions of the proposed futures contract, or with respect to other materials submitted by CBT in support of its application, should send such comments to Jane K. Stuckey, Secretary, Commodity Futures Trading Commission, 2033 K Street, N.W., Washington D.C. 20581, by November 2, 1981. Such comment letters will be publicly available except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9.

Issued in Washington, D.C., on September 28, 1981.

Jane K. Stuckey,

Secretary of the Commission.

[FR Doc. 28657 Filed 9-30-81; 8:45 am]

BILLING CODE 6351-01-M

Chicago Board of Trade's Proposed Intermediate-Term U.S. Treasury Notes-CDR Futures Contract

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions of proposed commodity futures contract.

SUMMARY: The Chicago Board of Trade ("CBT") has applied for designation as a contract market in intermediate-term U.S. Treasury notes-CDR. The Commodity Futures Trading Commission ("Commission") has determined that the terms and conditions of the proposed futures contract are of major economic significance and that, accordingly, announcing the availability of this proposed contract for public inspection and comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATE: Comments must be received on or before November 2, 1981.

ADDRESS: Interested persons should submit their views and comments to Jane K. Stuckey, Secretary, Commodity Futures Trading Commission, 2033 K Street, N.W., Washington, D.C. 20581. Reference should be made to the CBT Treasury Notes-CDR Futures Contract.

FOR FURTHER INFORMATION CONTACT: Ronald Hobson, Division of Economics and Education, Commodity Futures Trading Commission, 2033 K Street, N.W., Washington, D.C., (202) 254–7303; or George L. Garrow, Jr., Esq., Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street, N.W., Washington, D.C. 20581, (202) 254–8955.

SUPPLEMENTARY INFORMATION: A copy of the terms and conditions of CBT's proposed Treasury notes-CDR futures contract will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, N.W., Washington, D.C. 20581. Copies can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254–6314.

Other materials submitted by CBT in support of its application for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1981)). Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Acts Compliance staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or arguments on the terms and conditions of the proposed futures contract, or with respect to other materials submitted by CBT in support of its application, should send such comments to Jane K. Stuckey, Secretary, Commodity Futures Trading Commission, 2033 K Street, N.W., Washington, D.C. 20581, by November 2, 1981. Such comment letters will be publicly available except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9.

Issued in Washington, D.C., on September 28, 1981.

Jane K. Stuckey,

Secretary of the Commission.

[FR Doc. 81-28659 Filed 9-30-81; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Intelligence Agency Advisory Committee; Closed Meeting

Pursuant to the provisions of Subsection (d) of Section 10 of Pub. L. 92–463, as amended by Section 5 of Pub. L. 94–409, notice is hereby given that a closed meeting of a Panel of the DIA Advisory Committee will be held as follows:

Wednesday & Thursday, November 18–19, 1981, Pomponio Plaza, Rosslyn, Virginia. The entire meeting, commencing at 0900 hours each day is devoted to the discussion of classified information as defined in Section 552b(c)(1), Title 5 of the U.S. Code and therefore will be closed to the public. Subject matter will be used in a study on Soviet naval trends.

M. S. Healy,

OSD Federal Register Liaison Officer, Washington Headquarters Services, Department of Defense.

September 25, 1981.

[FR Doc. 81-23426 Filed 9-30-81; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF EDUCATION

National Advisory Council on Women's Educational Programs; Meetings

AGENCY: National Advisory Council on Women's Educational Programs.

ACTION: Notice of Meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Advisory Council on Women's Educational Programs and its Executive, Federal Policies, Practices, and Programs, and WEEA Program Committees. This notice also describes the functions of the Council. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATE: October 15, 1981, 8:30 a.m. to 5:00 p.m. and October 16, 1981, 9:00 a.m. to 5:00 p.m.

ADDRESS: Meetings will be held in the Council offices at 1832 M Street, N.W., Suite 821, Washington, D.C. 20036.

FOR FURTHER INFORMATION CONTACT: Kathleen Dauito, Administrative Officer, National Advisory Council on Women's Educational Programs, 1832 M Street, N.W., Suite 821, Washington, D.C., 20036, (202) 653–5846.

SUPPLEMENTARY INFORMATION: The National Advisory Council on Women's Educational Programs is established pursuant to Pub. L. 95-561. The Council is mandated to (a) advise the Secretary on matters relating to equal education opportunities for women and policy matters relating to the administration of the Women's Educational Equality Act of 1978; (b) make recommendations to the Secretary with respect to the allocation of any funds pursuant to the Act, including criteria developed to insure an appropriate geographical distribution of approved programs and projects throughout the Nation; (c) recommend criteria for the establishment of program priorities; (d) make such reports as the Council determines appropriate to the President and Congress on the activities of the Council; and (e) disseminate information concerning the activities of the Council.

The meeting of the Executive Committee will take place on October 15, 1981 from 8:30 a.m. to 9:30 a.m. The agenda will include plans for the Council meeting as well as a discussion of current and future activities.

The meetings of the Federal Policies, Practices, and Programs Committee and the WEEA Program Committee will take place on October 15, 1981 from 3:00 p.m. to 5:00 p.m. and October 16, 1981 from 9:00 a.m. to 11:30 a.m.

The agenda for the Federal Policies, Practices, and Programs Committee will include the election of Committee Chair and Vice-Chair, discussion of proposals for reauthorization of the Vocational Education Act, status report on pending Committee activities, and future Committee plans.

The agenda for the Program Committee will include the election of Committee Chair and Vice-Chair, a discussion and review of the draft Evaluation Report of the Women's Educational Equity Act Program for Fiscal Year 1980, a status report from the WEEAP Director, and future Committee plans.

The meeting of the National Advisory Council on Women's Educational Programs will take place from 9:30 a.m. to 3:00 p.m. on October 15, 1981 and from 11:30 a.m. to 5:00 p.m. on October 16, 1981. The agenda will include the election of Council Chair and Vice-Chair, restructuring of the Council's committees, a review of the status of legislation and programs related to educational equity, a panel discussion on Title IV, consideration of the Council's future roles and activities, reports of the Executive Director and the Council's standing committees, action on any recommendations presented by the Committees, and plans for future Council meetings.

The meeting of the Council will be open to the public. Records will be kept of the proceedings and will be available for public inspection at the office of the National Advisory Council on Women's Educational Programs, 1832 M Street, N.W., Suite 821, Washington, D.C., 20036.

Signed at Washington, D.C. on September 24, 1981.

Joy R. Simonson,

Executive Director.

[FR Doc. 81-28531 Filed 9-30-81; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[OFC Case No. 55368-3194-01-12; Docket No. ERA-FC-81-018]

Availability of Tentative Staff Analysis

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of Availability of Tentative Staff Analysis.

SUMMARY: On July 14, 1981, Jones & Laughlin Steel Corporation (J&L) filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) seeking a permanent exemption for a major fuel burning installation (MFBI) from the statutory provisions of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. 8301 *et seq.*) (FUA or the Act), which prohibit the use of petroleum and natural gas as a primary energy source in certain new MFBI's. The procedure for petitioning and criteria for an exemption from the prohibitions of FUA are contained in 10 CFR Parts 500, 501 and 503.

The MFBI for which the petition is filed is a field-erected boiler (designated as #61 Bolier by J&L) at J&L's Aliquippa Works, located in Aliquippa, Pennsylvania. The MFBI has a design heat input rate of 732 million Btu's per hour and is designed to burn petroleum and natural gas in a mixture with industrial and commercial waste oils including spent lubricants, crankcase sludge from gasoline service stations and blast furnace gas.

ERA accepted the petition on August 23, 1981, and published notice of its acceptance, together with a statement of the reasons set forth in the petition for requesting the exemption, in the Federal Register on September 1, 1981, (46 FR 43870). Publication of the notice of acceptance commenced a 45-day public comment period pursuant to section 701 of FUA. During this period, interested persons are afforded an opportunity to request a public hearing. The period will expire October 16, 1981.

Based upon the ERA staff's review and analysis of the information presently contained in the record on this proceeding, a Tentative Staff Analysis has been prepared recommending that ERA issue an order which would grant J&L the requested exemption. A summary of the Tentative Staff Analysis is provided in the Supplementary Information section below.

As provided in 10 CFR 501.64, interested persons may submit written comments or request a public hearing on the Tentative Staff Analysis. Any hearing requested must include a description of the interest in the issue or issues involved and an outline of the anticipated content of the presentations.

DATE: The 14-day period to submit written comments or request a public hearing on the Tentative Staff Analysis, as prescribed in 10 CFR 501.64, will run concurrently with the current 45-day comment period on the Notice of Acceptance of J&L's petition. Accordingly, any written comments or requests for public hearing on the Tentative Staff Analysis must also be filed with ERA on or before October 16, 1981, the expiration of the 45-day period provided for Acceptance of J&L's petition.

ADDRESSES: Fifteen copies of written comments or a request for a public hearing should be submitted to: Economic Regulatory Administration, Case Control Unit (Fuel Use Act) Box 4629, Room 3214, 2000 M Street, NW, Washington, D.C. 20461.

Docket Number ERA-FC-81-018 should be printed on the outside of the envelope and on the document contained therein.

FOR FURTHER INFORMATION CONTACT:

Constance L. Buckley, Chief, New MFBI Branch, Office of Fuels Conversion, Economic Regulatory Administration, 2000 M. Street, NW, Room 3128, Washington, D.C. 20461. Phone (202) 653-4226.

Robert J. Goodie, Case Manager, Office of Fuels Conversion, Economic Regulatory Administration, 2000 M. Street, NW, Room 3128-L, Washington, D.C. 20461. Phone (202) 653-4257.

Douglas F. Mitchell, Office of the General Counsel, Department of Energy, Forrestal Building, Room 6B-178, 1000 Independence Avenue, SW, Washington, D.C. 20585. Phone (202) 252-2967

SUPPLEMENTARY INFORMATION: The MFBI for which the petition for exemption has been filed is a field-erected boiler at J&L's Aliquippa Works in Alliquippa, Pennsylvania. The new MFBI, designated as #61 Boiler by J&L, has a design heat input rate of approximately 732 million Btu's per hour and is designed to burn non-refinery waste oil and blast furnace gas in a mixture with petroleum and natural gas. J&L has utilized the certification alternative for the permanent fuels mixture exemption provided for in 10 CFR 503.38(d) and has included in its petition a description of the fuel mixture, component elements, and percentage and quantity of each component to be utilized; and the following duly executed certifications providing:

(1) That the amount of petroleum and natural gas to be used in the fuels mixture in the #61 Boiler will not exceed 25 percent of the total annual Btu heat input of the primary energy sources used in the installation;

(2) That, pursuant to 10 CFR 503.15(b), J&L will, prior to operating the #61 Boiler under the exemption, secure all applicable environmental permits and approvals pursuant to but not limited to, the following: Clean Air Act, Clean Water Act, Rivers and Harbors Act, Coastal Zone Management Act, Safe Drinking Water Act and the Resource Conservation and Recovery Act;

(3) The information required by the Environmental Checklist pursuant to 10 CFR 503.15(b); and

(4) That it will, upon grant of the requested exemption, agree to the terms and conditions specified in 10 CFR 503.38(e). The ERA staff has examined the aforementioned certifications made by J&L in its petition, and other information contained therein, and has determined that the petition fulfills the requirements of 10 CFR 503.38(d). Accordingly, the ERA staff recommends that an order be issued, subject to the terms and conditions specified below, which would grant J&L the requested permanent fuels mixture exemption for its #61 Boiler. This tentative recommendation also takes into account the purposes for which the minimum percentage of petroleum or natural gas provided by a fuels mixture exemption are to be used, i.e., to maintain reliability of operation, consistent with maintaining a reasonable level of fuel efficiency. Therefore, should this exemption be granted, ERA will not exclude from the definition of primary energy source any fuel used for the purposes of unit ignition, startup, testing, flame stabilization and control for the #61 Boiler.

Terms and Conditions: Section 214(a) of FUA gives ERA the authorization to attach appropriate terms and conditions to any order granting an exemption. By petitioning for an exempiton under the provisions of 10 CFR 503.38(d), J&L, in accordance with 10 CFR 503.38(e) agreed, upon grant of the exemption, to the standard terms and conditions specified in that subsection. Accordingly, should an order be issued in this case, it will be subject to the following terms and conditions:

(1) The amount of petroleum and/or natural gas to be used in a mixture with an alternate fuel in the #61 Boiler will not exceed 25 percent of the total annual Btu heat input of the primary energy sources of that unit.

(2) The quality of any petroleum to be burned in the #61 Boiler will be the lowest grade available, which is technically feasible, and capable of being burned consistent with applicable environmental requirements.

(3) Prior to operating No. 61 Boiler under this exemption, J&L will secure applicable environmental permits and approvals pursuant to, but not limited to, the following: Clean Air Act, Clean Water Act, Rivers and Harbors Act, Coastal Zone Management Act and the Resource Conservation and Recovery Act.

Reporting Requirements: In addition to the above standard terms and conditions, J&L will, pursuant to 10 CFR 503.38(g), submit to ERA the following: (a) A certified statement indicating the date No. 61 Boiler is first operated under the provisions of the order, and (b) within 30 days of each anniversary date of commencement of operation of the No. 61 Boiler, a certified statement of the percentage of petroleum and natural gas used in the No. 61 Boiler during the preceding year. Such certifications shall be executed by a duly authorized representative of J&L. Cite OFC Case Number 55368-3194-01-12 on each certification and send to: Economic Regulatory Administration, Case Control Unit (Fuel Use Act), Attn: OFC Case No. 55368-3194-01-12, Box 4629, Room 3214, 2000 M Street, NW, Washington, D.C. 20461.

NEPA Categorical Exclusion Guidelines: On August 11, 1980, DOE published in the Federal Register (45 FR 53199) a notice of proposed amendments to guidelines for compliance with the National Environmental Policy Act of 1969 (NEPA). Pursuant to the guidelines, the grant or denial of certain FUA permanent exemptions, including the permanent fuels mixture exemption by certification, was identified as an action which normally would not require the preparation of an Environmental Impact Statement or an Environmental Assessment pursuant to NEPA (categorical exclusion). This classification raises a rebuttable presumption that the grant or denial of the exemption will not significantly affect the quality of the human environment. J&L has certified that it will secure all applicable permits and approvals prior to commencement of operation of the new MFBI under exemption. The Environmental Checklist completed and certified to by J&L pursuant to 10 CFR 503.15(b) has been reviewed by DOE's Office of Environment, in consultation with the Office of the General Counsel. J&L's responses to the questions contained therein indicate that the operation of the new No. 61 Boiler will have no significant impact on those areas regulated by specified laws that impose consultation requirements on DOE, and otherwise affirm the applicability of the categorical exclusion to this FUA action. No contrary information has come to the attention of ERA. Therefore, unless substantial questions regarding the application of the categorical exclusion in this instance are raised during the remaining proceeding on J&L's petition which indicate otherwise, no additional environmental review is deemed to be required.

The Tentative Staff Analysis does not constitute a decision by ERA to grant the requested exemption. Such a decision will be made, in accordance with 10 CFR 501.68, on the basis of the entire record of this proceeding, including any comments received on the Tentative Staff Analysis.

The public file containing documents on this proceeding and supporting materials is available for inspection upon request at ERA, Room B-110, 2000 M Street, NW, Washington, D.C., Monday-Friday, 8:00 a.m.-4:30 p.m.

Issued in Washington, D.C., on September 24, 1981.

Robert L. Davies,

Director, Office of Fuels Conversion, Economic Regulatory Administration.

[FR Doc. 81-22360 Filed 9-30-81; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. CP79-416-002]

ANR Storage Co., Petition To Amend

September 24, 1981.

Take notice that on September 16, 1981,[1] ANR Storage Company (Petitioner), One Woodward Avenue, Detroit, Michigan 48226, filed in Docket No. CP79-416-002 a petition to amend the order issued January 2, 1981, in Docket No. CP79-416-001 pursuant to Section 7(c) of the Natural Gas Act so as to authorize the use of the facility well approved therein for injection and to incorporate the East Kalkaska 1 reservior with the Excelsior 6 and Cold Springs 31 reservoirs to form a single storage project, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Petitioner states that by order issued January 2, 1981, it was authorized to expand the boundary of its Excelsior 6 Storage Field to include the East Kalkaska 1 Reservoir, to recondition an existing well in the East Klakaska reservoir area for use as an observation well, and to drill and operate one additional well from the Excelsior 6 drilling pad to the East Kalkaska 1 reservoir for observation and possible injection/withdrawal. It is asserted that in the order of January 2, 1981, the Commission stated that if reservoir communication exists Petitioner should file to incorporate the East Kalkaska 1 reservoir with the Excelsior 6 and the Cold Springs 31 reservoirs to form a single storage project.

Petitioner states that tests taken on the wells in question have clearly demonstrated that there is communication between Excelsior 6 and East Klakaska 1; hence, Petitioner proposes to incorporate the East Klakaska 1 Reservoir with the Excelsior 6 and Cold Springs 31 Reservoir to form a single storage project. Petitioner further requests that the one facility well be changed from observation and withdrawal to injection/withdrawal.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before October 5, 1981, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-28569 Filed 9-30-81; 8:45 am]

BILLING CODE 6450-85-M

[1] The application was initially tendered for filing on September 16, 1981, however; the fee required by § 159.1 of the Regulations under the Natural Gas Act (18 CFR 159.1) was not paid until September 17, 1981; thus filing was not completed until the latter date.

[Docket Nos. G-3894-007, et al.]

Arco Oil and Gas Co., Division of Atlantic Richfield Co., et al.; Applications for Certificates, Abandonment of Service and Petitions To Amend Certificates[2]

September 24, 1981.

Take notice that each of the Applicants listed herein has filed an application or petition pursuant to Section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce or to abandon service as described herein, all as more fully described in the respective applications and amendments which are on file with the Commission and open to public inspection.

It appears reasonable and consistent with the public interest in this case to prescribe a period shorter than 10 days for the filing of protests and petitions to intervene. Therefore, any person desiring to be heard or to make any protest with reference to said application should on or before October 2, 1981 file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure a hearing will be held without further notice before the Commission on all applications in which no petition to intervene is filed within the time required herein if the Commission on its own review of the matter believes that a grant of the certificates or the authorization for the proposed abandonment is required by the public convenience and necessity. Where a petition for leave to intervene is timely filed, or where the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise, advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Kenneth F Plumb,

Secretary.

[2] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No. and date filed	Applicant	Purchaser and location	Price per Mcf	Pressure base
G-3894-007, Sept. 14, 1981[1]	ARCO Oil and Gas Company, Division of Atlantic Richfield Company, P.O. Box 2819, Dallas, Texas 75221.	Texas Eastern Transmission Corporation, T. J. Lyne #14 Well, Live Oak County, Texas.	(3)	14.65
CI78-259 (CI62-1077), B, Dec. 5, 1977	Cities Service Company, P.O. Box 300, Tulsa, Oklahoma 74102.	Colorado Interstate Gas Company, Boehm Field, Morton County, Kansas.	(3)	

[1] Applicant is filing to add a new delivery point on Texas Eastern's 8" lateral for gas from the T. J. Lyne #14 Well.
[2] Applicant is filing under Gas Purchase Contract dated March 25, 1952 as amended, and amended by Amendment dated August 15, 1981.
[3] Applicant was authorized by order issued February 20, 1974, to assign the productive acreage dedicated to this sale to the purchaser for development of a natural gas storage field. All the remaining acreage is non-productive. The last production was in 1973. The leases are held by production at other depths.

Filing Code: A—Initial service. B—Abandonment. C—Amendment to add acreage. D—Amendment to delete acreage. E—Total Succession. F—Partial Succession

[FR Doc. 81-28570 Filed 9-30-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket Nos. TC81-57-000, TC81-58-000, etc.]

Arkansas Louisiana Gas Co., et al.; Tariff Sheet Filings

September 25, 1981.

In the matter of Arkansas Louisiana Gas Co., Docket No. TC81-57-000; Tennessee Natural Gas Lines, Inc., Docket No. TC81-58-000; Tennessee Gas Pipeline Co., a Division of Tenneco Inc., Docket No. TC81-59-000; Panhandle Eastern Pipe Line Co., Docket No. TC81-60-000; Florida Gas Transmission Co., Docket No. TC81-61-000; Trunkline Gas Co., Docket No. TC81-62-000; South Georgia Natural Gas Co., Docket No. TC81-63-000; Southern Natural Gas Co., Docket No. TC81-64-000; East Tennessee Natural Gas Co., Docket No. TC81-65-000; National Fuel Gas Supply Corp., Docket No. TC81-66-000; Mississippi River Transmission Corp., Docket No. TC81-67-000; Midwestern Gas Transmission Co., Docket No. TC81-68-000; Eastern Shore Natural Gas Co., Docket No. TC81-69-000; Alabama-Tennessee Natural Gas Co., Docket No. TC81-70-000; El Paso Natural Gas Co., Docket No. TC81-71-000; Colorado Interstate Gas Co., Docket No. TC81-72-000; Kansas-Nebraska Natural Gas Co., Inc., Docket No. TC81-73-000.

Take notice that the following pipelines [1] have filed revised tariff sheets to become effective November 1, 1981, pursuant to § 281.204(b)(2) of the Commission's Regulations which section requires interstate pipelines to update their respective index of entitlements annually to reflect changes in priority 2 entitlements:

Pipeline and Tariff Sheet(s)

Arkansas Louisiana Gas Company:
- Third Revised Sheet No. 3E
- Third Revised Sheet No. 3F
- Third Revised Sheet No. 3G
- Third Revised Sheet No. 3H
- Third Revised Sheet No. 3I
- Third Revised Sheet No. 3J, FERC Gas Tariff, first Revised Volume No. 1

Tennessee Natural Gas Lines, Inc.:
- Third Revised Sheet No. 32
- Third Revised Sheet No. 33
- Third Revised Sheet No. 34, FERC Gas Tariff, First Revised Volume No. 1

Tennessee Gas Pipeline Company, a Division of Tenneco Inc.:
- Fourth Revised Sheet Nos. 2 and 96
- Third Revised Sheet Nos. 4, 9, 10, 16, 22, 23, 24, 34, 43, 87, 92, 93, 111, 118, 121, and 122
- Second Revised Sheet Nos. 5, 28, 29, 30, 91, 102, 104, 105, and 126

[1] Addresses of the pipelines are listed in the appendix hereto.

- First Revised Sheet Nos. 12, 19, 131, 134, and 135 FERC Gas Tariff, Original Volume No. 1A

Panhandle Eastern Pipe Line Company:
- Third Revised Sheet Nos. 2 Through 38, FERC Gas Tariff, Original Volume No. 1-A

Florida Gas Transmission Company:
- Fifth Revised Sheet No. 20-D
- Original Tariff Sheet Nos. 20-D.1 through 20-K.1, FERC Gas Tariff, Original Volume No. 1

Trunkline Gas Company:
- Fourth Revised Sheet Nos. 21-C.3 through 21-C.7
- Third Revised Sheet No. 21-C.8, FERC Gas Tariff, Original Volume No. 1

South Georgia Natural Gas Company:
- Fifth Revised Sheet No. 44
- Sixth Revised Sheet No. 45
- Third Revised Sheet No. 46
- Fourth Revised Sheet No. 47, FERC Gas Tariff, First Revised Volume No. 1

Southern Natural Gas Company:
- Ninth Revised Sheet No. 62
- Second Revised Sheet No. 62A
- Eleventh Revised Sheet No. 63
- Third Revised Sheet No. 63A
- Eleventh Revised Sheet No. 64
- Third Revised Sheet No. 64A
- Ninth Revised Sheet No. 65
- Fourth Revised Sheet No. 65A
- Tenth Revised Sheet No. 66
- Fourth Revised Sheet No. 66A
- Twelfth Revised Sheet No. 67
- Fourth Revised Sheet No. 67A
- Fourth Revised Sheet No. 68
- Second Revised Sheet No. 68A
- Sixth Revised Sheet No. 69
- First Revised Sheet No. 69A
- Sixth Revised Sheet No. 70
- First Revised Sheet No. 70A
- Twelfth Revised Sheet No. 71
- Fourth Revised Sheet No. 71A
- Eighth Revised Sheet No. 73
- Second Revised Sheet No. 73A
- Tenth Revised Sheet No. 74
- Third Revised Sheet No. 74A
- Tenth Revised Sheet No. 75
- Third Revised Sheet No. 75A
- Ninth Revised Sheet No. 76
- Fourth Revised Sheet No. 76A
- Eleventh Revised Sheet No. 77
- Fourth Revised Sheet No. 77A
- Twelfth Revised Sheet No. 78
- Fourth Revised Sheet No. 78A
- Fourth Revised Sheet No. 79
- Second Revised Sheet No. 79A
- Sixth Revised Sheet No. 80
- First Revised Sheet No. 80A
- Sixth Revised Sheet No. 81
- First Revised Sheet No. 81A
- Twelfth Revised Sheet No. 82
- Fourth Revised Sheet No. 82A, FERC Gas Tariff, Sixth Revised Volume No. 1

East Tennessee Natural Gas Company:
- First Revised Sheet Nos. 263 through 277, FERC Gas Tariff, Original Volume No. 1

National Fuel Gas Supply Corporation:
- Second Revised Sheet Nos. 32(B) and 32(C), FERC Gas Tariff, Original Volume No. 1

Mississippi River Transmission Corporation:
- Fourth Revised Sheet Nos. 35 and 38
- Fifth Revised Sheet Nos. 36 and 39, FERC Gas Tariff, First Revised Volume No. 1

Midwestern Gas Transmission Company:
- First Revised Sheet Nos. 265, 271, 273, 274, and 275, FERC Gas Tariff, Original Volume No. 1

Eastern Shore Natural Gas Company:
- Second Revised Sheet No. 424, FERC Gas Tariff, Original Volume No. 1

Alabama-Tennessee Natural Gas Company:
- Fourth Revised Sheet No. 36-E-2, FERC Gas Tariff, Third Revised Volume No. 1

El Paso Natural Gas Company:
- Eleventh Revised Sheet No. 63-C.3, FERC Gas Tariff, Original Volume No. 1
- Eleventh Revised Sheet No. 1-M.3, FERC Gas Tariff, Third Revised Volume No. 2
- Eleventh Revised Sheet No. 7-MM.3, FERC Gas Tariff, Original Volume No. 2A

Colorado Interstate Gas Company:
- First Revised Sheet No. 61H, FERC Gas Tariff, Original Volume No. 1

Kansas-Nebraska Natural Gas Company, Inc.:
- Fourth Revised Sheet Nos. 33 through 37
- Second Revised Sheet Nos. 38 through 49
- Original Sheet No. 50, FERC Gas Tariff Third Revised Volume No. 1

Any person desiring to be heard or to make any protest with reference to said tariff sheet filings should on or before October 14, 1981, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

Appendix

Arkansas Louisiana Gas Company
P.O. Box 21734
Shreveport, Louisiana 71151

Tennessee Natural Gas Lines, Inc.,
2000 Parkway Towers
Nashville, Tennessee 37219

Tennessee Gas Pipeline Company, a Division of Tenneco Inc.
Tenneco Building
P.O. Box 2511
Houston, Texas 77001

Panhandle Eastern Pipe Line Company
3000 Bissonnet Avenue
P.O. Box 1642
Houston, Texas 77001

Florida Gas Transmission Company
P.O. Box 44
Winter Park, Florida 32790

Truckline Gas Company

3000 Bissonnet Avenue
P.O. Box 1642
Houston, Texas 77001
South Georgia Natural Gas Company
P.O. Box 2563
Birmingham, Alabama 35202
Southern Natural Gas Company
P.O. Box 2563
Birmingham, Alabama 35202
East Tennessee Natural Gas Company
Tenneco Building
P.O. Box 2511
Houston, Texas 77001
Midwestern Gas Transmission Company
1100 Milam Building
P.O. Box 2511
Houston, Texas 77001
Eastern Shore Natural Gas Company
P.O. Box 615
Dover, Delaware 19901
Alabama-Tennessee Natural Gas Company
P.O. Box 918
Florence, Alabama 35630
Kansas-Nebraska Natural Gas Company, Inc.
12055 West Second Place
P.O. Box 15265
Lakewood, Colorado 80215
National Fuel Gas Supply Corporation
10 Lafayette Square
Buffalo, New York 14203
Mississippi River Transmission Corporation
9900 Clayton Road
St. Louis, Missouri 63124

[FR Doc. 81-28571 Filed 9-30-81; 8:45 am]
BILLING CODE 6450-85-M

[Docket No. ES81-85-000]

Central Maine Power Co.; Application

September 25, 1981

Take notice that on September 16, 1981, Central Maine Power Company (Applicant) filed an application seeking authority pursuant to section 204 of the Federal Power Act with respect to the guarantee of a portion (4.0%) of certain payment obligations, including indemnity obligations, of Vermont Yankee Nuclear Power Corporation ("Vermont Yankee") with respect to nuclear fuel under a nuclear fuel sale agreement (the "Sale Agreement") and promissory note (the "Promissory Note") proposed to be entered into with Bankers Trust Company, not in its individual capacity but solely as trustee of the Vernon Energy Trust (the "Trust").

Central Maine is one of ten sponsoring New England utilities (the "Sponsors") which purchase the entire output of the Vermont Yankee plant and which are contractually obligated to contribute capital to Vermont Yankee under certain defined circumstances. Each of the Sponsors has entered into a Power Contract, as amended, with Vermont Yankee pursuant to which it has agreed to purchase its ownership percentage share of the capacity and output of the Vermont Yankee plant at all levels at which the plant is operated or operable. Each of the Sponsors has also entered into a Capital Funds Agreement, as amended, with Vermont Yankee pursuant to which it has agreed to provide its ownership percentage share of the capital requirements of Vermont Yankee in the form of stock purchases, capital contributions or loans.

Vermont Yankee proposes to enter into the Sale Agreement and the Promissory Note in order to finance its nuclear fuel requirements. Pursuant to the Sale Agreement, the Trust will purchase from, or on behalf of, Vermont Yankee uranium and processing and fabrication services. After fabrication of the fuel is completed, the Trust will sell the fabricated fuel to Vermont Yankee and will lend Vermont Yankee funds to make that purchase, each of such loans to be recorded on the Promissory Note. Vermont Yankee will be obligated to make (1) quarterly payments under the Sale Agreement based upon the carrying costs of the capital invested in the nuclear fuel in processing, (2) quarterly payments of interest on the amounts outstanding under the Promissory Notes and (3) payments of principal under the Promissory Note as fuel is consumed. These payments will constitute fuel costs billable by Vermont Yankee to the Sponsors under the Power Contracts. The Trust will raise the capital necessary to make payments to fuel vendors and Vermont Yankee by the sale of its commercial paper backed by letters of credit issued by Bankers Trust Company, in its individual capacity, or by loans from Bankers Trust Company and two other participating banks (Bankers Trust Company and such other banks being herein after collectively called the "Banks"). The Banks' obligation to extend credit to the Trust by consenting to the issue of commercial paper backed by letters of credit or making loans will be limited to $40,000,000. The Trust will pay to Bankers Trust Company a fee of ⅝ of 1% per annum on the daily average aggregate outstanding principal amount of commercial paper and a commitment fee of ¼ of 1% per annum on the daily average unused portion of the commitment, each payable quarterly in arrears. The documentation to be entered into in connection with the Sale Agreement and the Promissory Note also provides for Vermont Yankee to secure its borrowings by pledging to the Banks and the commercial paper noteholders its right to receive payments of fuel costs under the Power Contracts. In addition, the Trust will assign to the Banks and the commercial paper noteholders its rights under the Sale Agreement, the Promissory Note and the Guarantee Agreements and will grant them a security interest in such rights and in the fuel owned by the Trust. The cash flow assured by the Power Contracts represents the underlying collateral for the nuclear fuel financing arrangement.

The Banks have requested additional assurances from Vermont Yankee in the form of an unconditional guarantee by each of the Sponsors, including Central Maine, of Vermont Yankee's payment obligation under the Sale Agreement and the Promissory Note in proportion to the Sponsor's ownership percentage of Vermont Yankee common stock. If the Sponsors had refused to guarantee Vermont Yankee's obligations in the manner proposed, Vermont Yankee would have to raise the $40,000,000 by requiring the Sponsors to make capital contributions or loans under the existing Capital Funds Agreements. This would require an actual cash outlay by Central Maine of $1,600,000.

Copies of this application have been served on the Connecticut Department of Public Utility Control, the Vermont Public Service Board, and the Maine Department of Public Utility Regulation.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure. All such petitions or protests should be filed on or before October 6, 1981. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants party to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 81-28572 Filed 9-30-81; 8:45]
BILLING CODE 6450-85-M

[Docket No. CP81-514-000]

Cities Service Gas Co.; Application

September 28, 1981.

Take notice that on September 14, 1981, Cities Service Gas Company (Applicant), P.O. Box 25128, Oklahoma City, Oklahoma 73125, filed in Docket No. CP81-514-000 an application

pursuant to Section 7 of the Natural Gas Act and § 157.7(g) of the Regulations thereunder (18 CFR 157.7(g)) for a certificate of public convenience and necessity authorizing the construction and for permission and approval to abandon for the calendar year 1982 and operation of various field compression and related metering and appurtenant facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

The stated purpose of this budget-type application is to enable Applicant to act with reasonable dispatch in constructing and abandoning facilities which would not result in changing Applicant's system salable capacity or service from that authorized prior to the filing of the instant application.

Applicant states that the total cost of the proposed construction and abandonment under § 157.7(g) would not exceed $3,000,000. Applicant requests waiver of the single project cost limitation of $500,000 proposing a single project cost limitation of $750,000. Applicant asserts that such waiver is required because of the increases in the cost of labor and materials. Such costs, it is asserted, would be financed from treasury cash.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 19, 1981, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and permission and approval for the proposed abandonment are required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-28573 Filed 9-30-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ES81-87-000]

Detroit Edison Co.; Application

September 25, 1981.

Take notice that on September 18, 1981, The Detroit Edison Company, a corporation organized under the laws of the State of Michigan and New York, with principal business offices in Detroit, Michigan, filed an Application pursuant to Section 204 of the Federal Power Act, seeking authorization to issue from time to time, on or before September 30, 1983, in aggregate principal amount not to exceed $1.2 billion at any one time outstanding, short-term debt securities and promissory notes bearing final maturities not to exceed two years.

Any person desiring to be heard or to make any protest with reference to said Application should, on or before October 19, 1981, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions or protests in accordance with the requirements of the Commission's Rules of Practice and Procedures (18 CFR 1.8 or 1.10). The Application is on file and available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-28574 Filed 9-30-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP81-483-000]

Equitable Gas Co.; Application

September 28, 1981.

Take notice that on August 24, 1981, Equitable Gas Company (Applicant), 420 Boulevard of the Allies, Pittsburgh, Pennsylvania 15219, filed in Docket No. CP81-483-000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas for the account of The Brooklyn Union Gas Company (Brooklyn Union) and the construction and operation of facilities necessary therefor, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes pursuant to a service agreement dated July 20, 1981, to transport up to 2,500 dekatherms (dth) equivalent of natural gas per day for Brooklyn Union commencing on September 23, 1981, and continuing for ten years thereafter. It is stated that Brooklyn Union would purchase such gas in Braxton, Clay, Gilmer, Lewis, and Nicholas Counties, West Virginia, which Applicant would receive from Brooklyn Union's suppliers' facilities. Applicant further states that although the maximum delivery would be 2,500 dth equivalent per day it estimates that the average daily quantity would be 2,000 Mcf of natural gas per day. Applicant explains that it would construct and operate metering facilities necessary to receive the gas from Brooklyn Union's suppliers.

It is asserted that Applicant would deliver similar quantities, less 5.0 percent for shrinkage, to Texas Eastern Transmission Corporation (Texas Eastern) at the existing interconnection between Applicant and Texas Eastern either at Texas Eastern's measuring station No. 9 near Waynesburg, Greene County, Pennsylvania, at Texas Eastern's measuring station No. 355 near Delmont, Westmoreland County, Pennsylvania, or at other mutually agreeable points. Applicant submits that Texas Eastern would further transport the gas for Brooklyn Union under a separate transportation agreement.

Applicant proposes to construct and operate metering facilities which would consist of twenty 3-inch meters and appurtenant facilities at a cost of approximately $37,000 which would be financed by cash on hand.

Applicant states that it would charge Brooklyn Union at a rate of 15.5 cents per Mcf for all gas transported.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 19, 1981, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a

proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-28575 Filed 9-30-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER81-767-000]

Illinois Power Co.; Filing

September 25, 1981.

The filing Company submits the following:

Take notice that on September 15, 1981, Illinois Power Company (Illinois Power) tendered for filing proposed Modification No. 17, dated August 15, 1981, to the Interconnection Agreement, dated November 27, 1961, between Indiana and Michigan Electric Company (I&M) and Illinois Power.

Illinois Power indicates that Modification No. 197 modifies the language of Article 7—Billing and Payment from the original 1961 Agreement. In addition, Modification No. 17 provides for a new Service Schedule E—Short Term Power which allows daily, in addition to weekly, exchanges of short term power.

The parties request waiver of the notice requirements to permit an effective date of August 15, 1981.

Illinois Power states that a copy of this filing was served upon I&M, American Electric Power Service Corporation, Public Service Commission of Indiana, Michigan Public Service Commission and the Illinois Commerce Commission.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before October 16, 1981. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-28576 Filed 9-30-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. SA81-47-000]

Kennecott Minerals Co.; Application for Adjustment

Issued: September 28, 1981.

Take notice that on June 23, 1981, Kennecott Minerals Company (Kennecott), c/o Parsons, Behle and Latimer, 79 South State, Salt Lake City, Utah 84147, filed with the Federal Energy Regulatory Commission (Commission) an application for adjustment pursuant to section 502(c) of the Natural Gas Policy Act of 1978 (NGPA) (15 U.S.C. 3301 *et seq*), and § 1.41 of the Commission's regulations. Kennecott seeks relief from certain alternative fuel price ceilings set forth in 18 CFR 282.404.

Specifically, Kennecott states that its Utah Copper Division consumes natural gas subject to the incremental pricing program of Title II of the NGPA. Kennecott notes that the alternative-fuel price ceilings published by the Energy Information Administration for the months of January and February, 1981 for the State of Utah were $3.88 and $4.26 per MMBtu respectively. Kennecott asserts that these fuel price ceilings were based on inaccurate and incomplete information, and exceeded the actual market price of high sulfur No. 6 fuel oil in Utah during those months. Kennecott submits that the application of these price ceilings results in an inequity and unfair distribution of burdens to its Utah Copper Division.

Kennecott requests that the alternative fuel price ceilings for the State of Utah be revised and republished to reflect the fuel price ceilings for Region G, which Kennecott states to be $3.33 and $3.57 per MMBtu, for the months of January and February, 1981 respectively. The $3.33 and $3.57 per MMBtu ceilings, according to Kennecott's application, approximate the appropriate prices for Utah for the two months in question.

The procedures applicable to the conduct of this adjustment proceeding are found in 18 CFR 1.41 (44 FR 18961, March 30, 1979). Any person desiring to participate in this adjustment proceeding shall file a petition to intervene in accordance with the provisions of § 1.41. All petitions to intervene must be filed on or before October 16, 1981.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-28577 Filed 9-30-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. SA81-55-000]

McCormick Operating Co.; Application for Adjustment

September 25, 1981.

On September 14, 1981, McCormick Operating Company filed with the Federal Energy Regulatory Commission an application for an adjustment under § 273.202 of the Commission's regulations (18 CFR 273.202) wherein McCormick sought waiver of the § 273.202(b)(2) limitation of the period for interim collection authority with respect to the S. W. Cummings No. 1 well in Miller County, Arkansas. McCormick also sought interim relief pursuant to § 1.41(m) of the Commission's regulations.

On September 11, 1980, McCormick filed its application with the Arkansas Oil & Gas Commission (Arkansas) for a determination of eligibility under section 102(c)(1)(C) of the Natural Gas Policy Act of 1978. However, Arkansas has yet to send a notice of jurisdictional agency determination to the Commission, apparently due to a backlog of applications.

The procedures applicable to the conduct of this adjustment proceeding are found in § 1.41 of the Commission's Rules of Practice and Procedure, Order No. 24, issued March 22, 1979.

Any person desiring to participate in this adjustment proceeding shall file a Petition to Intervene in accordance with the provisions of § 1.41. All petitions to intervene must be filed on or before October 16, 1981.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-28578 Filed 9-30-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER81-764-000]

Minnesota Power & Light Co.; Filing

September 25, 1981.

The filing Company submits the following:

Take notice that Minnesota Power & Light Company (MP&L) on September 15, 1981, tendered for filing proposed changes in its rates and charges applicable to eighteen municipal customers, one rural electric cooperative customer, and one privately-owned electric system customer, as embodied in proposed Rate Schedule Nos. 06, 07 and 08. In addition, MP&L has filed proposed contracts for service to the City of Hibbing and the City of Virginia, and the letter amendments increasing the transmission service rate applicable to the City of Wadena and increasing the distribution wheeling service rate applicable to United Power Association. MP&L proposes to place the proposed rate schedules, contracts and amendments into effect as of November 14, 1981. The revised rates and charges would increase revenues from jurisdictional sales by $8,529,659, based on the 12 month period ending December 31, 1982.

MP&L states that the proposed increase in sales-for-resale rates is intended primarily to increase the rate of return to an adequate level and reflects the inclusion in rate base of MP&L's investment in the 500 MW coal-fired generating unit at the Clay Boswell Steam Electric Station. The proposed rates and charges are designed to enable MP&L to earn a rate of return of 11.62% on rate base during calendar year 1982, which is Period II.

MP&L proposes an effective date of November 14, 1981.

A copy of the appropriate portions of the filing has been served upon MP&L's jurisdictional customers and the State Commissions of Minnesota and Wisconsin.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before October 16, 1981. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-28579 Filed 9-30-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket Nos. CI69-1177-000, et al.]

Mobil Oil Exploration & Producing Southeast Inc., et al.; Applications for Certificates, Abandonment of Service and Petitions to Amend Certificates [1]

September 25, 1981.

Take notice that each of the Applicants listed herein has filed an application or petition pursuant to Section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce or to abandon service as described herein, all as more fully described in the respective applications and amendments which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with referende to said applications should on or before October 9, 1981, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure a hearing will be held without further notice before the Commission on all applications in which no petition to intervene is filed within the time required herein if the Commission on its own review of the matter believes that a grant of the certificates or the authorization for the proposed abandonment is required by the public convenience and necessity. Where a petition for leave to intervene is timely filed, or where the commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No. and date filed	Applicant	Purchaser and location	Price per Mcf	Pressure base
CI69-1177-000, D, Sept. 21, 1981	Mobile Oil Exploration & Producing Southeast Inc., Nine Greenway Plaza, Suite 2700, Houston, Texas 77046.	Texas Eastern Transmission Corporation, Main Pass Block 6 and 103 Fields, Offshore Louisiana.	(1)	
CI74-82-000, Sept. 18, 1981 [2]	Texaco Inc., P.O. Box 60252, New Orleans, Louisiana 70160.	Tennessee Gas Pipeline Company, Platform Block Nos. 388, 330, and 331, Eugene Island Area, Offshore Louisiana.	(3)	15.025
CI75-174-001, Sept. 18, 1981 [2]	Texaco Inc., P.O. Box 60252, New Orleans, Louisiana 70160.	Transcontinental Gas Pipe Line, Corporation, Vermilion Area Block 67-B, Offshore Louisiana.	(4)	15.025
CI81-495-000, A, Sept. 14, 1981	Union Oil Company of California, Union Oil Center, Room 901, P.O. Box 7600, Los Angeles, California 90051.	Pacific Lighting Gas Supply Company, Federal Lease #OCS-P-0216 (Tract 373), Santa Clara Field, and Federal Leases #OCS-P-0202 (Tract 350), and #OCS-P-0203 (Tract 351), Hueneme Field, Offshore Ventura County, California.	(5)	14.73
CI81-496-000, A, Sept. 14, 1981	Marathon Oil Company, 539 South Main Street, Findlay, Ohio 45840.	Natural Gas Pipeline Company of America, High Island Area, High Island Block, A-568 Field, Offshore Texas.	(6)	14.73
CI81-497-000, A, Sept. 14, 1981	ARCO Oil and Gas Company, Division of Atlantic Richfield Company, P.O. Box 2819, Dallas, Texas 75221.	Transco Gas. Supply Company, Ship Shoal Block 91, Offshore Louisiana.	(7)	15.025
CI81-498-000, A, Sept. 17, 1981	Mesa Petroleum Co., One Mesa Square, P.O. Box 2009, Amarillo, Texas 79189.	Trunkline Gas Company, Vermilion Area, block 348, Offshore Louisiana.	(8)	15.025

Docket No. and date filed	Applicant	Purchaser and location	Price per Mcf	Pressure base
CI81-499-000, A, Sept. 21, 1981	Getty Oil Company, P.O. Box 1401, Houston, Texas 77001.	Texas Eastern Transmission Corporation, West Cameron Block 261, Offshore Louisiana.	(9)	15.025
CI81-500-000, A, Sept. 22, 1981	Columbia Gas Development Corporation, P.O. Box 1350, 1700 West Loop South, Houston, Texas 77001.	Columbia Gas Transmission Corporation, Blocks 155 and 156, Vermilion Area, Offshore Louisiana.	(10)	15.025

[1] Cessation of production.
[2] Applicant is filing to change delivery point.
[3] Applicant is filing under Gas Purchase and Sales Agreement dated July 5, 1973, amended by amendment dated November 10, 1980.
[4] Applicant is filing under Gas Purchase Contract dated August 29, 1974, amended by agreement dated January 30, 1981.
[5] Applicant is filing under Gas Sales and Purchase Agreement dated August 31, 1981.
[6] Applicant is filing under Gas Purchase Contract dated March 2, 1981.
[7] Applicant is filing under Gas Purchase Contract dated August 17, 1981.
[8] Applicant is willing to accept the applicable rate under Section 104 of the Natural Gas Policy Act of 1978.
[9] Applicant is filing under Gas Purchase Contract dated July 17, 1981.
[10] Applicant is filing under Gas Purchase and Sales Agreement dated September 4, 1981.
Filing Code: A—Initial service. B—Abandonment. C—Amendment to add acreage. D—Amendment to delete acreage. E—Total Succession. F—Partial Succession.

[FR Doc. 81-28580 Filed 9-30-81; 8:45 am]
BILLING CODE 6450-85-M

[Docket No. CP81-503-000]

Southern Natural Gas Co., Application

September 28, 1981.

Take notice that on September 8, 1981, Southern Natural Gas Company (Applicant), P.O. Box 2563, Birmingham, Alabama 35202, filed in Docket No. CP81-503-000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of an additional compressor unit to be located at Applicant's existing White Castle Compressor Station in Iberville Parish, Louisiana, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that its White Castle Compressor Station presently compresses gas received from the west on Applicant's 20-inch South Section 28 pipeline and from the south from Applicant's Shadyside Compressor Station. Applicant has determined that the most economic means of providing the capacity at its White Castle Compressor Station necessary to accommodate future additional supplies of gas which would be delivered to its system as the said locations is by a combination of transferring volumes of gas off its pipelines and by installing a proposed 2,700 horsepower compressor unit at its White Castle Station.

Appliant proposed to install the 2,700 horsepower compressor unit as a "swing" unit so that Applicant would be able to utilize the unit in conjunction with the existing swing units to compress those gas volumes received on its South Section 28 pipeline or at its Shadyside Station depending upon the then existing operational conditions on its system.

The estimated cost of Applicant's proposed facilities is $4,444,900. Applicant expects that such cost would be financed initially by short-term financing and/or cash from current operations and ultimately from permanent financing.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 19, 1981, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on it own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,
Secretary.

[FR Doc. 81-28581 Filed 9-30-81; 8:45 am]
BILLING CODE 6450-85-M

[Docket No. CP75-120-002]

Tennessee Gas Pipeline Co., a Division of Tenneco Inc.; Petition To Amend

September 28, 1981.

Take notice that on September 4, 1981, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Petitioner), P.O. Box 2511, Houston, Texas 77001, filed in Docket No. CP75-120-002 a petition to amend the order issued March 7, 1977,[1] as amended, in the instant docket pursuant to Section 7(c) of the Natural Gas Act so as to authorize the transportation of natural gas for additional points of receipt for the account of Tenneco Oil Company (TOC), all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Petitioner states that by FPC Opinion No. 789 and order issued March 7, 1977, as amended, Petitioner was authorized to transport natural gas subject to certain limitations for TOC to Yscloskey, Louisiana, for delivery to Creole Gas Pipeline Corporation (Creole) for transportation by Creole to TOC's Chalmette Refinery. Petitioner now proposes to establish the following additional receipt points:

1. Lake Boudreaux source: Delivered for the account of Petitioner at a central treating and metering facility platform on Columbia Gulf Transmission Company's (Columbia Gulf) line approximately 500 feet west northwest of the La-Terre No. 1, Tex W-3 RA SU A

[1] This proceeding was commenced before the FPC. By joint regulation of October 1, 1977 (10 CFR 1000.1), it was transferred to the Commission.

Well in Terrebonne Parish, Louisiana. Columbia Gulf then transports and delivers gas to Petitioner at an existing authorized point of interconnection located at Egan, Louisiana.

2. East Lake Decade source: Delivered for the account of Petitioner at a central treating and metering facility on Transcontinental Gas Pipe Line Corporation's (Transco) line at or near the Terrebonne Parish School Board Well No. 3 located in Terrebonne Parish, Louisiana. Transco then transports and delivers gas to Petitioner at existing authorized points of interconnection located at Louise, Wharton County, Texas, Crowely, Acadia Parish and Kinder, Allen Parish, Louisiana.

3. Grand Cane source: Delivered to Petitioner at Petitioner's Valve No. 704A–102 in De Soto Parish, Louisiana.

4. Haynesville source: Delivered to Petitioner by United Gas Pipe Line Company (United) at existing interconnections between Petitioner and United at Cocodrie, Terrebonne Parish, Louisiana, and at Bayou Sale, St. Mary Parish, Louisiana.

5. Bisteneau source: Delivered to Petitioner by United at existing interconnections between Petitioner and United at Cocodrie, Terrebonne Parish, Louisiana, and at Bayou Sale, St. Mary Parish, Louisiana.

6. San Juan source: Caused to be delivered to Petitioner by El Paso Natural Gas Company at Cocodrie, Louisiana, and/or Katy, Texas.

7 Four Isle Dome source: Delivered to Petitioner at Superior Oil Company's Four Isle Dome Plant in Terrebonne Parish, Louisiana.

8. Agua Dulce source: Delivered to Petitioner at side valve ID–102 on Petitioner's Plomo Line No. ID–100, Nueces County, Texas, and/or delivered to Petitioner at TGP–400E–102 on the Elmer McCoy, *et al.* 160 Ac. Tract in the north end of Share 3 of Share 2 of the Palo Alto Partition of the W. B. Chapman Sands, in the Matias Garcia Grant, Abstract 116, Nueces County, Texas.

Petitioner submits that the gas to be transported from the above receipt points would be subject to the provisions of paragraph (K) of Opinion No. 789 which according to Petitioner provides that:

* * * all the gas transported by Petitioner pursuant to the paragraph K other than the exchange gas shall be delivered to satisfy a portion of the process and feedstock requirements of the New Orleans complex of Air Products and Chemicals Corporation and thereafter, the process and feedstock requirements of Tenneco's refinery at Chalmettee, Louisiana.

Petitioner maintains that the service would be rendered in accordance with terms set forth in the agreement of November 3, 1980, between TOC and Petitioner which amended their exchange and transportation agreement dated September 27, 1974.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before October 19, 1981 file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-28582; Filed 9-30-81 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP 81-480-000]

TOPICO; Petition for Declaratory Order

September 28, 1981.

Take notice that on August 18, 1981, TOPICO (Petitioner), 4000 Mahoning Avenue, Warren, Ohio 44482, filed in Docket No. CP81–480–000 a petition pursuant to § 1.7(c) of the Commission's Rules of Practice and Procedure (18 CFR 1.7(c)) for a declaratory order (1) approving a transportation arrangement under Section 311(a) of the Natural Gas Policy Act of 1978 (NGPA), (2) finding that Petitioner is an intrastate pipeline within the meaning of Section 2(16) of the NGPA, and (3) finding that it is unnecessary for Petitioner to obtain a certificate of public convenience and necessity pursuant to Section 7(c) of the Natural Gas Act to construct and operate facilities necessary for the proposed Section 311(a) transaction, all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

Petitioner, an Ohio intrastate pipeline, proposes to provide transportation service to deliver the natural gas sold by Atlas Energy Group, Inc. to the facilities of National Fuel Supply Company (National Fuel) pursuant to a NGPA Section 311(a) transportation arrangement. It is stated that the connecting facilities necessary to connect Petitioner's system to National Fuel's facilities would be located approximately thirty feet into the State of Pennsylvania. Petitioner asserts that these facilities would be used solely for the NGPA Section 311(a) delivery to National Fuel.

Petitioner further requests a finding that it not be required to obtain a certificate of public convenience and necessity under the Natural Gas Act to transport natural gas on behalf of National Fuel. Petitioner states that Section 311(a) of the NGPA permits intrastate pipelines such as Petitioner to transport natural gas on behalf of interstate pipelines such as National Fuel. Petitioner submits that Section 601(a)(2) of the NGPA provides that the Natural Gas Act shall not apply to any transportation in interstate commerce if such transportation is authorized by Section 311(a) of the NGPA. Moreover, Petitioner maintains that since the proposed transportation would use facilities solely for transportation authorized by NGPA Section 311(a) it should not be subject to the Natural Gas Act according to § 284.3 of the Commission's Regulations.

Petitioner finally requests a finding that it is an intrastate pipeline within the meaning of Section 2(16) of the NGPA. Petitioner asserts that it engages solely in transporting natural gas which is gathered and delivered to its lines by producers. Petitioner further asserts that it does not take title to any natural gas and is an Ohio public utility subject to the jurisdiction of the Public Utilities Commission of Ohio. Petitioner therefore submits that it is an intrastate pipeline within the meaning of NGPA Section 2(16).

Any person desiring to be heard or to make any protest with reference to said petition should on or before October 19, 1981, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to a proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition

to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-28563 Filed 9-30-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP 81-498-000]

United Gas Pipe Line Co.; et al.; Application

September 28, 1981.

Take notice that on September 4, 1981, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77001, Natural Gas Pipeline Company of America (Natural), 122 South Michigan Avenue, Chicago, Illinois 60603, and Northern Natural Gas Company, Division of InterNorth, Inc. (Northern), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP81-498-000 a joint application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of approximately 113.3 miles of 16-inch pipeline, 19.7 miles of 12-pipeline and appurtenant facilities including 9,000 horsepower of compression, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicants propose to construct and operate the following laterals or gas supply lines and appurtenant facilities to connect gas produced from the Williston Basin Area in North and South Dakota and Montana.

Lateral A

Applicants state that Lateral A would consist of 60.6 miles of 16-inch pipeline and appurtenant facilities originating at the outlet side of Aminoil USA, Inc.'s plant in Williams County, North Dakota, and extending in a west southwesterly direction to a point of interconnection with the Northern Border Pipeline Company (Northern Border) System in Williams County. A 3,000 horsepower compressor station would be located at the tie-in with Northern Border. Following installation of the facilities, Applicants anticipate that 50,000 Mcf of gas per day would be available to this lateral. It is averred that Lateral A would have an initial disign capacity of 65,000 Mcf of gas per day. The estimated cost of Lateral A is $26,956,400 it is stated.

Lateral B

Applicants assert that Lateral B would consist of 35.5 miles of 16-inch pipeline, and appurtenant facilities beginning at the outlet side of Koch Industries, Inc.'s plant in McKenzie County, North Dakota, and extending in a northeasterly direction to a point of interconnection with the Northern Border system in McKenzie County. A 3,000 horsepower compressor station would be located at the tie-in with Northern Border. Following installation of the facilities, Applicants anticipate that up to 50,000 Mcf of gas per day would be available to this lateral. It is averred that Lateral B would have an initial design capacity of 64,000 Mcf of gas per day and an estimated cost of $18,948,700.

Lateral C

Applicants state that Lateral C would consist of 19.7 miles of 12-inch pipeline and 17.2 miles of 16-inch pipeline and appurtenant facilities. This lateral would begin at the outlet side of Western Gas Processors, Ltd.'s (Western) plant in Billings County, North Dakota, and extend to a point of interconnection with the Warren Petroleum's (Warren) Plant in Billings County. Applicants submit that from this point Lateral C would extend in a northeasterly direction to a point of interconnection with the Northern Border system in Dunn County, North Dakota. A 3,000 horsepower compressor station would be located at the tie-in with Northern Border. Following installation of the facilities, Applicants anticipate that up to 25,000 Mcf of gas per day would be available at the Western point of receipt and an additioal 25,000 Mcf per day would e available at the Warren point of receipt. Applicant contends that the design capacity of the Western segment of the lateral is 36,500 Mcf per day and 61,500 Mcf per day for the Warren segment of the lateral. the estimated cost of Lateral C is $17,975,700, it is submitted.

Applicants submit that to receive the gas from the Williston Basin into their respective systems they have requested. Northern Plains Natural Gas Company (Northern Plains), operator of Northern Border, to transport an aggregate volume of 150,000 Mcf of gas per day from the points of interconnection of these proposed laterals to the terminus of Northern Border near Ventura, Iowa. It is indicated that from this point in Iowa, United and Natural have requested Northern to transport said volume from Ventura to existing points of interconnection with Natural or by exchanging said volume of gas.

Applicants assert that the projects proposed in the instant application would provide them with access to the Williston Basin, a new gas supply area with excellent potential for future development. Applicants contend that this basin which has its structural center in McKenzie County, North Dakota, is one of the largest structural and sedimentary basins on the North America Continent.

Applicants assert that United has entered into letters of commitment with Depco, Inc. and Nicor Exploration for their collective interests in approximately 484,906 gross acres and 246,638 net acres of anticipated gas supply to be produced from land in the Western Williston Basin. Applicants state that Natural has entered into letters of commitment with Williams Exploration Company and Jerry Chambers Exploration Company for their interest in a total of 2,770,672 gross acres and 594,612 net acres in the Williston Basin Area. Applicants aver that they are actively negotiating with other producers for the purchase of natural gas to be produced from the Williston Basin. Applicants propose to begin receiving gas from the proposed laterals in the third quarter of 1982 which would coincide with the projected in-service date of the Northern Border system.

Applicants submit that the projects proposed herein would allow Applicants to be competitive purchasers of new gas supplies necessary to meet long-term needs of their customers and that the proposed pipeline systems would provide a transportation route to assure that Williston Basin volumes can be delivered to gas markets which would in turn encourage producers to develop gas reserves in the area.

The total cost of the proposed facilities is estimated to be approximately $64,000,000 which would be financed from the general corporate funds of each Applicant.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 19, 1981, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to

jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-28584 Filed 9-30-81; 8:45 am]

BILLING CODE 6450-85-M

[Volume 513]

Notice of Determinations by Jurisdictional Agencies Under the Natural Gas Policy Act of 1978

Issued: September 24, 1981

JD NO	JA DKT	API NO	D	SEC	CAT	WELL NAME	FIELD NAME	PROD	PURCHASER
KANSAS CORPORATION COMMISSION									
-COASTAL OIL & GAS CORP						RECEIVED: 09/03/81 JA: KS			
8148450	K-79-0596	1512900000		108	-ER	DREYES # 1-16	GREENWOOD	0.0	COLORADO INTERSTA
MICHIGAN DEPARTMENT OF NATURAL RESOURCES									
-SUN OIL COMPANY (DELAWARE)						RECEIVED: 09/04/81 JA: MI			
8148578		2111333164		103		NORWICH UNIT NO 3-2	NORWICH	16.0	DOW CHEMICAL CO
8148567		2111334073		103		NORWICH UNIT NO 4-105	NORWICH	1.6	DOW CHEMICAL CO
8148572		2111333276		103		NORWICH UNIT NO 4-86	NORWICH	28.0	DOW CHEMICAL CO
8148575		2111333167		103		NORWICH UNIT NO 4-87	NORWICH	14.6	DOW CHEMICAL CO
8148569		2111334074		103		NORWICH UNIT NO 4-88	NORWICH	6.0	DOW CHEMICAL CO
8148562		2111333592		103		NORWICH UNIT NO 4-89	NORWICH	7.0	DOW CHEMICAL CO
8148561		2111333591		103		NORWICH UNIT NO 4-90	NORWICH	5.0	DOW CHEMICAL CO
8148560		2111333590		103		NORWICH UNIT NO 4-92	NORWICH	0.5	DOW CHEMICAL CO
8148566		2112134103		103		NORWICH UNIT NO 4-93	NORWICH	8.0	DOW CHEMICAL CO
8148576		2111333484		103		NORWICH UNIT NO 4-94	NORWICH	1.0	DOW CHEMICAL CO
8148557		2111333589		103		NORWICH UNIT NO 4-95	NORWICH	1.0	DOW CHEMICAL CO
8148559		2111333850		103		NORWICH UNIT NO 4-96	NORWICH	8.0	DOW CHEMICAL CO
8148577		2111333275		103		NORWICH UNIT NO 5-22	NORWICH	1.6	DOW CHEMICAL CO
8148570		2111333485		103		NORWICH UNIT NO 5-23	NORWICH	9.0	DOW CHEMICAL CO
8148563		2111333486		103		NORWICH UNIT NO 5-24	NORWICH	2.0	DOW CHEMICAL CO
8148558		2114333822		103		NORWICH UNIT NO 5-25	NORWICH	2.0	DOW CHEMICAL CO
8148574		2114333339		103		NORWICH UNIT NO 6-13	NORWICH	17.0	DOW CHEMICAL CO
8148564		2114333682		103		NORWICH UNIT NO 6-14	NORWICH	8.0	DOW CHEMICAL CO
8148565		2114334061		103		NORWICH UNIT NO 6-17	NORWICH	3.0	DOW CHEMICAL CO
8148568		2114334188		103		NORWICH UNIT NO 6-19	NORWICH	1.0	DOW CHEMICAL CO
8148573		2114333222		103		NORWICH UNIT NO 8-1	NORWICH	1.3	DOW CHEMICAL CO
8148571		2111332861		103		NORWICH UNIT NO 9-14	NORWICH	1.0	DOW CHEMICAL CO
OHIO DEPARTMENT OF NATURAL RESOURCES									
-BELDEN & BLAKE & CO L P NO 76						RECEIVED: 09/04/81 JA: OH			
8148504		3401921432		103		G JEWELL #1-341063	BROWN	36.5	
8148504		3401921432		107	-TF	G JEWELL #1-341063	BROWN	36.5	
-BELDEN & BLAKE AND CO #77						RECEIVED: 09/04/81 JA: OH			
8148503		3401921415		103		W WRIGHT #1-341062	BROWN	36.5	
8148503		3401921415		107	-TF	W WRIGHT #1-341062	BROWN	36.5	
-BEREA OIL AND GAS CORPORATION						RECEIVED: 09/04/81 JA: OH			
8148505		3405922913		103		LINKHORN #2	WESTLAND	0.0	COLUMBIA GAS TRAN
8148505		3405922913		107	-TF	LINKHORN #2	WESTLAND	0.0	COLUMBIA GAS TRAN
-BROWN PETROLEUM CORP						RECEIVED: 09/04/81 JA: OH			

VOLUME 513 PAGE 002

JD NO	JA DKT	API NO	D	SEC	CAT	WELL NAME	FIELD NAME	PROD	PURCHASER
8148506		3403124085			103	LONSINGER #1	BEDFORD	10.0	COLUMBIA GAS TRAN
8148506		3403124085	D		107-TF	LONSINGER #1	BEDFORD	10.0	COLUMBIA GAS TRAN
-DORAN & ASSOCIATES INC						RECEIVED: 09/04/81 JA: OH			
8148507		3412725123	D		107-TF	FRANK GRIGSBY #1	READING	12.0	COLUMBIA GAS TRAN
-GASEARCH INC						RECEIVED: 09/04/81 JA: OH			
8148508		3415521628			103	HARRINGTON #1	MESOPOTAMIA	20.0	COLUMBIA GAS TRAN
8148508		3415521628			107-TF	HARRINGTON #1	MESOPOTAMIA	20.0	COLUMBIA GAS TRAN
-H & S OPERATING COMPANY						RECEIVED: 09/04/81 JA: OH			
8148510		3405922803			107-TF	ELDER #2	WHEELING	20.0	COLUMBIA GAS TRAN
8148509		3403124128			107-TF	WELKER #1	LINTON	15.0	COLUMBIA GAS TRAN
-I R D CORP						RECEIVED: 09/04/81 JA: OH			
8148511		3415521710			103	SULEK #2	BLOOMFIELD	200.0	
8148511		3415521710			107-TF	SULEK #2	BLOOMFIELD	200.0	
8148512		3415521722			103	SULEK #3	BLOOMFIELD	200.0	
8148512		3415521722			107-TF	SULEK #3	BLOOMFIELD	200.0	
-JERRY MOORE INC						RECEIVED: 09/04/81 JA: OH			
8148516		3403123023			103	BEN J RABER NO 1-16	NEW BEDFORD	4.0	COLUMBIA GAS TRAN
8148516		3403123023			107-TF	BEN J RABER NO 1-16	NEW BEDFORD	4.0	COLUMBIA GAS TRAN
8148531		3403124288			103	CARROLL WELLING NO 1-4	NEW BEDFORD	3.0	COLUMBIA GAS TRAN
8148531		3403124288			107-TF	CARROLL WELLING NO 1-4	NEW BEDFORD	3.0	COLUMBIA GAS TRAN
8148517		3403123832			103	CHARLES L PEW NO 1	COSHOCTON	3.0	COLUMBIA GAS TRAN
8148517		3403123832			107-TF	CHARLES L PEW NO 1	COSHOCTON	3.0	COLUMBIA GAS TRAN
8148530		3403124203			103	DAVID A BARKMAN #1-6	NEW BEDFORD	3.0	COLUMBIA GAS TRAN
8148530		3403124203			107-TF	DAVID A BARKMAN #1-6	NEW BEDFORD	3.0	COLUMBIA GAS TRAN
8148519		3403123841			103	ELI D TROYER NO 1-14	NEW BEDFORD	4.0	COLUMBIA GAS TRAN
8148519		3403123841			107-TF	ELI D TROYER NO 1-14	NEW BEDFORD	4.0	COLUMBIA GAS TRAN
8148521		3403123849			103	EMANUEL D MILLER NO 1-14	NEW BEDFORD	6.0	COLUMBIA GAS TRAN
8148521		3403123849			107-TF	EMANUEL D MILLER NO 1-14	NEW BEDFORD	6.0	COLUMBIA GAS TRAN
8148529		3403124106			103	ERNEST F LORENZ UNIT NO 1-7	KEENE	3.0	COLUMBIA GAS TRAN
8148529		3403124106			107-TF	ERNEST F LORENZ UNIT NO 1-7	KEENE	3.0	COLUMBIA GAS TRAN
8148527		3403124058			103	FRANCES R HENSLEY UNIT NO 1-9	KEENE	2.0	COLUMBIA GAS TRAN
8148527		3403124058			107-TF	FRANCES R HENSLEY UNIT NO 1-9	KEENE	2.0	COLUMBIA GAS TRAN
8148520		3403123848			103	GEORGE L SMITH NO 1-18	NEW BEDFORD	3.0	COLUMBIA GAS TRAN
8148520		3403123848			107-TF	GEORGE L SMITH NO 1-18	NEW BEDFORD	3.0	COLUMBIA GAS TRAN
8148526		3403124043			103	HAROLD L PARKHILL NO 1-12	NEW BEDFORD	4.0	COLUMBIA GAS TRAN
8148526		3403124043			107-TF	HAROLD L PARKHILL NO 1-12	NEW BEDFORD	4.0	COLUMBIA GAS TRAN
8148518		3403123833			103	JOHN A RABER NO 1-14	NEW BEDFORD	4.0	COLUMBIA GAS TRAN
8148518		3403123833			107-TF	JOHN A RABER NO 1-14	NEW BEDFORD	4.0	COLUMBIA GAS TRAN
8148522		3403123858			103	ROBERT KAUFMAN UNIT NO 1	NEW BEDFORD	3.0	COLUMBIA GAS TRAN
8148522		3403123858			107-TF	ROBERT KAUFMAN UNIT NO 1	NEW BEDFORD	3.0	COLUMBIA GAS TRAN
8148523		3403123885			103	ROBERT R LEE UNIT NO 1-18	KEENE	3.0	COLUMBIA GAS TRAN
8148523		3403123885			107-TF	ROBERT R LEE UNIT NO 1-18	KEENE	3.0	COLUMBIA GAS TRAN
8148524		3403123897			103	RONALD HADINGER UNIT NO 1	KEENE	2.0	COLUMBIA GAS TRAN
8148524		3403123897			107-TF	RONALD HADINGER UNIT NO 1	KEENE	2.0	COLUMBIA GAS TRAN
8148525		3403124042			103	WAYNE J MILLER NO 1-19	KEENE	10.0	COLUMBIA GAS TRAN
8148525		3403124042			107-TF	WAYNE J MILLER NO 1-19	KEENE	10.0	COLUMBIA GAS TRAN
8148528		3403124059			103	WAYNE J MILLER NO 2-19	KEENE	6.0	COLUMBIA GAS TRAN
8148528		3403124059			107-TF	WAYNE J MILLER NO 2-19	KEENE	6.0	COLUMBIA GAS TRAN
-KENOIL						RECEIVED: 09/04/81 JA: OH			
8148513		3416922040			107-TF	JAMES FOLLOWAY #2	CANAAN	4.0	COLUMBIA GAS TRAN
-LAKE REGION OIL INC						RECEIVED: 09/04/81 JA: OH			
8148514		3415723562			107-TF	SAM AMISTADI #1	FRANKLIN	30.0	COLUMBIA GAS TRAN
-MITCHELL ENERGY CORPORATION						RECEIVED: 09/04/81 JA: OH			

JD NO	JA DKT	API NO	C	SEC	CAT	WELL NAME	FIELD NAME	PROD	PURCHASER
8148515		3406720373		103		MYERS-BIRNEY #1-26	CLINTON	100.0	
8148515		3406720373		107	TF	MYERS-BIRNEY #1-26	CLINTON	100.0	
-OHIO PARTNERS OIL CO						RECEIVED: 09/04/81 JA: OH			
8148532		3415514920		103		YOUNGSTOWN AIRPORT #14	VIENNA	20.0	COLUMBIA GAS TRAN
8148532		3415514920		107	TF	YOUNGSTOWN AIRPORT #14	VIENNA	20.0	COLUMBIA GAS TRAN
-OHIO TITAN ENERGY CO LTD PART 79-12						RECEIVED: 09/04/81 JA: OH			
8148539		3407523290		107	TF	#1 HOMER ROGERS	MECHANIC	600.0	COLUMBIA GAS TRAN
-OHIO TITAN ENERGY CO LTD 1980-4						RECEIVED: 09/04/81 JA: OH			
8148545		3407522357		107	TF	#1 JOHN C BUREN	HARDY	1200.0	COLUMBIA GAS TRAN
-OHIO TITAN ENERGY CO LTD 1980-5						RECEIVED: 09/04/81 JA: OH			
8148542		3407522353		107	TF	#2 JOHN C BUREN	HARDY	1300.0	COLUMBIA GAS TRAN
-OHIO TITAN ENERGY CO LTD 1980-6						RECEIVED: 09/04/81 JA: OH			
8148541		3407522352		107	TF	#3 JOHN C BUREN	HARDY	1700.0	COLUMBIA GAS TRAN
-OHIO TITAN ENERGY CO LTD 80-2						RECEIVED: 09/04/81 JA: OH			
8148543		3407522354		107	TF	#4 MELVIN MILLER	MECHANIC	750.0	COLUMBIA GAS TRAN
-OHIO TITAN ENERGY L P 1979-10						RECEIVED: 09/04/81 JA: OH			
8148538		3407522297		107	TF	#1 JONAS RABER	MECHANIC	450.0	COLUMBIA GAS TRAN
-OHIO TITAN ENERGY L P 1979-11						RECEIVED: 09/04/81 JA: OH			
8148540		3407522332		107	TF	#1 MELVIN MILLER	MECHANIC	650.0	COLUMBIA GAS TRAN
-OHIO TITAN ENERGY L P 1979-8						RECEIVED: 09/04/81 JA: OH			
8148536		3407522295		107	TF	#2 R J MILLER	MECHANIC	350.0	COLUMBIA GAS TRAN
-OHIO TITAN ENERGY LTD PART 1979-9						RECEIVED: 09/04/81 JA: OH			
8148537		3407522296		107	TF	#1 L J MATTER	MECHANIC	385.0	COLUMBIA GAS TRAN
-OHIO TITAN ENERGY LTD PTNR 1979-1						RECEIVED: 09/04/81 JA: OH			
8148533		3407522209		107	TF	ATLEE J MILLER #1	MECHANIC	500.0	COLUMBIA GAS TRAN
-OHIO TITAN ENERGY LTD PTNR 1979-2						RECEIVED: 09/04/81 JA: OH			
8148534		3407522265		107	TF	RAYMOND J MILLER #1	MECHANIC	370.0	COLUMBIA GAS TRAN
-OHIO TITAN ENERGY LTD PTNR 1979-3						RECEIVED: 09/04/81 JA: OH			
8148535		3407522266		107	TF	ATLEE J MILLER #2	MECHANIC	45.0	COLUMBIA GAS TRAN
-OHIO TITAN ENERGY 80-7						RECEIVED: 09/04/81 JA: OH			
8148546		3407522558		107	TF	#1 THEO-LEEN REALTY	HARDY	1250.0	COLUMBIA GAS TRAN
-OHIO TITAN ENERGY 80-8						RECEIVED: 09/04/81 JA: OH			
8148547		3407522559		107	TF	#2 THEO-LEEN	HARDY	950.0	COLUMBIA GAS TRAN
-OHIO TITAN ENERGY-LTD PART 1979-13						RECEIVED: 09/04/81 JA: OH			
8148544		3407523550		107	TF	#2 MELVIN MILLER	MECHANIC	750.0	COLUMBIA GAS TRAN
-PENN-OHIO ENERGY CORP						RECEIVED: 09/04/81 JA: OH			
8148548		3403124051		103		OLLIE LOWE #1	CLARK	25.0	COLUMBIA GAS TRAN
8148548		3403124051		107	TF	OLLIE LOWE #1	CLARK	25.0	COLUMBIA GAS TRAN
-PREMIER ENERGY CORP						RECEIVED: 09/04/81 JA: OH			
8148549		3407522858	D	107	TF	ROBERT ALLISON #2	RICHLAND	0.0	COLUMBIA GAS TRAN
8148550		3407523083	D	107	TF	ROBERT ALLISON #3	RICHLAND	0.0	COLUMBIA GAS TRAN
-ROWLEY & BROWN PETROLEUM CORP						RECEIVED: 09/04/81 JA: OH			
8148552		3409921193		107	TF	CANFIELD MANUFACTURING #1	CANFIELD	0.0	EAST OHIO GAS
8148551		3403520916		107	TF	CLEVELAND CATHOLIC DIOCESE #2	PARMA	10.0	COLUMBIA GAS TRAN
-STRATA EXPLORATION INC LTD PART						RECEIVED: 09/04/81 JA: OH			
8148553		3407524630	D	107	TF	#1 JAMES FLYNN	KILLBUCK	500.0	EAST OHIO GAS CO
-SUPERIOR PETROLEUM INC						RECEIVED: 09/04/81 JA: OH			
8148554A		3401320326		103		HARPER #1		0.0	TEXAS EASTERN TRA
8148554B		3401320326	D	107	TF	HARPER #1		0.0	TEXAS EASTERN TRA
-VIKING RESOURCES CORP						RECEIVED: 09/04/81 JA: OH			
8148556		3415123523		103		BOOTH-MILLER UNIT #2	PARIS	30.0	
8148556		3415123523		107	TF	BOOTH-MILLER UNIT #2	PARIS	30.0	
8148555		3415123489		103		DIERINGER UNIT #1	WAYNE	30.0	
8148555		3415123489		107	TF	DIERINGER UNIT #1	WAYNE	30.0	

VOLUME 513 PAGE 004

OKLAHOMA CORPORATION COMMISSION

JD NO	JA DKT	API NO	D	SEC	CAT	WELL NAME	FIELD NAME	PROD	PURCHASER
-AMOCO PRODUCTION CO						RECEIVED: 09/03/81 JA: OK			
8148477	10343	3504520789		103		LUANE UNIT NO 1	N CHANEY	182.0	NORTHERN NATURAL
-AN-SON CORPORATION						RECEIVED: 09/03/81 JA: OK			
8148461	12931	3501520956		102-4		TAYLOR #1	KEECHI CREEK	86.0	PRODUCERS GAS CO
-ANDOVER OIL COMPANY						RECEIVED: 09/03/81 JA: OK			
8148463	12940	3501721900		102-2		EARL MILLS #28-4A		125.0	DELHI GAS PIPELIN
8148463	12940	3501721900		103		EARL MILLS #28-4A		125.0	DELHI GAS PIPELIN
-ARCO OIL AND GAS COMPANY						RECEIVED: 09/03/81 JA: OK			
8148468	12693	3504722038		102-4		MARY ELIZABETH COOPER NO 1	SOUTH DOUGLAS	36.5	
-BLUE QUAIL ENERGY INC						RECEIVED: 09/04/81 JA: OK			
8148482	10308	3501721786		103		C M I #1	EAST YUKON S1-T11N-5W	370.0	CONOCO INC
8148481	10332	3501721620		103		MCCAULEY #1	EAST YUKON NW/4 S1-11N-5	370.0	CONOCO INC
-BUNKER EXPLORATION CO						RECEIVED: 09/04/81 JA: OK			
8148480	12034	3505120938		103		REED 1-14	SOUTH CHITWOOD	0.0	
-BURKHART PETROLEUM CORP						RECEIVED: 09/04/81 JA: OK			
8148502	12898	3504722612		102-4		NEUNDORF 1-4	S E SALT FORK	200.0	CRA INC
8148502	12898	3504722612		103		NEUNDORF 1-4	S E SALT FORK	200.0	CRA INC
-CHAMPLIN PETROLEUM COMPANY						RECEIVED: 09/04/81 JA: OK			
8148487	09721	3508321477		103		J A HEIM NO 2	CASHION	61.0	CITIES SERVICE GA
-CLARK RESOURCES INC						RECEIVED: 09/03/81 JA: OK			
8148456	10409	3507322725		103		FRANK 3-1	SOONER TREND	65.0	EASON OIL CO
-CLARK RESOURCES INC						RECEIVED: 09/04/81 JA: OK			
8148483	10257	3507322844		103		CROSSWHITE 20-1	SOONER TREND	105.0	EASON OIL CO
-COTTON PETROLEUM CORPORATION						RECEIVED: 09/03/81 JA: OK			
8148474	10337	3504321148		103		PECKHAM NO 1	S W TALOGA	210.0	PANHANDLE EASTERN
-DAVID R MORGAN						RECEIVED: 09/03/81 JA: OK			
8148455	10408	3507322853		103		JULIA #1	SOONER TREND	150.0	ONG WESTERN INC
-DEMCO OIL & GAS COMPANY						RECEIVED: 09/03/81 JA: OK			
8148473	09522	3507121682		108		FRANKLIN #1		17.8	CITIES SERVICE GA
8148472	09521	3507121938		108		HENSLEY #2		7.2	CITIES SERVICE GA
-ENERGY SERVICES INC						RECEIVED: 09/03/81 JA: OK			
8148469	12700	3515321158		102-2		GRUNEWALD #4-1		73.0	DELHI GAS PIPELIN
-ENSERCH EXPLORATION INC						RECEIVED: 09/04/81 JA: OK			
8148495	10374	3514920127		103		LESLIE HINDS NO 1-36	BURNS FLAT	0.0	NATURAL GAS PIPEL
-ENTEX INC						RECEIVED: 09/03/81 JA: OK			
8148453	10405	3508320839		103		GLADYS WISS WELL NO 1	N W RUSSELL	4.0	EASON OIL CO
-GEORGE E FEARS						RECEIVED: 09/04/81 JA: OK			
8148493	09947	3508320986		103		HAAS #1		0.0	EASON OIL CO
-HENRY H GUNGOLL ASSOCIATES						RECEIVED: 09/03/81 JA: OK			
8148462	12938	3504722677		102-4		ALICE 3-12	SOONER TREND	126.0	
-IMPERIAL PETROLEUM INC						RECEIVED: 09/03/81 JA: OK			
8148452	12971	3511721127		102-2		BREWER PRUITT NO 1	JENNINGS	352.0	MID-AMERICA GAS L
-INTERNORTH INC						RECEIVED: 09/04/81 JA: OK			
8148496	10376	3504520871		103		MCCLURE NO 1	MOCANE-LAVERNE	17.0	INTERNORTH INC
8148497	10377	3504520871		103		MCCLURE NO 1	MOCANE-LAVERNE	65.0	INTERNORTH INC
-JAKE L HAMON						RECEIVED: 09/04/81 JA: OK			
8148486	09754	3504321116		103		SANDERS NO 1-6	CESTOS (MORROW)	274.0	DELHI GAS PIPELIN
-JEFFERSON-WILLIAMS ENERGY CORP						RECEIVED: 09/03/81 JA: OK			
8148457	10411	3510320833		103		GASAWAY ESTATE #2	BILLINGS FIELD	18.0	ARCO OIL & GAS CO
-JOE M SEARS						RECEIVED: 09/04/81 JA: OK			

VOLUME 513 PAGE 005

JD NO	JA DKT	API NO	D	SEC	CAT	WELL NAME	FIELD NAME	PROD	PURCHASER
8148500	10399	3507322308		103		MARGUERITE (2) NO 1	WEST CASHION-SOONER TREN	60.0	CONOCO INC
-JOHN D TODD				RECEIVED: 09/03/81 JA: OK					
8148479	12566	3508100000		102-4		SPURR NO 1	SOUTH STROUD	70.0	KERR MCGEE
-KAISER-FRANCIS OIL COMPANY				RECEIVED: 09/03/81 JA: OK					
8148475	12238	3503920447		102-4		STEINER #1	N W HYDRO	1000.0	TRANSOK PIPELINE
8148475	12238	3503920447		103		STEINER #1	N W HYDRO	1000.0	TRANSOK PIPELINE
-L G WILLIAMS OIL COMPANY INC				RECEIVED: 09/04/81 JA: OK					
8148494	10301	3504321129		103		HAIRY NO 11-1	S E HUCHAC	0.0	
-LRF CORP				RECEIVED: 09/04/81 JA: OK					
8148485	09911	3509321858		103		FLORENCE #1	405 232-7679	940.0	DELHI GAS PIPELIN
-MOBIL OIL CORP				RECEIVED: 09/04/81 JA: OK					
8148491	10345	3513921371		103		FRANK PARKES FD INC UNIT NO 1	GUYMON-HUGOTON COUNCIL G	70.0	CITIES SERVICE GA
8148490	10346	3513921345		103		JACKSON (RNG UNIT 15) NO 2	GUYMON-HUGOTON COUNCIL G	60.0	CITIES SERVICE GA
-NATOMAS NORTH AMERICA INC				RECEIVED: 09/03/81 JA: OK					
8148465	12609	3505121106		102-2		J C JOLLY #1-7	MINCO WEST	139.0	
8148466	12610	3512920547		102-2		TAYLOR A 1-15	TAYLOR RANCH	230.0	
-OKLAND OIL CO				RECEIVED: 09/04/81 JA: OK					
8148492	08645	3512920424		103		MALES FARM #1-17	DURHAM	200.0	DELHI GAS PIPELIN
-PHILLIPS PETROLEUM COMPANY				RECEIVED: 09/03/81 JA: OK					
8148471	07202	3500702185		103		KNOWLES #2	S E COMO TONKAWA	180.0	EL PASO NATURAL G
-PHILLIPS PETROLEUM COMPANY				RECEIVED: 09/04/81 JA: OK					
8148488	09355	3509322031		103		MYRTLE A #2		0.0	PANHANDLE EASTERN
8148499	09354	3505920974		103		SMITH DD #1		0.0	
-PORTS OF CALL OIL CO				RECEIVED: 09/04/81 JA: OK					
8148489	10338	3505121065		103		WRIGHT NO 22-2	WATONGA CHICKASHA TREND	803.0	
-RICKS EXPLORATION CO				RECEIVED: 09/03/81 JA: OK					
8148454	10407	3504520847		103		MARSH 26A	N E GAGE	270.0	PANHANDLE EASTERN
-ROBERT P LAMMERTS				RECEIVED: 09/03/81 JA: OK					
8148478	12555	3504722581		102-4		SCHNEIDER #2-12	HUNTER W	0.0	CRA INC
-SENECA OIL COMPANY				RECEIVED: 09/03/81 JA: OK					
8148470	12716	3501121576		102-2		PARKER #1-3	N CANTON	330.0	PANHANDLE EASTERN
-SUNDANCE ENERGY CORP				RECEIVED: 09/03/81 JA: OK					
8148458	10417	3509321813		103		PEARL NO 12-1	RINGWOOD	49.0	PANHANDLE EASTERN
-TENNECO OIL COMPANY				RECEIVED: 09/03/81 JA: OK					
8148460	12926	3512120619		102-4		CROWL 1-15	HAILEYVILLE SW	31.9	ARKANSAS LOUISIAN
-TEXAS OIL & GAS CORP				RECEIVED: 09/03/81 JA: OK					
8148451	12959	3512920570		102-2		PATTON B #1	E ROLL	1054.0	DELHI GAS PIPELIN
8148476	10339	3513921425		103		WILLIAMS R #1	N W DOMBEY	256.0	
-UNIVERSAL RESOURCES CORPORATION				RECEIVED: 09/04/81 JA: OK					
8148484	10059	3507322425		103		MAAS #1-22	SOONER TREND	237.3	WARREN PETROLEUM
-WALKER & WITHROW INC				RECEIVED: 09/04/81 JA: OK					
8148501	10398	3501721796		103		CARY 23-2	YUKON	336.0	CONOCO
-WESLEY WEBBER				RECEIVED: 09/04/81 JA: OK					
8148498	10396	3513722587		103		SPEARS B #15	SHO-VEL-TUM	15.0	GETTY OIL CO
-WILSHIRE OIL CO OF TEXAS				RECEIVED: 09/03/81 JA: OK					
8148467	12649	3504321243		102-4		BLAINE #2	SOUTH CESTOS	110.0	MICHIGAN WISCONSI
-WOODS PETROLEUM CORPORATION				RECEIVED: 09/03/81 JA: OK					
8148459	12906	3504921533		102-4		CUNNIUS #29-1	S W ELMORE	104.0	WARREN PETROLEUM
8148464	12590	3504321228		102-4		EDWARDS #5-3	KODRAS	480.0	DELHI GAS PIPELIN

****

PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL RESOURCES

****

-ADOBE OIL & GAS CORPORATION RECEIVED: 09/03/81 JA: PA

VOLUME 513 PAGE 006

JD NO	JA DKT	API NO	D	SEC	CAT	WELL NAME	FIELD NAME	PROD	PURCHASER
8148415	8936	3706522245		103		ABIGAIL SMITH HEIRS #1-A	DUBOIS	23.0	
8148416	8937	3706522246		103		ABIGAIL SMITH HEIRS #1-B	DUBOIS	24.0	
-AMOCO PRODUCTION CO				RECEIVED: 09/03/81 JA: PA					
8148417	8928	3711120110		102-4		EDWARD E BEENER GAS UNIT WELL NO 1	NEW CENTERVILLE	285.0	
8148418	8929	3711120113		102-4		WILLIAM SCHMIDT GAS UNIT WELL NO 1	ALLEN CREEK	333.0	
-ANGERMAN ASSOCIATES INC				RECEIVED: 09/03/81 JA: PA					
8148419	7917	3706323670	D	103		MUSSER FOREST INC #2 - IND-23670	W PENNA - UPPER DEVONIAN	25.0	PEOPLES NATURAL G
-CASTLE GAS CO INC				RECEIVED: 09/03/81 JA: PA					
8148420	8960	3706323299		108		V WISNIEWSKI #1(C-347) IND-23299	YOUNG TOWNSHIP	8.8	PEOPLES NATURAL G
8148421	8961	3706323303		108		V WISNIEWSKI #2 (C-349) IND-23303	YOUNG TOWNSHIP	8.8	PEOPLES NATURAL G
-COLUMBIA GAS TRANSMISSION CORP				RECEIVED: 09/03/81 JA: PA					
8148422	8987	3705120244		103		ED & ANGELA M YODER 620628	PENNSYLVANIA S W SHALLOW	65.0	COLUMBIA GAS TRAN
-CONSOLIDATED GAS SUPPLY CORPORATION				RECEIVED: 09/03/81 JA: PA					
8148424	8965	3706326207		103		ALVIN CAIN WN-1839	MONTGOMERY TOWNSHIP	12.2	GENERAL SYSTEM PU
8148428	8193	3704700000		108		CHARLEROI MOUNTAIN CLUB WN-1424		1.2	GENERAL SYSTEM PU
8148425	8967	3703321093		103		J D TONKIN WN-1862	BURNSIDE TOWNSHIP	13.1	GENERAL SYSTEM PU
8148427	8100	3703320908		108		M J HAAG #2 WN-1698	BRADY TOWNSHIP	4.3	GENERAL SYSTEM PU
8148429	8195	3704700000		108		PENN DEPT OF FOREST & WATERS WN-15		0.6	GENERAL SYSTEM PU
8148426	6998	3703320837		108		REED C REITER WN-1713	BRADY TOWNSHIP	5.3	GENERAL SYSTEM PU
8148423	8963	3703321095		103		W R HEVENER WN-1861	BURNSIDE TOWNSHIP	348.0	GENERAL SYSTEM PU
-DORAN & ASSOCIATES INC				RECEIVED: 09/03/81 JA: PA					
8148430	8934	3703321048		102-2		J PATTERSON KA - 101	UPPER DEVONIAN SANDS	30.0	COLUMBIA GAS TRAN
8148431	8935	3706325551		103		WALTER A PIEKARSKI #1 KA - 8	UPPER DEVONIAN SANDS	30.0	PEOPLES NATURAL G
-FAIRMAN DRILLING CO				RECEIVED: 09/03/81 JA: PA					
8148432	8942	3712920508		107-TF		ANNA KUHN UNIT NO 1 F-335	BAILEY	20.0	PEOPLES NATURAL G
-FOX OIL & GAS INC				RECEIVED: 09/03/81 JA: PA					
8148433	8834	3706325977		103		BEICRINGER #1	GREEN TOWNSHIP	25.5	COLUMBIA GAS TRAN
8148438	8848	3706325876		103		FLORENCE O HARRAH #5	MONTGOMERY	25.5	COLUMBIA GAS TRAN
8148437	8847	3706325440		103		FRED GOLDEN #2	CHERRYHILL TOWNSHIP	29.2	COLUMBIA GAS TRAN
8148434	8844	3706326897		103		J GASTON #3	MONTGOMERY TWP	25.5	COLUMBIA GAS TRAN
8148435	8845	3706326141		103		J GASTON #5	MONTGOMERY	25.5	COLUMBIA GAS TRAN
8148436	8846	3706326082		103		JOHN GOLDEN #1	CHERRYHILL	25.5	COLUMBIA GAS TRAN
-HUTTERIAN SOCIETY OF BROTHERS				RECEIVED: 09/03/81 JA: PA					
8148439	8994	3712521136		108		J & A HORNING #1		9.0	COLUMBIA GAS OF P
-J & J ENTERPRISES INC				RECEIVED: 09/03/81 JA: PA					
8148440	8932	3706326111		103		DAVID L JOYCE #2	BURRELL	0.0	PEOPLES NATURAL G
8148441	8933	3706325927		103		INDIANA CO VO-TECH SCHOOL #1	WHITE	0.0	COLUMBIA GAS TRAN
-LAUREL ENERGY CORP				RECEIVED: 09/03/81 JA: PA					
8148443	8990	3706324643		108		SOULCHIN #1 IND-24643	SOULCHIN	10.0	PEOPLES NATURAL G
8148442	8989	3706324644		108		SOULCHIN #2 IND-24644	SOULCHIN	10.0	PEOPLES NATURAL G
-MOM ACCOUNT				RECEIVED: 09/03/81 JA: PA					
8148444	8947	3706325807		107-TF		MATEER COAL CO #2	UPPER DEVONIAN SANDS	20.0	PEOPLES NATURAL G
-MITCHELL ENERGY CORPORATION				RECEIVED: 09/03/81 JA: PA					
8148445	8968	3703920200		103		MILLER #1-74	NEW LEBANON - MEDINA & W	0.0	
-PEACOCK DOVERSPIKE GAS VENTURE-1979				RECEIVED: 09/03/81 JA: PA					
8148446	8991	3700522275		108		MARSHALL #1 ARM-22275	MARSHALL	7.2	PEOPLES NATURAL G
-VICTORY DEVELOPMENT CO				RECEIVED: 09/03/81 JA: PA					
8148447	8442	3700521808		108		ST CLAIR ARM-21808 R	ST CLAIR	3.9	PEOPLES NATURAL G
-WAINOCO OIL & GAS CO				RECEIVED: 09/03/81 JA: PA					
8148449	8939	3703920978		102-2		G B HEINZELMAN NO 1 (W-87) WELL	ATHENS (BLOOMFIELD)	18.0	COLUMBIA GAS TRAN
8148448	8936	3703921097		102-2		G B HEINZELMAN NO 2 (W-88)	ATHENS (BLOOMFIELD)	6.0	COLUMBIA GAS TRAN
**********									
** BUREAU OF INDIAN AFFAIRS, OSAGE AGENCY, PAWHUSKA,OK									
**********									
-BRADY BROTHERS				RECEIVED: 09/04/81 JA: OK 8					
8148581		3511300000		103		OSAGE - CULVER #12A	CULVER LEASE	182.5	AJAX OIL & GAS CO
-CROWN CENTRAL PETROLEUM CORP				RECEIVED: 09/04/81 JA: OK 8					
8148580		3511300000		103		ST JOHN KENNEDY #6	DALTON DOME	10.0	PHILLIPS PETROLEU
8148579		3511300000		103		ST JOHN-KENNEDY #5	DALTON DOME	8.0	PHILLIPS PETROLEU

BILLING CODE 6450-85-C

The above notices of determination were received from the indicated jurisdictional agencies by the Federal Energy Regulatory Commission pursuant to the Natural Gas Policy Act of 1978 and 18 CFR 274.104. Negative determinations are indicated by a "D" before the section code. Estimated annual production (PROD) is in million cubic feet (MMCF). An (*) before the Control (JD) number denotes additional purchasers listed at the end of the notice.

The applications for determination are available for inspection except to the extent such material is confidential under 18 CFR 275.206, at the Commission's Division of Public Information, Room 1000, 825 North Capitol St., Washington, D.C. Persons objecting to any of these determinations may, in accordance with 18 CFR 275.203 and 275.204, file a protest with the Commission within fifteen days after publication of notice in the **FEDERAL REGISTER.**

Categories within each NGPA section are indicated by the following codes:

Section 102–1: New OCS lease
102–2: New well (2.5 mile rule)
102–3: New well (1000 ft rule)
102–4: New onshore reservoir
102–5: New reservoir on old OCS lease

Section 107–DP 15,000 feet or deeper
107–GB: Geopressured brine
107–CS: Coal seams
107–DV: Devonian shale
107–PE: Production enhancement
107–TF: New tight formation
107–RT: Recompletion tight formation

Section 108: Stripper well
108–SA: Seasonally affected
108–ER: Enhanced recovery
108–PB: Pressure buildup

Kenneth F. Plumb,

Secretary.

[FR Doc. 81–28503 Filed 9–30–81; 8:45 am]

BILLING CODE 6450–85–M

Determinations by Jurisdictional Agencies Under the Natural Gas Policy Act of 1978

Issued: September 24, 1981

JD NO	JA DKT	API NO	D	SEC	CAT	WELL NAME	FIELD NAME	PROD	PURCHASER
KANSAS CORPORATION COMMISSION									
-BRADEN-DEEM INC						RECEIVED: 09/08/81 JA: KS			
8148582	K 79-0014	1500700000		108	-SA	WHEAT B-1	AETNA	16.8	KANSAS POWER & LI
OKLAHOMA CORPORATION COMMISSION									
-AN-SON CORPORATION						RECEIVED: 09/08/81 JA: OK			
8148599	10425	3505121064		103		OEKERMAN #1-33	S W NORGE	23.0	PHILLIPS GAS CO
-ANDOVER OIL COMPANY						RECEIVED: 09/08/81 JA: OK			
8148584	10439	3501721772		103		GLOBE LIFE K #35-3		180.0	DELHI GAS PIPELIN
-BUNKER EXPLORATION CO						RECEIVED: 09/09/81 JA: OK			
8148604	13678	3505120924		107	-DP	BAILEY 1-36	KNOX	0.0	EL PASO NATURAL G
-CITIES SERVICE COMPANY						RECEIVED: 09/08/81 JA: OK			
8148598	11433	3513921424		103		INTERSTATE A NO 15 (CHEROKEE)	S RICHLAND CENTER AREA	756.0	NORTHERN NATURAL
-CITIES SERVICE COMPANY						RECEIVED: 09/09/81 JA: OK			
8148605	13022	3500721961		102	-2	DIRKS A NO 1	EAST LORENA	0.0	WESTERN GAS INTER
-DAWN ENERGY CO						RECEIVED: 09/09/81 JA: OK			
8148608	10579	3515321140		102	-2	YOUNG ESTATE #1-12	SOUTHWEST SHARON	397.9	
-F C D OIL CORP						RECEIVED: 09/08/81 JA: OK			
8148591	10593	3504722498		102	-4	MONTGOMERY 1-16	KREMLIN	160.6	CRA INC
-JAMES E BARNETT						RECEIVED: 09/09/81 JA: OK			
8148611	10454	3514300000		103		BUTLER 2-A	EAST OF BIRD CREEK FIELD	70.0	PHILLIPS PETROLEU
8148610	10455	3514320941		103		BUTLER 3-A API NO 143 20941	EAST OF BIRD CREEK FIELD	36.0	PHILLIPS PETROLEU
-KAISER-FRANCIS OIL COMPANY						RECEIVED: 09/09/81 JA: OK			
8148609	10459	3509322053		103		LONG #2		60.0	UNION TEXAS PETRO
-LADD PETROLEUM CORPORATION						RECEIVED: 09/08/81 JA: OK			
8148600	10313	3509321485		103		EARLY #1	RINGWOOD	100.5	PANHANDLE EASTERN
-MEWBOURNE OIL COMPANY						RECEIVED: 09/08/81 JA: OK			
8148603	13066	3504520935		102	-4	BRANDENBURG UNIT #1	BRANDENBURG	20.0	
8148585	10422	3513921427		103		MATTINA UNIT #1	HUGCTCN KRIDER FIELD	50.0	
8148595	13065	3513921372		102	-3	VAUGHN UNIT #1	VAUGHN UNIT	50.0	
-MUSHROOM OIL CO						RECEIVED: 09/08/81 JA: OK			
8148597	12401	3514722309		102	-2	MOORE E NO 10 14722309	BARTLESVILLE-DEWEY	12.0	CITIES SERVICE GA
8148596	12462	3514722145		102	-2	MOORE E NO 9 14722145	BARTLESVILLE-DEWEY	12.0	CITIES SERVICE GA
-NATIONAL COOP REFINERY ASSOC						RECEIVED: 09/08/81 JA: OK			
8148586	10419	3509322085		103		RATZLAFF #3	ORIENTA	690.0	UNION TEXAS PETRO
-PIONEER PRODUCTION CORP						RECEIVED: 09/08/81 JA: OK			
8148583	12148	3512920592		107	-DP	L R HERSHBERGER #1-4	REYDON	2000.0	
-RALPH E PLOTNER OIL & GAS INVEST IN						RECEIVED: 09/08/81 JA: OK			
8148589	10441	3501721746		103		MUEGGENBORG NO 1-14	OKARCHE	97.2	PHILLIPS PETROLEU
8148590	10440	3501721744		103		NICHOLSON #1-15	YUKON	72.0	MOBIL OIL CORP
-RED EAGLE OIL CO						RECEIVED: 09/08/81 JA: OK			

VOLUME 514 PAGE 002

JD NO	JA DKT	API NO	D	SEC	CAT	WELL NAME	FIELD NAME	PROD	PURCHASER
8148601	10247	3509322068		103		HENRY NO 1	N W FAIRVIEW	182.0	PANHANDLE EASTERN
-ROYAL OIL & GAS CORPORATION				RECEIVED: 09/08/81 JA: OK					
8148593	10446	3510321201		103		JAMES C ATHERTON A #2 (WAS B #1)	WEST RED ROCK	25.0	ARCO OIL & GAS CO
8148592	10447	3510321164		103		RICHARD C SULLINS #1	WEST RED ROCK	7.0	ARCO OIL & GAS CO
-SPECTRA ENERGY CORP				RECEIVED: 09/08/81 JA: OK					
8148602	09269	3504720579		103		MIESNER NO 1	SOONER TREND	100.0	GRACE PETROLEUM C
-SUN OIL COMPANY (DELAWARE)				RECEIVED: 09/08/81 JA: OK					
8148588	10442	3505920791		103		A E BOYD NO 2	MOCANE-LAVERNE	478.0	MICHIGAN WISCONSI
8148587	10443	3504500000		108		F W MOORE NO 1	S PEEK	9.0	PANHANDLE EASTERN
8148594	10444	3501900000		108		MAUD MOORE NO 2	SHO-VEL-TUM	0.4	MOBIL OIL CORP
-TEXAS OIL & GAS CORP				RECEIVED: 09/09/81 JA: OK					
8148607	11995	3500722019		102-4		DUERSON #1	DOMBEY	68.0	UNCONTRACTED
-VIERSEN & COCHRAN				RECEIVED: 09/09/81 JA: OK					
8148606	12995	3501721984		103		SPURLIN #3-14	EAST EL RENO	150.0	DELHI GAS PIPELIN
**********									
PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL RESOURCES									
**********									
-ANGERMAN ASSOCIATES INC				RECEIVED: 09/11/81 JA: PA					
8148612	7695	3712921243		103		LEWIS M PIPER #2 WES-21243	W PA - UPPER DEVONIAN SA	35.0	PEOPLES NATURAL G
-APPALACHIAN ENERGY INC				RECEIVED: 09/11/81 JA: PA					
8148682	9066	3704921271		103		ARCHIE BISHOP #2 AE-190	UPPER DEVONIAN SANDS	0.0	COLUMBIA GAS TRAN
-CABOT OIL & GAS CORP				RECEIVED: 09/11/81 JA: PA					
8148665	9040	3703920741		102-2		E & M KISER #1	UNION	50.0	TENNESSEE GAS PIP
8148666	9042	3703921118		102-2		GLEN FREYERMUTH #1	UNION	50.0	TENNESSEE GAS PIP
8148667	9044	3703921186		102-2		NEAL LANG #2	RANDOLPH	50.0	TENNESSEE GAS PIP
8148668	9046	3703921128		102-2		RICHARD DUNN #1	EAST FAIRFIELD	50.0	TENNESSEE GAS PIP
-CASTLE GAS CO INC				RECEIVED: 09/11/81 JA: PA					
8148681	9062	3706323424		108		G SMYERS #1 (PNG-5063) IND-23424	GRANT TOWNSHIP	4.0	PEOPLES NATURAL G
8148680	9061	3706323989		108		J S STEWART #1 (C-464) IND-23989	YOUNG TOWNSHIP	17.0	INDUSTRIAL ENERGY
-CONSOLIDATED GAS SUPPLY CORPORATION				RECEIVED: 09/11/81 JA: PA					
8148633	9003	3703321095		102-2		W R HEVENER WN-1861	BURNSIDE TOWNSHIP	348.0	GENERAL SYSTEM PU
-DORAN & ASSOCIATES INC				RECEIVED: 09/11/81 JA: PA					
8148664	9036	3706326152		103		JOHN R GETTY KA - 67	UPPER DEVONIAN SANDS	30.0	COLUMBIA GAS TRAN
-FAIRMAN DRILLING CO				RECEIVED: 09/11/81 JA: PA					
8148620	8502	3706322919		108		CLAIR PARK NO 1 F-1255	WILLET	15.0	PEOPLES NATURAL G
8148615	8497	3706321845		108		EDWARD V & D M HARRIS NO 1 F-708	WILLET	15.0	PEOPLES NATURAL G
8148617	8499	3706322317		108		FRED JEWART NO 1 F-922	WILLET	15.0	PEOPLES NATURAL G
8148616	8498	3706321848		108		J T & DOLORES L EDELMAN NO 1 F-707	WILLET	15.0	PEOPLES NATURAL G
8148613	8495	3706322834		108		L A ROBIN NO 1 F-1186	WILLET	15.0	PEOPLES NATURAL G
8148619	8501	3706322228		108		NORMAN L BREWER NO 1 F-852	WILLET	15.0	PEOPLES NATURAL G
8148614	8496	3706321824		108		R E BENNINGER NO 1 F-698	WILLET	15.0	PEOPLES NATURAL G
8148618	8500	3706322833		108		VERA L KEPNER NO 1 F-1187	WILLET	15.0	PEOPLES NATURAL G
-I F BITTINGER & R E BARRETT				RECEIVED: 09/11/81 JA: PA					
8148670	9049	3700500000		108		LAURA PONTIOUS #1		1.5	PEOPLES NATURAL G
8148669	9048	3700500000		108		LAURA PONTIOUS #2		1.5	PEOPLES NATURAL G
-J & J-ENTERPRISES INC				RECEIVED: 09/11/81 JA: PA					
8148630	8930	3706522147		103		F S BIZOUSKY #1	PUNXSUTAWNEY BORO	0.0	CONSOLIDATED GAS
8148631	8931	3706522148		103		P BEATTY #1	PUNXSUTAWNEY BORO	0.0	CONSOLIDATED GAS
-MERIDIAN EXPLORATION CORP				RECEIVED: 09/11/81 JA: PA					
8148628	8919	3704921209		102-2		ARDEN S STAFFORD #539-1	EDINBORO NORTH	30.0	COLUMBIA GAS TRAN
8148624	8912	3704921249		102-2		C MCCLEARY #556-1	EDINBORO NORTH	30.0	COLUMBIA GAS TRAN
8148625	8914	3704921258		102-2		EDGAR HALL #553-1	EDINBORO NORTH	30.0	COLUMBIA GAS TRAN
8148626	8917	3704921257		102-2		EDINBORO GRAVEL 559-1	EDINBORO NORTH	30.0	NATIONAL FUEL GAS

VOLUME 514 PAGE 003

JD NO	JA DKT	API NO	D SEC CAT	WELL NAME	FIELD NAME	PROD	PURCHASER
8148627	8918	3704921247	102-2	G REEMSNYDER #550-1	EDINBORO NORTH	30.0	COLUMBIA GAS TRAN
8148623	8911	3704921217	102-2	LEWIS G SKELTON #548-1	EDINBORO NORTH	30.0	COLUMBIA GAS TRAN
8148629	8920	3704921218	102-2	RALPH L BATCHELOR #549-1	EDINBORO NORTH	30.0	COLUMBIA GAS TRAN
-MID-EAST OIL CO			RECEIVED: 09/11/81 JA: PA				
8148679	9060	3706521629	108	JAMES L SHAFFER ET UX #1	REYNOLDSVILLE	9.5	CONSOLIDATED GAS
8148678	9059	3706521640	108	JAMES L SHAFFER ET UX #2	REYNOLDSVILLE	9.5	CONSOLIDATED GAS
-MITCHELL ENERGY CORPORATION			RECEIVED: 09/11/81 JA: PA				
8148675	9055	3703920943	103	BLOOD #1-75	LINESVILLE - MEDINA SAND	35.0	
8148677	9058	3703920947	103	BLOOD #2-93	LINESVILLE - MEDINA SAND	35.0	
8148673	9052	3706320940	103	GESSNER #2-84	NORRISVILLE - MEDINA & W	0.0	
8148672	9051	3703920941	103	HUYA #1-76	MOSIERTOWN - MEDINA SAND	35.0	
8148674	9054	3706300000	103	VAREE #1-68	NORRISVILLE - MEDINA & W	35.0	
8148676	9057	3703900000	103	WORLEY #1-77	MOSIERTOWN - MEDINA SAND	0.0	
-MONROE RESOURCES LTD			RECEIVED: 09/11/81 JA: PA				
8148671	9050	3712328589	102-2	A GOURLEY NO 1	LOTTSVILLE	38.0	COLUMBIA GAS TRAN
-VICTORY DEVELOPMENT CO			RECEIVED: 09/11/81 JA: PA				
8148621	8658	3700500000	108	PATRICK #1	PATRICK	3.5	PEOPLES NATURAL G
8148622	8665	3700500000	108	SHAEFFER	SHAEFFER	8.0	PEOPLES NATURAL G
-WAINOCO OIL & GAS CO			RECEIVED: 09/11/81 JA: PA				
8148632	8999	3703920822	102-2	ANTHONY C & IRENE H IZBICKI NO 1	ATHENS	5.0	COLUMBIA GAS TRAN
8148683	9068	3703920887	102-2	ELIZABETH WM & RICHARD ROEDER NO 1	ATHENS (ROME)	50.0	COLUMBIA GAS TRAN
-ZAMA PETROLEUM INC			RECEIVED: 09/11/81 JA: PA				
8148654	9026	3705900000	108	A J PHILLIPS & E E PHILLIPS #1	KUGHNTOWN	3.3	PEOPLES NATURAL G
8148657	9029	3705900000	108	ABRAHAM & FRANCES TUSTIN #1	KUGHNTOWN	3.3	PEOPLES NATURAL G
8148646	9018	3705900000	108	ALBERT ADDLEMAN		2.0	PEOPLES NATURAL G
8148640	9011	3705900000	108	B F MOORE		3.4	PEOPLES NATURAL G
8148653	9025	3705900000	108	BELLE C STEWART	KUGHNTOWN	3.3	PEOPLES NATURAL G
8148639	9010	3705900000	108	BERT WISE #1		21.3	PEOPLES NATURAL G
8148655	9027	3705900000	108	E D & LIDE C MAPEL #1	KUGHNTOWN	3.3	PEOPLES NATURAL G
8148651	9023	3705900000	108	ELISHA RINEHART #6	KUGHNTOWN	2.9	PEOPLES NATURAL G
8148637	9007	3705900000	108	GEO HOSKINSON #1	NEW FREEPORT	2.4	EQUITABLE GAS CO
8148636	9006	3705900000	108	GEO HOSKINSON #2	NEW FREEPORT	2.4	EQUITABLE GAS CO
8148641	9012	3705900000	108	GEORGE RINEHART		7.0	PEOPLES NATURAL G
8148643	9014	3705900000	108	H R KNIGHT #1		3.4	PEOPLES NATURAL G
8148650	9022	3705900000	108	HARRISON ULLOM #2	NETTLE HILL	2.9	PEOPLES NATURAL G
8148659	9031	3705900000	108	J L & ALICE CLARK WELL #1	KUGHNTOWN	3.3	PEOPLES NATURAL G
8148662	9034	3705900000	108	J S ORNDOFF & ELLA ORNDOFF #1	KUGHNTOWN	3.3	PEOPLES NATURAL G
8148656	9028	3705900000	108	J T KNIGHT & MARY E KNIGHT #2	KUGHNTOWN	3.3	PEOPLES NATURAL G
8148660	9032	3705900000	108	JACOB & ELLA SHRIVER	KUGHNTOWN	3.3	PEOPLES NATURAL G
8148649	9021	3705900000	108	LEMMON #1	NETTLE HILL	3.0	PEOPLES NATURAL G
8148648	9020	3705900000	108	LEMMON #2	NETTLE HILL	3.0	PEOPLES NATURAL G
8148647	9019	3705900000	108	MAIN OR CLOVIS WELL		4.0	PEOPLES NATURAL G
8148642	9013	3705900000	108	PARRY		4.4	PEOPLES NATURAL G
8148663	9035	3705900000	108	PETER COLE #2	KUGHNTOWN	3.3	PEOPLES NATURAL G
8148645	9016	3705900000	108	SMITH #1		3.9	PEOPLES NATURAL G
8148644	9015	3705900000	108	SMITH #2		3.9	PEOPLES NATURAL G
8148661	9033	3705900000	108	T J & R HUFFMAN	KUGHNTOWN	3.3	PEOPLES NATURAL G
8148658	9030	3705900000	108	T L J & M A GARRISON	KUGHNTOWN	3.3	PEOPLES NATURAL G
8148638	9009	3705900000	108	W L SELLERS #1		3.4	PEOPLES NATURAL G
8148635	9005	3705900000	108	WILLIAM BRADLEY #1	NEW FREEPORT	2.7	EQUITABLE GAS CO
8148634	9004	3705900000	108	WILLIAM BRADLEY #2	NEW FREEPORT	2.7	EQUITABLE GAS CO
8148652	9024	3705900000	108	WILLIAM COLE	KUGHNTOWN	4.0	PEOPLES NATURAL G

BILLING CODE 6450-85-C

The above notices of determination were received from the indicated jurisdictional agencies by the Federal Energy Regulatory Commission pursuant to the Natural Gas Policy Act of 1978 and 18 CFR 274.104. Negative determinations are indicated by a "D" before the section code. Estimated annual production (PROD) is in million cubic feet (MMCF). An (*) before the Control (JD) number denotes additional purchasers listed at the end of the notice.

The applications for determination are available for inspection except to the extent such material is confidential under 18 CFR 275.206, at the Commission's Division of Public Information, Room 1000, 825 North Capitol St., Washington, D.C. Persons objecting to any of these determinations may, in accordance with 18 CFR 275.203 and 275.204, file a protest with the Commission within fifteen days after publication of notice in the Federal Register.

Categories within each NGPA section are indicated by the following codes:

Section 102-1: New OCS lease
102-2: New well (2.5 mile rule)
102-3: New well (1,000 ft. rule)
102-4: New onshore reservoir
102-5: New reservoir on old OCS lease

Section 107-DP: 15,000 feet or deeper
107-GB: Geopressured brine
107-CS: Coal seams
107-DV: Devonian shale
107-PE: Production enhancement
107-TF: New tight formation
107-RT: Recompletion tight formation

Section 108: Stripper well
108-SA: Seasonally affected
108-ER: Enhanced recovery
108-PB: Pressure buildup

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-28564 Filed 9-30-81; 8:45 am]

BILLING CODE 6450-85-M

[Volume 512]

Determinations by Jurisdictional Agencies Under the Natural Gas Policy Act of 1978

Issued: September 24, 1981

JD NO	JA DKT	API NO	D	SEC	CAT	WELL NAME	FIELD NAME	PROD	PURCHASER
ALABAMA OIL & GAS BOARD									
-GRACE PETROLEUM CORPORATION				RECEIVED: 09/03/81 JA: AL					
8148411	8-21-8112PD	0105720243		102-4		C L BURROW 29-13	MUSGROVE CREEK	0.0	
8148407	8-21-811PD	0107520342		102-4		FRANKS 2-15	NORTH BLOWHORN CREEK	0.0	SOUTHERN NATURAL
-HUGHES & HUGHES				RECEIVED: 09/03/81 JA: AL					
8148410	8-21-8111PD	0107520344		102-4		ELSIE WALLACE 34-16 NO 1	NORTH BLOWHORN CREEK	44.5	
8148409	8-21-8110PD	0107520340		102-4		SELMER WOODS 35-13 NO 1	NORTH BLOWHORN CREEK	69.0	
-MOON & HINES				RECEIVED: 09/03/81 JA: AL					
8148408	8-21-516PD	0105720222		102-4		LANGSTON 31-7 NO 1	BLUFF	438.0	SOUTHERN NATURAL
-MOSBACHER PRODUCTION CO				RECEIVED: 09/03/81 JA: AL					
8148412	81-83 PD	0105320151		107-DP		POWELL GAS UNIT NO 19-4	FLOMATON	240.0	UNITED GAS PIPELI
-PRUET PRODUCTION CO				RECEIVED: 09/03/81 JA: AL					
8148413	8-21-8114PD	0107520316		102-4		COATS 10-9 NO 2	BLOWHORN CREEK	0.0	SOUTHERN NATURAL
-SKELTON OPERATING CO INC.				RECEIVED: 09/03/81 JA: AL					
8148414	8-21-8115PD	0107520348		103		S H GILMER 18-15 NO 5	FAIRVIEW	0.0	NORTHWEST ALABAMA
-TRIAD OIL & GAS CO INC				RECEIVED: 09/03/81 JA: AL					
8148406	7-2-819PD	0107520326		102-4		COATS 29-15 NO 1 WELL	BEAVERTON FIELD	600.0	SOUTHERN NATURAL
LOUISIANA OFFICE OF CONSERVATION									
-PRIMOS PRODUCTION				RECEIVED: 09/03/81 JA: LA					
8148319	81-1694	1711122431		108		PETRO LEWIS E NICHOLS #1	MONROE	9.5	PETRO LEWIS FUNDS
8148313	81-1690	1711122832		108		PETRO LEWIS UNION POWER #8	MONROE	5.8	PETRO LEWIS FUNDS
-PRIMOS PRODUCTION CO				RECEIVED: 09/03/81 JA: LA					
8148312	81-1687	1707321456		108		PETRO LEWIS CONS CARBON #2	MONROE	6.2	PETRO LEWIS FUNDS
8148310	81-1683	1707321618		108		PETRO LEWIS DARBONNE #1	MONROE	13.7	PETRO LEWIS FUNDS
8148320	81-1695	1711122433		108		PETRO LEWIS E NICHOLS #4	MONROE	9.5	PETRO LEWIS FUNDS
8148322	81-1696	1711122782		108		PETRO LEWIS E NICHOLS #5	MONROE	9.5	PETRO LEWIS FUNDS
8148307	81-1688	1711122780		108		PETRO LEWIS FROST LUMBER #14	MONROE	6.4	PETRO LEWIS FUNDS
8148308	81-1689	1711122881		108		PETRO LEWIS FROST LUMBER #4	MONROE	14.8	PETRO LEWIS FUNDS
8148318	81-1693	1711122401		108		PETRO LEWIS NOLAN HEIRS #2	MONROE GAS FIELD	15.8	PETRO LEWIS FUNDS
8148316	81-1686	1711122367		108		PETRO LEWIS PENNZOIL FEE 65 #4	MONROE	16.3	PETRO LEWIS FUNDS
8148309	81-1682	1707321624		108		PETRO LEWIS S R WALL #2	MONROE	11.9	PETRO LEWIS FUNDS
8148306	81-1687	1707321623		108		PETRO LEWIS SR WALL #1	MONROE	11.9	PETRO LEWIS FUNDS
8148314	81-1691	1711122833		108		PETRO LEWIS UNION POWER #9	MONROE	5.8	PETRO LEWIS FUNDS
8148311	81-1685	1711122373		108		PETRO-LEWIS PENNZOIL FEE 65 #3	MONROE	16.3	PETRO LEWIS FUNDS
8148315	81-1692	1711122834		108		PETRO-LEWIS UNION POWER #12	MONROE	5.8	PETRO LEWIS FUNDS
-PRIMOS-PENNZOIL JV				RECEIVED: 09/03/81 JA: LA					
8148348	81-1776	1707321254		108		A BAYLES #1	MONROE	8.6	UNITED GAS PIPELI
8148346	81-1772	1707321176		108		ARENT #1	MONROE	12.8	UNITED GAS PIPELI
8148382	81-1773	1707321186		108		ARENT #3	MONROE	12.8	UNITED GAS PIPELI
8148352	81-1775	1707321454		108		ARENT #6	MONROE	12.8	UNITED GAS PIPELI

VOLUME 512 PAGE 002

JD NO	JA DKT	API NO	D	SEC	CAT	WELL NAME	FIELD NAME	PROD	PURCHASER
8148351	81-1774	1707321177		108		ARENT NO 5	MONROE	12.8	UNITED GAS PIPELI
8148333	81-1703	1707672144		108		CROSSETT TIMBER & DEVELOPMENT CO #1	MONROE	11.2	UNITED GAS PIPE L
8148334	81-1704	1707621445		108		CROSSETT TIMBER & DEVELOPMENT CO 2	MONROE	11.2	UNITED GAS PIPELI
8148342	81-1764	1707321165		108		D ARBONNE CO #1	MONROE	2.8	UNITED GAS PIPELI
8148343	81-1765	1707321166		108		DARBONNE CO #2	MONROE	2.8	UNITED GAS PIPELI
8148344	81-1770	1707321255		108		FEE 135 #1	MONROE	3.0	UNITED GAS PIPELI
8148345	81-1771	1707321197		108		FEE 136 #1	MONROE	11.1	UNITED GAS PIPELI
8148400	81-1751	1707321203		108		FEE 136 #2	MONROE	11.1	UNITED GAS PIPELI
8148401	81-1752	1707321198		108		FEE 136 #3	MONROE	11.1	UNITED GAS PIPELI
8148356	81-1753	1707321526		108		FEE 136 #4	MONROE	11.1	UNITED GAS PIPELI
8148402	81-1754	1707321215		108		FEE 523 #1	MONROE	15.7	UNITED GAS PIPELI
8148347	81-1766	1707321442		108		FEE 53 #1	MONROE	5.9	UNITED GAS PIPELI
8148339	81-1767	1707321206		108		FEE 55 #1	MONROE	15.7	UNITED GAS PIPELI
8148340	81-1768	1707321483		108		FEE 55 #2	MONROE	15.7	UNITED GAS PIPELI
8148353	81-1769	1707321473		108		FEE 55 #3	MONROE	15.7	UNITED GAS PIPE L
8148379	81-1729	1706721593		108		FEE 71 NO 2	MONROE	2.5	UNITED GAS PIPELI
8148403	81-1755	1706721361		108		GEORGIA PACIFIC C #16	MONROE	9.6	UNITED GAS PIPELI
8148404	81-1756	1706721362		108		GEORGIA PACIFIC C #17	MONROE	9.6	UNITED GAS PIPELI
8148338	81-1757	1706721352		108		GEORGIA PACIFIC C #18	MONROE	9.6	UNITED GAS PIPELI
8148329	81-1758	1706721380		108		GEORGIA PACIFIC C #21	MONROE	12.5	UNITED GAS PIPELI
8148330	81-1759	1706721442		108		GEORGIA PACIFIC C #22	MONROE	9.6	UNITED GAS PIPELI
8148335	81-1760	1706721437		108		GEORGIA PACIFIC C #24	MONROE	12.5	UNITED GAS PIPELI
8148336	81-1761	1706721449		108		GEORGIA PACIFIC C #25	MONROE	11.2	UNITED GAS PIPELI
8148393	81-1741	1706721377		108		GEORGIA PACIFIC C #26	MONROE	7.7	UNITED GAS PIPELI
8148388	81-1735	1706721450		108		GEORGIA PACIFIC C #27	MONROE	12.5	UNITED GAS PIPELI
8148389	81-1736	1706721379		108		GEORGIA PACIFIC C #28	MONROE	12.5	UNITED GAS PIPELI
8148390	81-1737	1706721378		108		GEORGIA PACIFIC C #29	MONROE	12.5	UNITED GAS PIPELI
8148380	81-1730	1706721483		108		GEORGIA PACIFIC C #31	MONROE	9.6	UNITED GAS PIPELI
8148381	81-1731	1706721484		108		GEORGIA PACIFIC C #32	MONROE	12.5	UNITED GAS PIPELI
8148376	81-1732	1706721485		108		GEORGIA PACIFIC C #33	MONROE	9.6	UNITED GAS PIPELI
8148375	81-1733	1706721589		108		GEORGIA PACIFIC C #34	MONROE	9.6	UNITED GAS PIPELI
8148378	81-1734	1706721590		108		GEORGIA PACIFIC C #35	MONROE	12.5	UNITED GAS PIPELI
8148385	81-1738	1706721482		108		GEORGIA PACIFIC C-30	MONROE	9.6	UNITED GAS PIPELI
8148326	81-1706	1706721365		108		GEORGIA PACIFIC D #1	MONROE	12.5	UNITED GAS PIPELI
8148358	81-1713	1706721381		108		GEORGIA PACIFIC D #10	MONROE	11.2	UNITED GAS PIPE L
8148359	81-1714	1706721372		108		GEORGIA PACIFIC D #11	MONROE	12.5	UNITED GAS PIPELI
8148366	81-1715	1706721373		108		GEORGIA PACIFIC D #12	MONROE	12.5	UNITED GAS PIPELI
8148367	81-1716	1706721374		108		GEORGIA PACIFIC D #13	MONROE	12.5	UNITED GAS PIPELI
8148368	81-1717	1706721375		108		GEORGIA PACIFIC D #14	MONROE	12.5	UNITED GAS PIPELI
8148363	81-1718	1706721454		108		GEORGIA PACIFIC D #15	MONROE	12.5	UNITED GAS PIPE L
8148364	81-1719	1706721452		108		GEORGIA PACIFIC D #16	MONROE	12.5	UNITED GAS PIPE L
8148365	81-1720	1706721455		108		GEORGIA PACIFIC D #17	MONROE	12.5	UNITED GAS PIPELI
8148305	81-1721	1706721146		108		GEORGIA PACIFIC D #18	MONROE	12.5	UNITED GAS PIPELI
8148323	81-1697	1706721465		108		GEORGIA PACIFIC D #19	MONROE	11.2	UNITED GAS PIPELI
8148355	81-1707	1706721366		108		GEORGIA PACIFIC D #2	MONROE	12.5	UNITED GAS PIPELI
8148354	81-1708	1706721369		108		GEORGIA PACIFIC D #3	MONROE	12.5	UNITED GAS PIPELI
8148362	81-1709	1706721447		108		GEORGIA PACIFIC D #4	MONROE	12.5	UNITED GAS PIPELI
8148360	81-1710	1706721371		108		GEORGIA PACIFIC D #5	MONROE	11.2	UNITED GAS PIPELI
8148361	81-1711	1706721417		108		GEORGIA PACIFIC D #6	MONROE	11.2	UNITED GAS PIPELI
8148357	81-1712	1706721368		108		GEORGIA PACIFIC D #7	MONROE	11.2	UNITED GAS PIPELI
8148324	81-1698	1706721475		108		GEORGIA PACIFIC D-20	MONROE	8.1	UNITED GAS PIPELI
8148317	81-1699	1706721478		108		GEORGIA PACIFIC D-21	MONROE	11.2	UNITED GAS PIPELI
8148327	81-1700	1706721476		108		GEORGIA PACIFIC D-22	MONROE	11.2	UNITED GAS PIPELI

VOLUME 512 PAGE 003

JD NO	JA DKT	API NO	D	SEC	CAT	WELL NAME	FIELD NAME	PROD	PURCHASER
8148328	81-1701	1706721592		108		GEORGIA PACIFIC D#23	MONROE	11.2	UNITED GAS PIPELI
8148321	81-1702	1706721522		108		GEORGIA PACIFIC E #1	MONROE	8.1	UNITED GAS PIPE L
8148332	81-1782	1707321216		108		H C COLE #2	MONROE	1.9	UNITED GAS PIPELI
8148337	81-1762	1707321214		108		H C COLE #3	MONROE	7.6	UNITED GAS PIPELI
8148386	81-1739	1711121940		108		HAILE BROS #1	MONROE	8.1	UNITED GAS PIPELI
8148387	81-1740	1711121902		108		J THOMAS #1	MONROE	10.2	UNITED GAS PIPELI
8148331	81-1781	1707321188		108		JOHNSON #1	MONROE	4.4	UNITED GAS PIPELI
8148405	81-1750	1707321126		108		LIEBER #1	MONROE	4.1	UNITED GAS PIPELI
8148391	81-1745	1707321260		108		LIEBER #10	MONROE	4.1	UNITED GAS PIPELI
8148396	81-1744	1707321260		108		LIEBER #10-D	MONROE	4.1	UNITED GAS PIPE L
8148395	81-1743	1707321277		108		LIEBER #11	MONROE	4.1	UNITED GAS PIPELI
8148394	81-1742	1707321277		108		LIEBER #11-D	MONROE	4.1	UNITED GAS PIPELI
8148397	81-1749	1707321127		108		LIEBER #2	MONROE	4.1	UNITED GAS PIPELI
8148399	81-1748	1707321287		108		LIEBER #4	MONROE	4.1	UNITED GAS PIPELI
8148398	81-1747	1707321164		108		LIEBER #5	MONROE	4.1	UNITED GAS PIPELI
8148392	81-1746	1707321171		108		LIEBER #8	MONROE	4.1	UNITED GAS PIPELI
8148341	81-1763	1707321213		108		PERRYVILLE #1	MONROE	1.6	UNITED GAS PIPELI
8148370	81-1727	1706721472		108		SCHOOL BOARD #13	MONROE	11.8	UNITED GAS PIPELI
8148371	81-1728	1706721467		108		SCHOOL BOARD #14	MONROE	11.8	UNITED GAS PIPELI
8148325	81-1705	1706721464		108		SCHOOL BOARD #7	MONROE	11.8	UNITED GAS PIPELI
8148372	81-1722	1706721466		108		SCHOOL BOARD #8	MONROE	11.8	UNITED GAS PIPELI
8148373	81-1723	1706721468		108		SCHOOL BOARD #9	MONROE	11.8	UNITED GAS PIPELI
8148374	81-1724	1706721469		108		SCHOOL BOARD NO 10	MONROE	11.8	UNITED GAS PIPELI
8148377	81-1725	1706721470		108		SCHOOL BOARD NO 11	MONROE	11.8	UNITED GAS PIPELI
8148369	81-1726	1706721471		108		SCHOOLBOARD NO 12	MONROE	11.8	UNITED GAS PIPELI
8148358	81-1778	1707321196		108		WALL #1	MONROE	9.7	UNITED GAS PIPELI
8148349	81-1777	1706721217		108		WHITE #1	MONROE	10.2	UNITED GAS PIPELI
8148383	81-1779	1707321190		108		WILSON #1	MONROE	4.4	UNITED GAS PIPELI
8148384	81-1780	1707321191		108		WILSON #2	MONROE	4.4	UNITED GAS PIPELI

****

NEW MEXICO DEPARTMENT OF ENERGY & MINERALS

****

-MARALO INC RECEIVED: 09/03/81 JA: NM

8148304		3002500000	102-2	MARALO 16 STATE #2	SIOUX YATES POOL	65.0	EL PASO NATURAL G

-YATES PETROLEUM CORPORATION RECEIVED: 09/03/81 JA: NM

8148275	NM-0985-81	3000560682	107-TF	HAHN NH FEDERAL #1	UNDES ABO	0.0	TRANSWESTERN PIPE

****

** U.S. GEOLOGICAL SURVEY - ALBUQUERQUE,NM

****

-AMOCO PRODUCTION CO RECEIVED: 09/03/81 JA: NM 4

8148281	NM 1022-81	3004524663	103	C A MCADAMS C NO 1E	BASIN DAKOTA	30.0	EL PASO NATURAL G
8148232	NM-0016-81-E	3004508586	108-ER	FLORANCE GAS COM B #1 (2ND FILING)	BASIN DAKOTA	19.0	EL PASO NATURAL G
8148295	NM-1038-81	3004524553	103	GALLEGOS CANYON UNIT NO 152E	BASIN DAKOTA	30.0	EL PASO NATURAL G
8148296	NM-1037-81	3004524292	103	GALLEGOS CANYON UNIT NO 153E	BASIN DAKOTA	30.0	EL PASO NATURAL G
8148294	NM-1039-81	3004524726	103	J C GORDON D NO 3E	BASIN DAKOTA	30.0	EL PASO NATURAL G
8148292	NM-1041-81	3004524725	103	MARTIN GAS COM F NO 1E	BASIN DAKOTA	50.0	EL PASO NATURAL G
8148291	NM-1042-81	3004524665	103	P O PIPKIN NO 1E	BASIN DAKOTA	30.0	EL PASO NATURAL G
8148290	NM-1043-81	3004524684	103	P O PIPKIN NO 3E	BASIN DAKOTA	30.0	EL PASO NATURAL G
8148293	NM-1040-81	3004523902	103	W D HEATH A NO 14	WILDCAT-KIRTLAND	15.0	EL PASO NATURAL G

-BLACKWOOD & NICHOLS CO LTD RECEIVED: 09/03/81 JA: NM 4

8148213	NM-0952-81	3004509791	108	NORTHEAST BLANCO UNIT WELL NO 104	BLANCO MESAVERDE SEC 1-3	20.0	EL PASO NATURAL G
8148214	NM-0950-81	3004522528	108	NORTHEAST BLANCO UNIT WELL NO 65	BLANCO MESAVERDE NE/4 SE	20.0	EL PASO NATURAL G

-CITIES SERVICE COMPANY RECEIVED: 09/03/81 JA: NM 4

VOLUME 512 PAGE 004

JD NO	JA DKT	API NO	D	SEC	CAT	WELL NAME	FIELD NAME	PROD	PURCHASER
8148282	NM 1017-81	3001523538			103	FEDERAL N COM NO 1	UNDESIGNATED MORROW	365.0	
-COTTON PETROLEUM CORPORATION						RECEIVED: 09/03/81 JA: NM 4			
8148264	NM-0568-81	3003922220			103	APACHE NO 25	S BLANCO	46.0	NORTHWEST PIPELIN
-DAVE M THOMAS JR						RECEIVED: 09/03/81 JA: NM 4			
8148280	NM 1023-81	3003922584			103	AMERADA JICARILLA #3	CHACON JICARILLA	59.8	EL PASO NATURAL G
-DUGAN PRODUCTION CORP						RECEIVED: 09/03/81 JA: NM 4			
8148267	NM-0821-81	3004524636			103	MF #1 WELL	BASIN DAKOTA	35.0	EL PASO NATURAL G
-EL PASO NATURAL GAS COMPANY						RECEIVED: 09/03/81 JA: NM 4			
8148244	NM-1066-81	3004520446			108	BOLACK B #7	SOUTH BLANCO - PICTURED	20.0	EL PASO NATURAL G
8148268	NM-0085-81	3004521100			108	HEATON #31 PC	AZTEC PICTURED CLIFFS	24.0	EL PASO NATURAL G
8148245	NM-1062-81	3004520334			108	HOWELL #6	SOUTH BLANCO - PICTURED	22.0	EL PASO NATURAL G
8148240	NM-0964-81	3004521770			108	HOWELL D #3A	BLANCO - MESA VERDE	0.0	EL PASO NATURAL G
8148223	NM-0870-81	3004505916			108	HUERFANITO UNIT #92	BASIN-DAKOTA	20.0	EL PASO NATURAL G
8148274	NM-1816-80	3004511579			108	HUERFANO UNIT #145	BASIN-DAKOTA	19.0	EL PASO NATURAL G
8148224	NM-0872-81	3004520419			108	HUERFANO UNIT #190	BASIN - DAKOTA	18.0	EL PASO NATURAL G
8148243	NM-1068-81	3004510338			108	KERNAGHAN #4	BLANCO - MESA VERDE	20.0	EL PASO NATURAL G
8148220	NM-0862-81	3004507349			108	LACKEY B #16	BASIN - DAKOTA	10.0	EL PASO NATURAL G
8148272	NM-1716-80	3004523710			108	MORRIS A #3R	AZTEC PICTURED CLIFFS GA	9.0	EL PASO NATURAL G
8148298	NM-1030-81	3004523740			103	NEWBERRY #13A	BLANCO MESAVERDE	150.0	EL PASO NATURAL G
8148297	NM-1031-81	3004523738			103	NEWBERRY #3A	BLANCO MESAVERDE	150.0	EL PASO NATURAL G
8148246	NM-1061-81	3004520469			108	PIERCE #6	BLANCO - PICTURED CLIFFS	21.0	EL PASO NATURAL G
8148270	NM-0261-81	3003921392			108	RINCON UNIT #220	LARGO-CHACRA	23.0	EL PASO NATURAL G
8148265	NM-0630-81	3003920127			108	SAN JUAN 27-4 UNIT #47	BASIN - DAKOTA	16.0	EL PASO NATURAL G
8148217	NM 905-81	3003920484			108	SAN JUAN 27-4 UNIT #60	BASIN DAKOTA	17.0	EL PASO NATURAL G
8148221	NM-0863-81	3003920608			108	SAN JUAN 28-6 UNIT #172	BLANCO SOUTH-PICTURED CL	20.0	EL PASO NATURAL G
8148242	NM-1100-81	3003960072			108	SAN JUAN 28-6 UNIT #7	BLANCO - MESAVERDE	18.0	EL PASO NATURAL G
8148211	NM 0944-81	3003922362			103	SAN JUAN 28-7 UNIT #239E	BASIN DAKOTA	190.0	EL PASO NATURAL G
8148215	NM 0945-81	3003922360			103	SAN JUAN 28-7 UNIT #246E	BASIN DAKOTA	150.0	EL PASO NATURAL G
8148212	NM 0940-81	3003922363			103	SAN JUAN 28-7UNIT #256E	BASIN DAKOTA	160.0	EL PASO NATURAL G
8148222	NM-0868-81	3003907555			108	SAN JUAN 29-7 UNIT #40	BLANCO-MESAVERDE	15.0	EL PASO NATURAL G
8148263	NM-0475-81	3003907130			108	SJ 28-6 UNIT #80 MV & PC	BLANCO - MESAVERDE AND S	23.0	EL PASO NATURAL G
8148247	NM-1059-81	3002500000			108	W H RHODES B FEDERAL NCT 2 #5	RHODES YATES - SEVEN RIV	1.0	EL PASO NATURAL G
-GETTY OIL COMPANY						RECEIVED: 09/03/81 JA: NM 4			
8148279	NM 1026-81	3003922659			103	JICARILLA B WELL NO 3E	BASIN DAKOTA	34.0	EL PASO NATURAL G
-KENAI OIL AND GAS INC						RECEIVED: 09/03/81 JA: NM 4			
8148271	NM-0343-81	3001523368			103	COBB-FEDERAL #2 NM-13987	ARTESIA	0.0	
-KIMBELL OIL COMPANY						RECEIVED: 09/03/81 JA: NM 4			
8148259	NM-1140-81	3003905899			108	JICARILLA FEDERAL NO 1	BASIN DAKOTA M-20-25N-5W	16.7	EL PASO NATURAL G
-MARATHON OIL COMPANY						RECEIVED: 09/03/81 JA: NM 4			
8148273	NM-1786-80	3004524335			103	OHIO C GOVERNMENT #3-E	KUTZ CANYON	212.0	EL PASO NATURAL G
-MESA PETROLEUM						RECEIVED: 09/03/81 JA: NM 4			
8148218	NM 0906-81	3000560698			107-TF	BARN FEDERAL #1	UNDESIGNATED ABO	100.0	TRANSWESTERN PIPE
8148219	NM-0908-81	3000560859			107-TF	CAMACK FEDERAL #1	UNDESIGNATED ABO	97.0	TRANSWESTERN PIPE
8148226	NM-0909-81	3000560831			107-TF	CAMACK FEDERAL #3	UNDESIGNATED ABO	495.0	TRANSWESTERN PIPE
8148227	NM-0910-81	3000560759			107-TF	COYOTE FEDERAL #1	UNDESIGNATED ABO	200.0	TRANSWESTERN PIPE
8148228	NM-0911-81	3000560779			107-TF	COYOTE FEDERAL #2	UNDESIGNATED ABO	400.0	TRANSWESTERN PIPE
8148236	NM-0912-81	3000560827			107-TF	COYOTE FEDERAL #3	UNDESIGNATED ABO	214.0	TRANSWESTERN PIPE
8148237	NM-0913-81	3000560818			107-TF	COYOTE FEDERAL #4	UNDESIGNATED ABO	309.0	TRANSWESTERN PIPE
8148301	NM-0924-81-B	3003922255			103	FEDERAL #11E	BLANCO MESAVERDE	603.0	NORTHWEST PIPELIN
8148302	NM-0924-81-A	3003922255			103	FEDERAL #11E	BASIN-DAKOTA	957.0	NORTHWEST PIPELIN
8148238	NM-0914-81	3000560769			107-TF	HUGGINS FEDERAL #1	UNDESIGNATED ABO	290.0	TRANSWESTERN PIPE
8148225	NM-0915-81	3000560600			107-TF	ROCK FEDERAL #1	WILDCAT ABO	179.0	TRANSWESTERN PIPE
8148234	NM 916-81	3000560630			107-TF	ROCK FEDERAL #2	UNDESIGNATED ABO	60.0	TRANSWESTERN PIPE

VOLUME 512 PAGE 005

JD NO	JA DKT	API NO	D SEC CAT	WELL NAME	FIELD NAME	PROD	PURCHASER
8148235	NM 917-81	3000560687	107-TF	ROCK FEDERAL #5	UNDESIGNATED ABO	100.0	TRANSWESTERN PIPE
8148262	NM-0918-81	3000560772	107-TF	SALT FEDERAL #1	UNDESIGNATED ABO	181.0	TRANSWESTERN PIPE
8148253	NM 919-81	3000560704	107-TF	SAVAGE FEDERAL #1	WILDCAT ABO	479.0	TRANSWESTERN PIPE
8148252	NM 920-81	3000560756	107-TF	SAVAGE FEDERAL #2	UNDESIGNATED ABO	365.0	TRANSWESTERN PIPE
8148257	NM-0921-81	3000560703	107-TF	STANCEL FEDERAL #1	WILDCAT ABO	365.0	TRANSWESTERN PIPE
8148287	NM 922-81	3000560749	107-TF	STANCEL FEDERAL #2	UNDESIGNATED ABO	168.0	TRANSWESTERN PIPE
8148303	NM-0923-81	3000560770	107-TF	STANCEL FEDERAL #3	UNDESIGNATED ABO	700.0	TRANSWESTERN PIPE
-MOBIL PROD TEXAS & NEW MEXICO INC			RECEIVED: 09/03/81 JA: NM 4				
8148258	NM-1835-80	3003920162	108	JICARILLA B NO 8	TAPACITO PICTURED CLIFFS	19.5	NORTHWEST PIPELIN
-NORTHWEST PIPELINE CORPORATION			RECEIVED: 09/03/81 JA: NM 4				
8148251	NM-1045-81-B	3003922538	103	ROSA UNIT 77 DK/GL	BASIN DAKOTA-GALLOP	99.0	NORTHWEST PIPELIN
8148289	NM-1045-81-A	3003922538	103	ROSA UNIT 77 MV	BLANCO MESAVERDE	174.0	NORTHWEST PIPELIN
8148261	NM-1007-81-B	3003922537	103	ROSA 80 DK	BASIN DAKOTA	40.0	NORTHWEST PIPELIN
8148254	NM-1007-81-A	3003922537	103	ROSA 80 MV	BLANCO MESAVERDE	200.0	NORTHWEST PIPELIN
8148231	NM-1165-80	3004507835	108	SAN JUAN 30-5 #25	BLANCO MESAVERDE	0.0	EL PASO NATURAL G
8148284	NM-1010-81	3003921147	108	SAN JUAN 30-5 #54	BLANCO MESAVERDE	21.0	NORTHWEST PIPELIN
8148283	NM-1012-81	3003922573	103	SAN JUAN 30-5 #72	BASIN DAKOTA	95.0	PHILLIPS PACIFIC
8148229	NM-1009-81	3003907835	108	SAN JUAN 30-5 UNIT 25	BLANCO MESAVERDE	0.0	EL PASO NATURAL G
8148260	NM-1008-81	3004521545	108	SAN JUAN 32-7 #28	BLANCO MESAVERDE	0.0	EL PASO NATURAL G
8148248	NM-1088-81	3004524390	103	SAN JUAN 32-7 #62	BASIN DAKOTA	23.0	NORTHWEST PIPELIN
8148250	NM-1046-81	3004524499	103	SAN JUAN 32-8 #20A	BLANCO MESAVERDE	121.0	NORTHWEST PIPELIN
8148230	NM-1164-80	3004510943	108	SAN JUAN 32-8 #33	BLANCO MESAVERDE	0.0	EL PASO NATURAL G
8148249	NM-1047-81	3004522468	103	SAN JUAN 32-8 #42	BLANCO MESAVERDE	189.0	NORTHWEST PIPELIN
-PERRY R BASS			RECEIVED: 09/03/81 JA: NM 4				
8148216	NM-0895-81-1	3001522162	103	JAMES RANCH UNIT NO 12	WILDCAT	274.0	NATURAL GAS PIPEL
-SHELL OIL CO			RECEIVED: 09/03/81 JA: NM 4				
8148269	NM-0195-81	3001510499	108	HENSHAW DEEP UNIT #11	HENSHAW WOLFCAMP	2.0	PHILLIPS PETROLEU
-SOUTHLAND ROYALTY CO			RECEIVED: 09/03/81 JA: NM 4				
8148277	NM 0975-81	3001523502	103	EMPIRE FEDERAL 22 COM #1		46.0	TRANSWESTERN PIPE
-SUPRON ENERGY CORPORATION			RECEIVED: 09/03/81 JA: NM 4				
8148239	NM 0973-81-A	3004524369	103	NORDHAUS 5-A	BLANCO MESAVERDE	288.0	SOUTHERN UNION GA
8148278	NM 0973-81-B	3004524369	103	NORDHAUS 5-A	BASIN DAKOTA	102.0	SOUTHERN UNION GA
8148266	NM-0684-81-B	3004524452	103	TALIAFERRO NO 4-E	BLANCO MESAVERDE	312.0	SOUTHERN UNION GA
-TENNECO OIL COMPANY			RECEIVED: 09/03/81 JA: NM 4				
8148276	NM-0981-81	3004524592	103	NEWBERRY A #4E	BASIN DAKOTA	500.0	NORTHWEST PIPELIN
-TEXACO INC			RECEIVED: 09/03/81 JA: NM 4				
8148241	NM-1115-81	3002527186	103	COTTON DRAW UNIT #74	NORTH PADUCA (DELAWARE)	15.0	PHILLIPS PETROLEU
-W M GALLAWAY			RECEIVED: 09/03/81 JA: NM 4				
8148299	NM-1027-81	3004521002	108	DELO #8	FULCHER KUTZ PICTURED CL	5.0	EL PASO NATURAL G
8148233	NM-0017-81-E	3003920444	108-ER	MECHEL #6	TAPACITO PICTURED CLIFFS	12.0	EL PASO NATURAL G
-YATES PETROLEUM CORPORATION			RECEIVED: 09/03/81 JA: NM 4				
8148256	NM-1112-81	3001523591	103	AMOCO QT FEDERAL #1	SIEGREST DRAW	0.0	TRANSWESTERN PIPE
8148300	NM-0995-81	3000560742	107-TF	COFFMAN NY FEDERAL #1	UNDES ABO	0.0	TRANSWESTERN PIPE
8148208	NM-0996-81	3001560594	107-TF	DUNCAN LH FED #1-Y	UNDES ABO	0.0	TRANSWESTERN PIPE
8148286	NM-0997-80	3000560820	107-TF	EVERETTE OO FEDERAL #1	UNDES ABO	0.0	TRANSWESTERN PIPE
8148285	NM-0999-81	3000560608	107-TF	FIVE MILE DRAW LX FEDERAL #1	UNDES ABO	0.0	TRANSWESTERN PIPE
8148207	NM-0986-81	3000560645	107-TF	IWANOWSKI MM FEDERAL #1	UNDES ABO	0.0	TRANSWESTERN PIPE
8148204	NM-0987-81	3000560614	107-TF	MCCLELLAN MB FEDERAL #1	UNDES ABO	0.0	TRANSWESTERN PIPE
8148203	NM-0988-81	3000560834	107-TF	MCCLELLAN MB FEDERAL #2	UNDES ABO	0.0	TRANSWESTERN PIPE
8148202	NM-0989-81	3000560799	107-TF	POWERS OL FEDERAL #1	UNDES ABO	0.0	TRANSWESTERN PIPE
8148209	NM-0990-81	3000560821	107-TF	POWERS OL FEDERAL #3	UNDES ABO	0.0	TRANSWESTERN PIPE
8148255	NM-1001-81	3001560574	107-TF	SOUTH ALKALI LK FED #1	UNDES ABO	0.0	TRANSWESTERN PIPE
8148288	NM 991-81	3000560681	107-TF	TECKLA MD FEDERAL #2	UNDES ABO	0.0	TRANSWESTERN PIPE
8140206	NM-0992-81	3001560583	107-TF	THOMAS LN FEDERAL #1	UNDES ABO	0.0	TRANSWESTERN PIPE
8148205	NM-0993-81	3000560740	107-TF	THORPE MI FEDERAL #2	UNDES ABO	0.0	TRANSWESTERN PIPE
8148210	NM-0994-81	3000560847	107-TF	WILLIAMSON LC FEDERAL #2	WILDCAT ABO	0.0	TRANSWESTERN PIPE

BILLING CODE 6450-85-C

The above notices of determination were received from the indicated jurisdictional agencies by the Federal Energy Regulatory Commission pursuant to the Natural Gas Policy Act of 1978 and 18 CFR 274.104. Negative determinations are indicated by a "D" before the section code. Estimated annual production (PROD) is in million cubic feet (MMCF). An (*) before the Control (JD) number denotes additional purchasers listed at the end of the notice.

The applications for determination are available for inspection except to the extent such material is confidential under 18 CFR 275.206, at the Commission's Division of Public Information, Room 1000, 825 North Capitol St., Washington, D.C. Persons objecting to any of these determinations may, in accordance with 18 CFR 275.203 and 275.204, file a protest with the Commission within fifteen days after publication of notice in the Federal Register.

Categories within each NGPA section are indicated by the following codes:

Section 102–1: New OCS lease
102–2: New well (2.5 mile rule)
102–3: New well (1000 ft rule)
102–4: New onshore reservoir
102–5: New reservoir on old OCS lease
Section 107–DP: 15,000 feet or deeper
107–GB: Geopressured brine
107–CS: Coal seams
107–DV: Devonian shale
107–PE: Production enhancement
107–TF: New tight formation
107–RT: Recompletion tight formation
Section 108: Stripper well
108–SA: Seasonally affected
108–ER: Enhanced recovery
108–PB: Pressure buildup

Kenneth Plumb,
Secretary.

[FR Doc. 81–28565 Filed 9–30–81; 8:45 am]
BILLING CODE 6450–85–M

ENVIRONMENTAL PROTECTION AGENCY

[WH–10–FRL–1946–6]

Petitions Requesting Sole Source Aquifer Designation; Request for Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Public comments requested.

SUMMARY: The purpose of this notice is to invite public comment on the two *sole source aquifer* petitions for Whidbey Island and Camano Island submitted April 13, 1981 by the Island County Board of Commissioners of Coupeville, Washington, on behalf of the Island County Health Department and the Island County Planning Department. The petitions request the Regional Administrator of the Environmental Protection Agency, Region 10, to make a determination under Section 1424(e) of the Safe Drinking Water Act, Pub. L. 93–523 as amended, that separates aquifers underlying Whidbey Island and Camano Island be designated as sole or principal drinking water sources for the area which, if contaminated, would create a significant hazard to public health.

The Public Health Service Act, as amended by the Safe Drinking Water Act, Pub. L. 93–523, 88 Stat. 1661, provides in section 1424(e):

> (e) "If the Administrator determines, on his own initiative or upon petition, that an area has an aquifer which is the sole or principal drinking water source for the area and which, if contaminated, would create a significant hazard to public health, he shall publish, notice of that determination in the Federal Register. After the publication of any such notice, no commitment for Federal financial assistance (through a grant, contract, loan guarantee, or otherwise) may be entered into for any project which the Administrator determines may contaminate such aquifer through a recharge zone so as to create a significant hazard to public health, but a commitment for Federal financial assistance may, if authorized under another provision of law, be entered into, to plan or design the project to assure that it will not so contaminate the aquifer."

These two petitions are being processed under the sole or principal aquifer proposed regulations published in the Federal Register, Volume 42, No. 189, page 51620, Thursday, September 29, 1977

DATE: Comments will be accepted up to November 16, 1981.

ADDRESSES: The petitions and background data concerning this request for sole source aquifer designation can be examined during normal business hours at the following locations:

Island County Health Department or Island County Planning Department, Courthouse Annex, 6th and Main, Coupeville, Washington 98239. Attn: Don Holmes or Rob Harbour.

Environmental Protection Agency, Region 10, Library, 1200 Sixth Avenue, Seattle, Washington 98101.

COMMENTS SHOULD BE ADDRESSED TO: Harold M. Scott, Drinking Water Programs Branch, M/S 409, Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Seattle, Washington 98101, Telephone No. (206) 442–1223, FTS 399–1223.

FOR FURTHER INFORMATION CONTACT: Harold Scott at (206) 442–1223, or FTS 300–1223.

SUPPLEMENTARY INFORMATION: Due to the similarity of the two petitions, significant portions are combined and reprinted below:

(a) *Petitioners' interest.*

The above named petitioners are mandated by state law to plan for, and regulate public and private systems and services and activities in order to ensure an acceptable level of health, safety and welfare within Island County, consistent with federal, state and local laws.

A more specific responsibility of the petitioners is to provide for the continued productivity and qualtiy of Whidbey Island's and Camano Island's ground water aquifers, which are the sole source of drinking water for a major portion of the islands' population.

The petitioners wish to cooperate with the U.S. Environmental Protection Agency to ensure that all projects on Whidbey Island and Camano Island receiving federal financial assistance, will be consistent with our common goal of safeguarding our fragile aquifers for the benefit of present and future generations.

(b) *Significant Health Hazard Due to Contamination.*

Contamination of the ground-water aquifers, either by improper management of ground water withdrawal or by pollution resulting from unwise land use activities, would constitute a major health hazard because 70% of the Whidbey Island population and the entire population of Camano Island depend upon ground water for its drinking water supply.

In addition, the predominant development patterns on Whidbey Island and Camano Island and the unique characteristics of an island intensify the potential health hazards caused by ground-water aquifer pollution. Development is predominantly rural and low density residential in nature. Such a low density of development induces the proliferation of many individual and small community water systems that, in the event of ground-water pollution, would be difficult or impossible to adequately monitor or control.

Islands, by their very nature, are more isolated than surrounding mainland areas. As a result of this isolation, the provisions of even a short term emergency water supply would be difficult if not impossible.

(c) *The Aquifers and Their Location.*

(1) The following plans and reports address the ground-water aquifers of Whidbey Island and Camano Island:

The Comprehensive Water and Sewer Plan for Island County, published in 1968, by R. W. Beck and Associates, discusses future water demands and the problems associated with meeting those

demands. Although it is over 10 years old, the document has a wealth of accurate information regarding the ground-water aquifer of Whidbey Island.

Also published in 1968, *Water Bulletin #25*, prepared by the Washington Department of Water Resources (now the Dept. of Ecology) contains information on pleistocene stratigraphy and ground-water resources.

Island County is presently participating, with the United States Geological Survey, in a cooperative study of the ground-water resources of the entire county. The goal of this effort is the formulation of a ground-water management plan that will ensure the long term productivity of the ground-water aquifers of the county.

Presently, only a preliminary report, designated "Confidential," has been released by U.S.G.S. for in-house review. Data collection continues and a final report is expected to be published within three years. Charles R. Collier, District Chief, United States Department of Interior, Geological Survey, Water Resources Div., 1201 Pacific Ave., Suite 600, Tacoma, WA, 98402, may be contacted for release of information contained in the study.

The ground-water aquifers serving Whidbey Island and Camano Island lie within the shoreline defining the Islands.

(2) *Location of Sole or Primary Source Aquifer Area.*

The aquifer underlying Whidbey Island is a sole or primary source aquifer for the entire island population EXCEPT for the following areas: The City of Oak Harbor, Deception Pass State Park, a residential plant adjacent to the state park and a few industrial users north of Oak Harbor on Goldie Road.

The entire aquifer underlying Camano Island is a sole or primary source aquifer for the entire island population.

(3) Preliminary U.S. Census Bureau figures indicate a 1980 population of approximately 25,262 for Whidbey Island described in subparagraph #2 above. the 1970 population of this area was 13,766 which indicates a 45% increase in the past decade.

Preliminary U.S. Census Bureau figures indicate that the permanent 1980 population of Camano Island was 4,998. The 1970 population of Camano Island was 2,600. The Island has experienced a 91.8% population increase in the past decade and will experience accelerated population growth in the coming years.

(4) *Alternative Sources of Drinking Water.*

Presently, the City of Oak Harbor and the U.S. Navy purchase water from the City of Anacortes. 75% of the water used within the City of Oak Harbor is purchase from the City of Anacortes. The purchased water is drawn from the Skagit River above Mt. Vernon and piped to Oak Harbor and the U.S. Navy Base by two pipelines that tie into the main pipeline to Anacortes.

The potential for expansion of this service exists on the northern portion of the island, in close proximity to the pipeline. Future expansion of this alternative surface water source is limited by previous commitments of water produced by the Anacortes Water System and the Skagit River itself.

Central and southern Whidbey Island could not be served economically by the Anacortes system because of the low density of development and distance from the existing system.

There are no known alternative sources of drinking water capable of serving Camano Island. The nearest major water purveyor, Stanwood Water Company, serves the City of Stanwood, a food processing plant and a small area surrounding the city. Due to the distance from its existing service area and the low density development on Camano Island, the Stanwood Water Company is not a viable alternative source of drinking water.

(5) *Recharge Zones for the Aquifers.*

The recharge areas of the aquifers consist of areas of high soil permeability and low-lying peat and bog areas.

Areas of gravelly and sandy glacial drift and outwash exist throughout the Island and provide a relatively rapid route for rainfall to recharge the ground-water aquifer.

Low-lying peat and bog areas, although less permeable, collect and hold surface and shallow subsurface waters, allowing slow infiltration of the water into the ground-water aquifer

(6) *Source of Recharge.*

The ground-water aquifers of Whidbey Island and Camano Island are entirely dependent upon rainfall for recharge.

(7) *Projects Which Might Contaminate the Aquifer.*

There are a number of projects which might contaminate the ground-water aquifers of Whidbey Island and Camano Island.

The Northern Tier Pipeline Company has applied to the Washington State Energy Facility Site Evaluation Council for license to construct a crude oil shipment pipeline across the Whidbey Island and Camano Island. Local experts fear there will be contamination of the ground-water aquifers by oil leaking from the pipeline and either leaching slowly down to the aquifer or by coming into contact with a moving perched water layer that will move the highly volatile portions of the crude oil quickly to the aquifers. Another potential source of pollution associated with the pipeline project is the intrusion of salt water into the ground-water aquifers through the pipeline landfall, where the pipeline passes from a submarine environment to a terrestrial environment. Disruption of this marine/terrestrial interface could create a "window" through which salt water could enter the ground-water aquifers or through which valuable fresh water supplies could escape into the marine waters.

The Trans-Mountain Pipeline Company has also applied to the Washington State Energy Facility Site Evaluation Council for a license to construct a crude oil pipeline across the Islands. The potential pollution problems associated with the Northern Tier proposal mentioned above apply to this proposal as well.

Presently most residences and businesses on Whidbey Island and all on Camano Island rely upon septic drainfields for disposal of sanitary wastes. If poorly designed, located or constructed, these drainfields cold, in aggregate, pose a serious threat to the ground-water aquifers.

There are several existing or proposed industrial developments that may potentially contaminate the ground-water aquifers. On the southern portion of Whidbey Island, a 90-acre industrial park is proposed in the vicinity of Lone Lake, an unsewered area. The City of Langley has recently received an Economic Development Administration grant to study the feasibility of converting an abandoned solid waste disposal site into an industrial park.

An existing electronics firm in the Goldie Road area of North Whidbey presently disposes of manufacturing wastes in a leach field which is directly upstream of an established peat bog area.

Other additional sources of ground water aquifer pollution include sludge dump sites that serve the six sewage treatment plants in operations on Whidbey Island; the operation of a boat building business on the shores of Homes Harbor, various sanitary landfill sites, both operating and abandoned; and the operation of NAS Whidbey on North Whidbey.

(8) *Public Water Systems Utilizing the Aquifer.*

There are about 300 and 700 recorded public water systems serving Whidbey Island and Camano Island, respectively. There are a much larger number of unrecorded public and private water systems on the Islands.

(d) *Maps of Aquifer.*

Since the ground-water aquifers of Whidbey Island and Camano Island underline the entire Islands; and the aquifers are recharged by precipitation that percolates through permeable soils scattered throughout the entire Islands, the following map [1] shows the location of, recharge areas of and source of recharge for the ground-water aquifers of Whidbey Island and Camano Island.

Any comments to EPA should be submitted to Harold Scott at the location listed in the "Addresses" section. Depending upon comments, if there is significant public interest the Regional Administrator will hold an informal public hearing on whether the aquifers should be designated a sole source. The Regional Administrator will give widespread notice of such a public hearing.

Dated: September 18, 1981.

John R. Spencer,

Regional Administrator.

[FR Doc. 81-28542 Filed 9-30-81 8:45 am]

BILLING CODE 6560-38-M

[1] Filed as a part of original documents.

[OPTS-59061A; TSH-FRL-1946-2]

Polymer of an Alkenoic Acid, Alkyl Alkenoate, and a Substituted Alkyl Alkenoate; Approval of Test Marketing Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA received an application for a test marketing exemption (TM-81-31) under section 5 of the Toxic Substances Control Act (TSCA) on August 25, 1981. Notice of receipt of the application was published in the Federal Register of September 2, 1981 (46 FR 44042). EPA has granted the exemption.

EFFECTIVE DATE: This exemption is effective on September 24, 1981.

FOR FURTHER INFORMATION CONTACT: Rose Allison, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-206, 401 M St., SW., Washington, D.C. 20460, (202-426-8815).

SUPPLEMENTARY INFORMATION: Under section 5 of TSCA, anyone who intends to manufacture in, or import into, the United States, a new chemical substance for commercial purposes must submit a notice to EPA before manufacture or import begins. A "new" chemical substance is any chemical substance that is not on the Inventory of existing substances compiled by EPA under section 8(b) of TSCA. Section 5(a)(1) requires each premanufacture notice (PMN) to be submitted in accordance with section 5(d) and any applicable requirement of section 5(b). Section 5(d)(1) defines the contents of a PMN and section 5(b) contains additional reporting requirements of certain new chemical substances.

Section 5(h), "Exemptions", contains several provisions for exemptions from some or all of the requirements of section 5. In particular, section 5(h)(1) authorizes EPA, upon application, to exempt persons from any requirements of section 5(a) or section 5(b), and to permit them to manufacture or process chemical substances for test marketing purposes. To grant an exemption, the Agency must find that the test marketing activities will not present any unreasonable risk of injury to health or the environment. EPA must either approve or deny the application within 45 days of its receipt, and under section 5(h)(6) the Agency must publish a notice of this disposition in the Federal Register. If EPA grants a test marketing exemption, it may impose restrictions on the test marketing activities.

On August 25, 1981, EPA received an application for an exemption from the requirements of sections 5(a) and 5(b) of TSCA to manufacture a new chemical substance for test marketing purposes. The application was assigned test marketing exemption number TM-81-31. The manufacturer claimed its identity, the specific chemical identity, and the specific use of the new substance as confidential business information. The generic name of the new substance is a polymer of an alkenoic acid, alkyl alkenoate and, a substituted alkyl alkenoate and it will be used in an open use. A maximum of 35,000 kilograms will be manufactured for test market purposes, during a test marketing period not to exceed two months. During manufacture at one site, a maximum number of 12 workers may be exposed to the new substance 6 hours/day for 4 days and at another site, 5 workers may be exposed for 6 hours/day for one day. During processing, 40 workers will be exposed for 6 hours/day for 10 days. During industrial use, a total of 64 workers will be exposed for a maximum of 8 hours/day for 45 days. A notice published in the Federal Register of September 2, 1981 (46 FR 44042) announced receipt of this application and requested comment on the appropriateness of granting the exemption. The Agency did not receive any comments concerning the application.

EPA has established that the text marketing of the substance described in TM-81-31, under the conditions set our in the application will not present any unreasonable risk of injury to health or the environment for the reasons explained below. No significant health concerns were identified for the TME substance. The substance has a high molecular weight and is not soluble in water. As a formulated mixture, there will be no direct exposure to consumers of the new substance. Consumer use will involve an infrequent potential for skin contact with an article containing the new substance in a cured solid state. No significant environmental concerns were identified and environmental release of the substance will be low.

This test marketing exemption is granted based on the facts and information obtained and reviewed, but is subject to all conditions set out in the exemption application, and, in particular, those enumerated below.

1. This exemption is granted solely to this manufacturer.

2. The appplicant must maintain Records of the date(s) of shipment(s) to the customers specified in the application, and the quantities shipped in each shipment, and must make these records available to EPA upon request.

3. Each bill of lading that accompanies a shipment of the substance during the test marketing period must state that the use of the substance is restricted to that described to EPA in the test marketing exemption application.

4. The production volume of the new substance may not exceed the quantity of 35,000 kilograms described in the test marketing exemption application.

5. The test marketing activity approved in this notice is limited to a two-month period commencing on the date of signature of this notice by the Administrator.

6. The number of workers exposed to the new chemical should not exceed that specified in the application and the exposure levels and duration of exposure should not exceed those specified.

The Agency reserves the right to rescind its decision to grant this exemption should any new information come to its attention which casts significant doubt on the Agency's conclusion that the test markting of this substance under the conditions specified in the application will not present an unreasonable risk of injury to human health or the environment.

Dated: September 24, 1981.
Anne M. Gorsuch,
Administrator.

[FR Doc. 81-28529 Filed 9-30-81; 8:45 am]
BILLING CODE 6560-31-M

[EN-3-FRL-1936-6]

Standards of Performance for New Stationary Sources; Delegation of Authority to Commonwealth of Pennsylvania

On June 11, 1979 (44 FR 33613), pursuant to Section 111 of the Clean Air Act, as amended, the Administrator of The Environmental Protection Agency (EPA) promulgated regulations establishing standards of performance for certain categories of new stationary sources, New Source Performance Standards (NSPS). Section 111(c) directs the Administrator to delegate his authority to implement and enforce NSPS to any State which has submitted adequate procedures. Nevertheless, the Administrator retains concurrent authority to implement and enforce the standards following delegation of authority to the State.

On February 26, 1981, Clifford L. Jones, Secretary, Department of Environmental Resources, submitted to the EPA Regional Office a request for delegation of authority. The request was to receive delegation of authority to enforce New Source Performance Standards for: Grain Elevators, Electric Utility Steam Generating Units, Gas Turbines, Petroleum Liquid Storage Vessels, Glass Manufacturing Plants, Ammonium Sulfate Manufacture, and Automobile and Light-Duty Truck Surface Coating Operations. After a thorough review of that request, the Enforcement Director has determined that for the source categories set forth in paragraph A of the following official letter to Clifford L. Jones, Secretary, Department of Environmental Resources, delegation is appropriate subject to the conditions set forth in paragraphs 1 through 8 of that letter.

During the ten day comment period Pennsylvania made two comments concerning the delegation letter. The first dealt with condition 3. It was the State's understanding that the condition required the State to only request authority for new source categories as they are promulgated, not amendments to existing source categories. This is correct. Condition 3 delegates to the State authority for any future amendments to the categories delegated in this package, and the original categories delegated previously. The second comment by Pennsylvania was that the delegation makes no indication that it does not include Philadelphia and Allegheny Counties. Therefore, the delegation is now amended to specifically exclude Philadelphia and Allegheny Counties from this delegation of authority for NSPS. (The response to Pennsylvania's comments is included in this delegation package).

CERTIFIED MAIL, RETURN RECEIPT REQUESTED

Clifford L. Jones,
Secretary, Commonwealth of Pennsylvania, Department of Environmental Resources, Post Office Box 2063, Harrisburg, Pennsylvania

Re: Delegation of Authority of New Source Performance Standards pursuant to Section 111(c), Clean Air Act, as amended

Dear Secretary Jones: This is in response to your letter of February 26, 1981, requesting delegation of authority for implementation and enforcement for the following Standards of Performance for New Stationary Sources (NSPS), to the Commonwealth of Pennsylvania's Department of Environmental Resources (the Department): Grain Elevators, Electric Utility Steam Generating Units, Gas Turbines, Petroleum Liquid Storage Vessels, Glass Manufacturing Plants, Ammonium Sulfate Manufacture, and Automobile and Light-Duty Truck Surface Coating Operations.

We have reviewed the pertinent laws of the Commonwealth of Pennsylvania and its regulations governing the control of air pollution and have determined that they provide an adequate and effective procedure for implementation and enforcement of the NSPS regulations by the Department. Therefore, we hereby delegate authority to the Department, as follows:

The Department is delegated and shall have authority for all sources that come under the above categories, located in the Commonwealth of Pennsylvania subject to the Standards of Performance for New Stationary Sources promulgated in 40 CFR Part 60.

This delegation is based upon the following conditions:

1. Quarterly reports will be submitted to EPA by the Department For New Source Performance Standards including:

(A) Sources determined to be applicable during that quarter;

(B) Applicable sources which started operation during that quarter or which started operation prior to that quarter which have not been previously reported;

(C) The compliance status of the above, including the summary sheet from the compliance test(s); and

(D) Any legal actions which pertain to NSPS Sources.

2. Enforcement of the NSPS regulations in the Commonwealth of Pennsylvania will be the primary responsibility of the Department. Where the Department determines that such enforcement is not feasible and so notifies EPA, or where the Department acts in a manner inconsistent with the terms of this delegation, EPA will exercise its concurrent enforcement authority pursuant to Section 113 of the Clean Air Act, as amended, with respect to sources within the Commonwealth of Pennsylvania subject to NSPS regulations.

3. Acceptance of this delegation of certain promulgated NSPS does not commit the Commonwealth of Pennsylvania to request or accept delegation of other present or future standards and requirements. A new request for delegation will be required for any additional standards of 40 CFR Part 60, not included in the State's request of February 26, 1981. (The state has requested all subsequent amendments to the requested standards, and they have demonstrated adequate legal authority to enforce such amendments. Therefore, in this case no additional delegation will be necessary).

4. The Department will not grant a variance from compliance with the applicable NSPS regulations if such variance delays compliance with the Federal Standards (Part 60). Should the Department grant such a variance, EPA will consider the source receiving the variance to be in violation of the applicable Federal regulations and may initiate enforcement action against the source pursuant to Section 113 of the Clean Air Act. The granting of such variances by the Department shall also constitute grounds for revocation of delegation by EPA.

5. The Department and EPA will develop a system of communication sufficient to guarantee that each office is always fully informed regarding the interpretation of applicable regulations. In instances where there is a conflict between a Department interpretation and a Federal interpretation of applicable regulations, the Federal interpretation must be applied if it is more stringent than that of the Department.

6. If at any time there is a conflict between a Department regulation and a Federal regulation 40 CFR Part 60, the Federal regulation must be applied if it is more stringent than that of the Department. If the Department does not have the authority to enforce the more stringent Federal regulation, this portion of the delegation may be revoked.

7. The Department will utilize the methods specified in 40 CFR Part 60, in performing source tests pursuant to the regulations.

8. If the Enforcement Division Director determines that a Department program for enforcing or implementing a NSPS regulation is inadequate, or is not being effectively carried out, this delegation may be revoked in whole or in part. Any such revocation shall be effective as of the date specified in a Notice of Revocation to the Department.

A Notice announcing this delegation will be published in the Federal Register in the near future. The Notice will state, among other things, that effective immediately, all reports required pursuant to the above-enumerated Federal NSPS regulations by sources located in the Commonwealth of Pennsylvania should be submitted to the Commonwealth of Pennsylvania, Department of Environmental Resources, Post Office Box 2063, Harrisburg, Pennsylvania 17120, in addition to EPA, Region III. Any original reports which have been or may be received by EPA, Region III will be promptly transmitted to the Department.

Since this delegation is effective immediately, there is no requirement that the Department notify EPA of its acceptance. Unless EPA receives from the Department written notice of objections within ten (10) days of receipt of this letter, the Commonwealth of Pennsylvania's Department of Environmental Resources will be deemed to have accepted all of the terms of the delegation.

Sincerely yours,

Thomas C. Voltaggio,

Acting Director, Enforcement Division.

August 30, 1981.

Clifford L. Jones,

Secretary, Commonwealth of Pennsylvania, Department of Environmental Resources, P.O. Box 2063, Harrisburg, Pennsylvania

Dear Secretary Jones: This is in response to Mr. Hambright's letter of July 17, 1981, regarding comments to our letter of July 6, delegating authority to enforce additional Standards of Performance for New Stationary Sources (NSPS). The first comment dealt with condition 3. The understanding was that the condition required the Department to request only the authority for new source categories as they are promulgated, rather than the amendments to existing source categories. This is correct. Condition 3 delegates to you authority to enforce any future amendments to the categories that you requested in your February 26 letter, and the original categories delegated previously.

Secondly, Mr. Hambright indicated that the delegation makes no indication that it does not include the areas of Philadelphia and Allegheny Counties. The package is not specific in this respect, however, the delegation was never intended to include those two counties and has been modified to correct this.

Both of the items you are concerned with will be clarified and included in the introduction of the Federal Register package.

I hope these points of concern have been taken care of to your satisfaction.

Sincerely yours,

Thomas C. Voltaggio,

Acting Director, Enforcement Division.

Therefore, pursuant to the authority delegated by the Administrator, the Enforcement Director of Region III notified Clifford L. Jones, Secretary, Department of Environmental Resources, on July 6, 1981, that authority to implement and enforce certain standards of performance for new stationary sources was delegated to the Commonwealth of Pennsylvania.

Copies of that request for delegation of authority are available for public inspection at the Environmental Protection Agency, Region III Office, 6th and Walnut Streets, Philadelphia, Pennsylvania 19106.

Effective immediately, all reports required pursuant to the standards of performance for new stationary sources should be submitted to the Commonwealth of Pennsylvania Department of Environmental Resources, Post Office Box 2063, Harrisburg, Pennsylvania 17120, with copies to EPA Region III. However, reports required pursuant to 40 CFR 60.7(c) (excess emissions and malfunctions) should be sent to the Pennsylvania Department of Environmental Resources only.

This Notice is issued under the authority of Section 111 of the Clean Air Act, as amended.

Under Executive Order 12291, EPA must judge whether a regulation is "Major" and therefore subject to the requirement of a Regulatory Impact Analysis. This regulation is an administrative change and is not a major rule because it is not likely to result in:

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

A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This regulation was submitted to the Office of Management and Budget for review as required by Executive Order 12291.

(42 U.S.C. 7411)

Dated: August 30, 1981.

Thomas C. Voltaggio,

Acting Director, Enforcement Division.

[FR Doc. 81-28543 Filed 9-30-81; 8:45 am]

BILLING CODE 6560-38-M

[OPP-00148; PH-FRL-1946-3]

State Fifra Issues Research and Evaluation Group (SFIREG) Working Committee on Enforcement and Certification; Open Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: There will be a two-day meeting of the Working Committee on Enforcement and Certification of the State FIFRA Issues Research and Evaluation Group (SFIREG) to discuss various aspects of pesticides. The meeting will be open to the public.

DATE: Tuesday and Wednesday, October 20 and 21, 1981, beginning at 8:30 a.m. each day.

ADDRESS: The meeting will be held in a room on the mezzanine floor of Environmental Protection Agency, Region VIII, 1860 Lincoln St., Denver, CO.

FOR FURTHER INFORMATION CONTACT: P. H. Gray, Jr., Office of Pesticide Programs (TS-766C), Environmental Protection Agency, Rm. 915, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-0825).

SUPPLEMENTARY INFORMATION: The meeting of the Working Committee on Enforcement and Certification will be concerned with the following topics:

1. Activities of drift sub-committee.
2. Model self-evaluation protocol.
3. Model use investigation report.
4. FIFRA Policy compendium.
5. Pesticide Incident Monitoring System.
6. Farm Worker Safety Action Plan.
7. Pesticide applicator certification activities.
8. Section 2(ee) and ULV/LV Uses by States.
9. Other topics as appropriate.

Dated: September 24, 1981.

James M. Conlon,

Acting Deputy Assistant Administrator for Pesticide Programs.

[FR Doc. 81-28530 Filed 9-30-81; 8:45 am]

BILLING CODE 6560-32-M

[OPTS-51322; TSH-FRL-1945-8]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of interim policy published in the Federal Register of May 15, 1979 (44 FR 28558) and November 7, 1980 (45 FR 74378). This notice announces receipt of two PMN's and provides a summary.

DATES: Written comments by: PMN 81-469 & 81-470: November 21, 1981.

ADDRESS: Written comments, identified by the document control number "[OPTS-51322]" and the specific PMN number should be sent to: Document Control Officer (TS-793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm.

E-409, 401 M St., SW., Washington, D.C. 20460, (202-755-5687).

FOR FURTHER INFORMATION CONTACT:

For PMN No.	Notice manager	Telephone	Room No.
81-469	Mary Cushmac	202-426-0503	E-229
81-470	Robert Jones	202-426-0503	E-229

Mail address of notice manager: Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

SUPPLEMENTARY INFORMATION: The following is a summary of information provided by the manufacturer on the PMN's received by EPA:

PMN 81-469

Close of Review Period. December 21, 1981.

Importer's Identify. Sumitomo Corporation of America, 345 Park Avenue, New York, NY 10022.

Specific Chemical Identity. Claimed confidential business information. Generic name provided: Benzyl heteropolycyclic onium halide.

Use. Claimed confidential business information. Generic use information provided: The importer states that the PMN substance will be used in an open use.

Importer Estimates	Kilograms per year	
	Minimum	Maximum
st year	30	120
2d year	45	180
3d year	90	300

Physical/Chemical Properties

Appearance—White powder.
pH—7.8 (1% aqueous solution).
Melting point—176-180°C.
Solubility:
Water—Soluble.
Methyl alcohol—Soluble.

Toxicity Data

Acute oral toxicity LD_{50} (mice):
Male—258 mg/kg.
Female—262 mg/kg.

Exposure. The importer states that dermal exposure may occur during weighing and finishing.

Environmental Release/Disposal. The importer states that more than 50 but less than 5,000 kg/yr may be released to the environment. Disposal is to an approved landfill.

PMN 81-470

Close of Review Period. December 21, 1981.

Manufacturer's Identity. The Minnesota Mining & Manufacturing Company, 3M Center, St. Paul, MN 55144.

Specific Chemical Identity. Tris (tridecafluorohexyl) amine. *Use.* The manufacturer states that the PMN substance will be used in soldering with heat from boiling fluid and in high temperature electronic testing.

Production Estimates. Claimed confidential business information.

Physical/Chemical Properties

Appearance—Colorless, wax-like solid.
Boiling point—251-257°C (uncorrected).
Melting point—0-33°C.
Solubility: water—0.76 part per million (ppm).
Density—1.92 g/cc @ 35°C.
Refractive index—1.3025 @ 25°C.
Octanol/Water Partition Coefficient—11 (0.76 ppm).
Vapor pressure—0.0185 mm/Hg @ 25°C.

Toxicity Data

Acute oral toxicity LD_{50} (rat)—>5,000 mg/kg.
Primary Skin irritation (rabbit)—Minimally irritating.
Primary Eye irritation (rabbit)—Non-irritating.
Ames salmonella—Non-mutagenic.

Environmental Test Data

COD—50 mg/kg.
BOD_{20}—<200 mg/kg.
LC_{50} 96 hr. (fathead minnow)—>1,000 mg/1.

Exposure. The manufacturer states that during manufacture, processing, and use a total of 422 workers may experience dermal and inhalation exposure up to 24 hrs/day, up to 250 days/yr.

Environmental Release/Disposal. The manufacturer states that from less that 10 to 1,000 kg/yr of the PMN substance may be released to air, land, and water. Disposal is to an approved landfill.

Dated: September 25, 1981.

Woodson W. Bercaw,

Acting Director for Management Support Division.

[FR Doc. 81-28537 Filed 9-30-81; 8:45 am]

BILLING CODE 6560-31-M

FEDERAL COMMUNICATIONS COMMISSION

Canadian Standard Broadcast Stations; Notification List

List of new stations, proposed changes in existing stations, deletions and corrections in assignments of Canadian standard broadcast stations modifying the assignments of Canadian broadcast stations contained in the Appendix to the Recommendations of the North American Regional Broadcasting Agreement Engineering Meeting January 30, 1941.

CANADIAN LIST NO. 406 (MILLIONS PER 1,000 KILOWATS)

Call letters	Location	Power (kilowatts)	Antenna	Schedule	Class	Antenna height (feet)	Ground system		Proposed date of commencement of operation
							Number of radials	Length (feet)	
				900 kHz					
CKTS	Sherbrooke, Quebec, N. 45°26'28" W. 72°00'35" (Change of day time directional antenna pattern) (Conditional on deletion of CJEN, St. Jerome, Quebec).	10	DA-2	U	II				July 20, 1982.
				970 kHz					
CFIQ	Harbour Grace, Newfoundland, N. 47°40'43" W. 53°12'13" (Assignment of call letters).	1D/0.5N	DA-2	U	III	170	120	428	July 20, 1982.

CANADIAN LIST NO. 406 (MILLIONS PER 1,000 KILOWATS)—Continued

Call letters	Location	Power (kilowatts)	Antenna	Schedule	Class	Antenna height (feet)	Gound system		Proposed date of commencement of operation
							Number of radials	Length (feet)	
			1250 kHz						
CKOM	Saskatoon, Saskatchewan, N. 50°04'45" W. 106°30'38" (In operation with night pattern change).	10	DA-N ND-D-220	U	III				
			1340 kHz						
CHNL-2	Ashcroft, British Columbia, N. 50°45'30" W. 121°17'47" (Assignment of call letters).	1D/0.25N	ND-180	U	IV	125	120	294	Oc. 10, 1981.
			1350 kHz						
CKEG	Nanaimo, British Columbia, N. 49°09'07" W. 123°38'40" (In operation).	10	DA-1	U	III				
			1450 kHz						
NEW	Canmore, Alberta, N. 51°04'44" W. 115°19"31"	1D/0.25N	ND-181	U	IV	125	120	271	July 20, 1982
			1450 kHz						
CKYR	Jasper, Alberta, N. 52°52'51" W. 118°04'26" (P.O. 0.1 kW).	0.25	ND-150	U	IV	80	120	60-160	Do.
			1450 kHz						
CHET	Chetwynd, British Columbia, N. 55°40'06", W. 121°34'54" (In operation).	1D/0.25N	ND-180	U	IV	115	120	271	
			1570 kHz						
CKIS	St. Thomas, Ontario, N. 42°42'22", W. 81°06'20" (Change of call letters from CHLO).	10	DA-2	U	II				

Richard J. Shiben,

Chief, Broadcast Bureau, Federal Communications Commission.

[FR Doc. 81-28507 Filed 9-30-81; 8:45 am]

BILLING CODE 6712-01-M

Canadian Standard Broadcast Stations; Notification List

List of new stations, proposed changes in existing stations, deletions and corrections in assignments of Canadian standard broadcast stations modifying the assignments of Canadian broadcast stations contained in the Appendix to the Recommendations of the North American Regional Broadcasting Agreement Engineering Meeting January 30, 1941.

August 25, 1981.

CANADIAN LIST NO. 407 (MILLIVOLTS PER 1,000 KILOWATTS)

Call letters	Location	Power (kilowatts)	Antenna	Schedule	Class	Antenna height (feet)	Ground system		Proposed date of commencement of operation
							Number of radials	Length (feet)	
			910 kHz						
CHRL	Roberval, Quebec, N. 48°26'25" W. 72°06'47" (In operation with increased night power).	10	DA-N	U	III				
			920 kHz						
CFLS	Levis, Quebec, N. 46°48'26", W. 71°08'37" (P.O. 1 kW, DA-N).	10	DA-2	U	III				Aug. 25, 1982.
			1140kHz						
CKXL	Calgary, Alberta, N. 50°55'25", W. 113°49'58" (Change of day-time directional pattern).	50	DA-2	U	II				Aug. 25, 1982.
			1340 kHz						
New	Iroquois Falls, Ontario, N. 48°45'12", W. 80°42'52".	1D/0.25N	ND-150	U	IV	160	120	294 ave	Aug. 25, 1982.

CANADIAN LIST NO. 407 (MILLIVOLTS PER 1,000 KILOWATTS)—Continued

Call letters	Location	Power (kilowatts)	Antenna	Schedule	Class	Antenna height (feet)	Ground system		Proposed date of commencement of operation
							Number of radials	Length (feet)	
			1400 kHz						
New	Cochran, Ontario, N. 49°03'20" W. 81°01'17".	1D/0.25N	ND-165	U	IV	160	120	281 ave.	Aug. 25, 1982

Richard J. Shiben,
Chief Broadcast Bureau Federal Communications Commission.
[FR Doc. 81-28566 Filed 9-30-81; 8:45 am]
BILLING CODE 6712-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[Federal Emergency Management Agency Docket: FEMA REP-1-CT-1; FEMA REP-1-CT-2]

Connecticut Radiological Emergency Response Plan

AGENCY: Federal Emergency Management Agency.

ACTION: Notice of Receipt of Plan.

SUMMARY: For continued operation of nuclear power plants, the Nuclear Regulatory Commission requires approved licensee and State and local governments' radiological emergency response plans. Since FEMA has a responsibility for reviewing the State and local government off-site plans, the State of Connecticut, by letter of transmittal dated September 4, 1981 has submitted its radiological emergency plans to the FEMA Region I Office. These plans support the Haddam Neck Nuclear Power Plant in Haddam, Connecticut and the Millstone Nuclear Power Station in Waterford, Connecticut.

DATE PLANS RECEIVED: September 4, 1981.

FOR FURTHER INFORMATION CONTACT: Mr. David M. Sparks, Regional Director, FEMA Region I, Room 442, John W. McCormack Post Office & Courthouse Bldg., Boston, MA 02109, 617/223-4741.

SUPPLEMENTARY INFORMATION: In support of the Federal requirement for emergency response plans, FEMA has proposed a Rule describing its procedures for review and approval of State and local governments' radiological emergency response plans. Pursuant to this proposed FEMA Rule (44 CFR 350.8), "Review and Approval of State Radiological Emergency Plans and Preparedness," 45 FR 42341, the State Radiological Emergency Plan for the State of Connecticut was received by the Federal Emergency Management Agency Region I Office.

Included are plans for local governments which are wholly or partially within the plume exposure pathway emergency planning zone of the nuclear power plants. For the Haddam Neck Nuclear Power Plant, plans are included for the towns of Chester, Colchester, Deep River, Durham, East Haddam, East Hampton, Essex, Haddam, Hebron, Killingworth, Lyme, Madison, Marlborough, Middlefield, Middletown, Portland, Salem, and Westbrook. For the Millstone Nuclear Power Station plans are included for the towns of East Lyme, Fishers Island, NY, City of Groton, Town of Groton, Ledyard, Lyme, Montville, New London, Old Lyme, Old Saybrook, Plum Island, NY, and Waterford. Plans are also included for host communities including East Hartford, Hartford, New Haven, Norwich, The University of Connecticut, Wethersfield, and Windham/Willimantic.

Copies of the plan are available for review at the FEMA Region I Public Affairs Office, Room 435, John W. McCormack Post Office and Courthouse Building, Boston, MA 02109. Copies will be made available upon request in accordance with the fee schedule for FEMA Freedom of Information Act requests, as set out in Subpart C of 44 CFR Part 5. There are 233 pages in the State of Connecticut Plan and 6,321 pages in Connecticut local plans; reproduction fees are $.10 a page payable with the request for copy.

Copies of the plan are also available from the State of Connecticut Office of Civil Preparedness, 360 Broad St., Hartford, CT 06115.

Comments on the plan may be submitted in writing to Mr. David M. Sparks, Regional Director, at the above address within 30 days of the Federal Register Notice.

FEMA proposed Rule 44 CFR 350.10 also calls for a public meeting prior to approval of the plan. Details of this meeting will be announced in *the Hartford Courant, The New London Day,* and *The Middletown Press* at least two weeks prior to the scheduled meeting. Local radio and television stations will be requested to announce the meeting.

David M. Sparks,
Regional Director.
September 15, 1981.
[FR Doc. 81-28457 Filed 9-30-81; 8:45 am]
BILLING CODE 6718-01-M

[FEMA-646-DR]

Texas; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Texas (FEMA-646-DR), dated September 21, 1981, and related determinations.

DATED: September 21, 1981.

FOR FURTHER INFORMATION CONTACT: Sewall H. E. Johnson, Disaster Response and Recovery, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 287-0520.

NOTICE: Pursuant to the authority vested in the Director of the Federal Emergency Management Agency by the President under Executive Order 12148, effective July 15, 1979, and delegated to me by the Director under Federal Emergency Management Agency Delegation of Authority, and by virtue of the Act of May 22, 1974, entitled "Disaster Relief Act of 1974" (88 Stat. 143); notice is hereby given that, in a letter of September 21, 1981, the President declared a major disaster as follows:

I have determined that the damage in certain areas of the State of Texas resulting from severe storms and flooding beginning on or about August 30, 1981, is of sufficient

severity and magnitude to warrant a major-disaster declaration under Pub. L. 93-288. I therefore declare that such a major disaster exists in the State of Texas.

In order to provide Federal assistance, you are hereby authorized to allocate, from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses. Consistent with the requirement that Federal assistance be supplemental, the Federal funds under Pub. L. 93-288 will be limited to 75 percent of all eligible public assistance in designated areas except for technical assistance which will be funded at 100 percent.

The time period prescribed for the implementation of Section 313(a), priority to certain applications for public facility and public housing assistance, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of Federal Emergency Management Agency under Exceutive Order 12148, and delegated to me by the Director under the Federal Emergency Management Agency Delegation of Authority, I hereby appoint Mr. Robert D. Broussard of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared major disaster.

I do hereby determine the following area of the State of Texas to have been affected adversely by this declared major disaster.

Lavaca County for Individual and Public Assistance

(Catalog of Federal Domestic Assistance No., 83-300, Disaster Assistance, Billing Code 6718-02)

John E. Dickey,

Acting Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 81-28488 Filed 9-30-81; 8:45 am]

BILLING CODE 6718-01-M

FEDERAL MARITIME COMMISSION

Independent Ocean Freight Forwarder License; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as independent ocean freight forwarders pursuant to section 44(a) of the Shipping Act, 1916 (75 Stat. 522 and 46 U.S.C. 841(c)).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to communicate with the Director, Bureau of Certification and Licensing, Federal Maritime Commission, Washington, D.C., 20573.

MDR Enterprises, Inc., 7701 Pacific, Suite 7, Omaha, NE 68114. Officers: M. Dale Roberts, President/Treasurer; Madine Roberts, Secretary

Inter-Maritime Forwarding Co. Illinois, Inc., 10600 W. Higgins Road, Suite 216, Rosemont, IL 60018. Officers: Charles H. Dalldorf, President/Director; Martin G. Mann, Vice President/Director; Robert B. Mann, Treasurer

Suzuyo American Corporation, 19600 Magellan Drive, Torrance, CA 90502. Officers: Michihiro Suzuki, Director/President; Takeo Suzuki, Director/Executive Vice President; Yoshinobu Endo, Director; Kenichi Tsumura, Vice President; Masashi Morimoto, Vice President; Henry Y. Ota, Assistant Secretary; Yoshihiko Shida, Treasurer

New Orleans Cold Storage Brokerage Co., Inc.; 3401 Alvar Street, New Orleans, LA. 70186. Officers: Phillip G. Kuehn, President/Director; Clarance E. Boyd, Vice President/Manager; Garland E. Walker, Vice President/Manager; Rober Chance, Vice President/Manager; Jo F. Fredotovich, Vice President/Manager; Joseph Paniello, Director; Edwin A. Geoghegan, Director; Lawrence J. Molony, Secretary/Director; Harry M. England, Director; Rita D. Machie; Jeanne C. Molony; George G. Westfeldt, Jr., Treasure/Director

L. F. Cargo Services, Inc., 65 Roosevelt Avenue, Valley Stream, NY 11581. Officers: Leon Frankel, President; Corona Frankel, Secretary/Treasurer

Deka Associates, Inc., 1673 B. Ninth Avenue, San Francisco, CA 94122. Debbie Yamamoto, President/Treasurer; Kazuko Sugie, Vice President/Secretary; Tzeng-Chih Chen, Chairman of the Board

Speedway Express, Inc., 3605 Long Beach Blvd., Suite 421, Long Beach, CA 90807. Officers: K. T. Chung, President; Key Y. Chung, Vice President; Eduardo C. Ferrer, Chief Finance Officer; Chong S. Park, Assistant Finance Officer; K. K. Lee, Director; B. Y. Shin, Director

Hudson International Forwarders, Inc., 295 Main Street, Madison, NJ 07940. Officers: Barbara Larsen, President; Martin Zager, Executive Vice President; David Rothbart, Secretary; Ronald Bubnis, Treasurer

Nilda Haydee Fadhel, 4810 N.W. 79th Avenue, Bldg. 3, Apt. 107, Miami, FL 33166

Louis C. Perez, dba Perez Correal International Services, 28200 SW 159th Avenue, Homestead, FL 33033

Nestor Reyes-Caban dba U.S. Customs Broker, Malgor Bldg., Suite #2-B, 151 Marina Street, San Juan, PR 00903

Gunther George Schmid, 110 Standard Street El Segundo, CA 90245

Eugene E. Ellison, Jr., dba Ellison & Company, P.O. Box 010432, Miami, FL 33101

Projects Transportation International, Ltd., 340 South Derbyshire Lane, Arlington Heights, IL 60004. Officers: Gordon H. Stewart, President; Flora A. Stewart, Secretary/Treasurer

Thomas M. Beidleman, dba A. C. S. Forwarding, 1540 West 9th Street, Long Beach, CA 98013

Quick International Service, Inc., 4723 N.W. 72nd Avenue, Miami, FL 33166. Officers: Arturo E. Insignares, President/Director; Javier Perez, First Vice President/Director

John A. Merritt & Company, 804 S. Palafox Street, P.O. Box 590, Pensacola, FL 32593-0590. Officers: E. Rob Leatherbury, President; John L. McCarron, Jr., Executive Vice President; E. P Nickinson, Jr., Executive Vice President; William J. Colley, Sr., Vice President/Finance Secretary; Philip M. Alvarez, Vice President; Peggy R. Moore, Treasurer; Emma Lou Drey, Assistant Secretary; Grace Wicke, Assistant Secretary; Gregory L. Leatherbury, President; E. B. Peebles, Jr., Senior Executive Vice President

R. Brian, Inc., 4333 Transworld Rd., Suite T-16, Schiller Park, IL 60176. Officers: Ralph E. Brian, President; Cynthia J. Brian, Secretary/Treasurer

Southern Steamship Agency, Inc., 80 Saint Michael Street, P.O. Box 2188, Mobile, AL 36652. Officers: Gregory L. Leatherbury, President; E. B. Peebles, Jr., Senior Executive Vice President; E. R. Leatherbury, Executive Vice President; John L. McCaron, Jr., Executive Vice President; Robert R. Barkerding, Sr., Senior Vice President; H. K. Baker, Jr., Vice President; Jack W. Campbell, Vice President; Martin J. Walsh, Vice President; H. S. Thorne, III, Vice President; Leslie H. Stuart, Jr., Vice President; Michael T. Merritt, Vice President; John E. Dyer, Vice President; E. P. Nickinson, Jr., Vice President; Robert S. Matthews, Vice President; P. M. Alvarez, Vice President; Robert C. Engram, Vice President; J. Frank Fogarty, Vice President; Michael V. H. Walsh, Assistant Vice President; Peggy R. Moore, Treasurer; Loraine W. Pugh, Assistant Secretary Administration; Emma L. Drey, Assistant Secretary; William J. Colley, Senior Vice President-Finance/Secretary; Dudley E. Dawson, Jr., Director; Ernest F. Ladd, III, Director; E. Roberts Leatherbury, Executive Vice President

Charles J. Buscemi, dba Seven Seas Consultants, 838 Greens Road, #256, P.O. Box 60741, AMF, Houston, TX 77060

Meston and Brings, Inc., Maritime Bldg., Suite 522, P.O. Box 24363, Seattle, WA 98124. Officers: Bruce S. Meston, President; Sam T. Shimabukuro, Assistant Vice President

Inter-Maritime Forwarding Company Florida, Inc., 2917 N.W. 79th Avenue, Miami, FL 33122. Officers: Charles H. Dalldorf, President/Director; Maritn G. Mann, Vice President; Robert B. Mann, Secretary/Treasurer; Marcelino Vazquez, Vice President

Inter-Maritime Forwarding Co. (California) Inc., 421 North Oak Street, Inglewood, CA 90301. Officers: Charles H. Dalldorf, President/Director; Martin G. Mann, Vice President; Robert B. Mann, Secretary/Treasurer

Akhtar L. Din, 4 Michael Drive, Blauvelt, NY 10913

Richard Allen Cope, dba RC Shipping Services, 6065 Rosewell Rd., N.E., Atlanta, GA 30328

Marjorie A. Goltzman Arellano, dba Customs Import Services, 1314 Texas Avenue, Suite 606, Houston, TX 77002

Seaport International, 42-D Hasell Street, Charleston, SC 29401. Officers: Edward A.

Godfrey, President; Amelia G. Aiken, Vice President/Treasurer
Miguel M. Alvarado, dba Exporters Service, 11211 Katy Freeway, Houston, TX 77079

Dated: September 25, 1981.

By the Federal Maritime Commission.

Joseph C. Polking,

Acting Secretary.

[FR Doc. 81-28479 Filed 9-30-81; 8:45 am]

BILLING CODE 6730-01-M

[Independent Ocean Freight Forwarder License No. 943]

George Stern Co., Inc.; Order of Revocation

On September 14, 1981, George Stern Co., Inc., 807 Keyser Bldg., 207 E. Redwood Street, Baltimore, MD 21202, surrendered its Independent Ocean Freight Forwarder License No. 943 for revocation.

Therefore, by virtue of authority vested in me by the Federal Maritime Commission as set forth in Manual of Orders, Commission Order No. 201.1 (Revised), § 5.01(c), dated August 8, 1977;

It is ordered, that Independent Ocean Freight Forwarder License No. 943 issued to George Stern Co., Inc. be revoked effective September 14, 1981, without prejudice to reapplication for a license in the future.

It is further ordered, that a copy of this Order be published in the Federal Register and served upon George Stern Co., Inc.

Albert J. Klingel, Jr.,

Director, Bureau of Certification and Licensing.

[FR Doc. 81-28621 Filed 9-30-81; 8:45 am]

BILLING CODE 6730-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

First-Year Student Enrollment Decreases for Health Professions Schools

The Department of Health and Human Services announces that schools of medicine, osteopathy, dentistry, public health, pharmacy, optometry, podiatry and veterinary medicine are permitted to decrease the first-year student enrollments that were required by statute as part of the conditions for receiving health professions construction grants, loan guarantees and interest subsidies under Title VII of the Public Health Service Act.

The Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97-35) requires the Secretary to unilaterally release all recipients of grants, loan guarantees, and interest subsidies under sections 720(a) and 726, of the Public Health Service Act (as these sections were in effect prior to October 1, 1981) from any contractual obligation to fulfill enrollment increases incurred under these sections or their implementing regulations. This release is applicable to all grantees that received grants, loan guarantees and interest subsidies irrespective of the date of the award. The release is effective as of October 1, 1981 and will apply to enrollment levels beginning in the 1981-82 academic year.

While relieved of enrollment requirements of the construction program, schools of public health wishing to participate in the Health Professions Capitation Program may not decrease first-year enrollments of full-time students below the level required for capitation eligibility. (See section 771(e) of the Public Health Service Act.)

This announcement will serve as an amendment to the approved applications, Notices of Grant Awards, and the Specifics of Grants pertaining to the number of first-year student enrollments.

Questions concerning this announcement should be directed to: Director, Bureau of Health Facilities, Health Resources Administration, Center Building, Room 5-22, 3700 East-West Highway, Hyattsville, Maryland 20782 (Phone 301-436-7700)

Robert Graham,

Acting Administrator.

September 26, 1981.

[FR Doc. 81-28528 Filed 9-30-81; 8:45 am]

BILLING CODE 4110-83-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. D-81-658]

Delegation of Authority

AGENCY: Office of The Secretary, HUD.

ACTION: Delegation of authority.

SUMMARY: The Regional Administrator and Deputy Regional Administrator, Chicago Regional Office, Region V, and the Area Manager and Deputy Area Manager, Detroit Area Office, each is delegated the authority of the Secretary of Housing and Urban Development, pursuant to Section 414 of the Housing and Urban Development Act of 1969, 40 U.S.C. 484b, as amended, to transfer a parcel of Federally-owned surplus land, together with any improvements and related personal property to the City of Detroit, Michigan.

EFFECTIVE DATE: September 25, 1981.

FOR FURTHER INFORMATION CONTACT: Angelo Scioscia, Department of Housing and Urban Development, 451 Seventh Street, S.W., Room 5182, Washington, D.C. 20410, Telephone 202/755-1862 (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: The subject real property will be assigned to HUD by GSA. The property will then be sold to the City of Detroit, Michigan for development of an assisted public housing rental project for persons of low and moderate income. The transaction is being handled this way to avoid the necessity of returning all the closing documents to Central Office.

Accordingly, the delegation of authority should read as follows:

The Secretary of the Department of Housing and Urban Development delegates to the Regional Administrator, Deputy Regional Administrator, Chicago Regional Office, and the Area Manager and Deputy Area Manager, Detroit Area Office, pursuant to Section 414 of the Housing and Urban Development Act of 1969, 40 U.S.C. 484b, as amended, the authority to transfer real property listed below, together with any improvements and related personal property, to the City of Detroit, Michigan: IRS Site, Detroit, Michigan; GSA Control Number 5-G-MI-639A

(Section 414 of the Housing and Urban Development Act of 1969, 40 U.S.C. 484b.)

Issued at Washington, D.C., September 25, 1981.

Donald I. Hovde,

Under Secretary, Department of Housing and Urban Development.

[FR Doc. 81-28540 Filed 9-30-81; 8:45 am]

BILLING CODE 4210-01-M

[Docket No. D-81-659]

Delegation of Authority

AGENCY: Office of the Secretary, HUD.

ACTION: Delegation of authority.

SUMMARY: The Regional Administrator and Deputy Regional Administrator, Region VI, Fort Worth, Texas and the Area Manager and Deputy Area Manager, San Antonio Area Office, each is delegated the authority of the Secretary of Housing and Urban Development, pursuant to Section 414 of the Housing and Urban Development Act of 1969, 40 U.S.C. 484b, as amended, to transfer a parcel of Federally-owned surplus land, together with any improvements and related personal property, to the City of San Antonio, Texas.

EFFECTIVE DATE: September 25, 1981.

FOR FURTHER INFORMATION CONTACT: Angelo Scioscia, Department of Housing and Urban Development, 451 Seventh Street, S.W., Room 5182, Washington, D.C. 20410, Telephone 202/755-1862. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: The subject real property will be assigned to HUD by GSA. The property will then be ɔld to the City of San Antonio, Texas ɔr development of an assisted public ousing rental project for persons of low nd moderate income. The transaction is eing handled this way to avoid the ecessity of returning all the closing ocuments to Central Office.

Accordingly, the delegation of uthority should read as follows:

The Secretary of the Department of ousing and Urban Development elegates to the Regional Administrator, eputy Regional Administrator, Region I, Fort Worth, Texas and the Area lanager and Deputy Area Manager, an Antonio Area Office, pursuant to ection 414 of the Housing and Urban evelopment Act of 1969, 40 U.S.C. 484b, s amended, the authority to transfer al property listed below, together with ny improvements and related personal roperty, the City of San Antonio, exas: Former Post Office Site, San ntonio, Texas, property identified as CB 2970, containing 2.249 acres. GSA ase NBR 7-G-TX-919.

ection 414 of the Housing and Urban evelopment Act of 1969, 40 U.S.C. 484b).

Issued at Washington, D.C., September 25, 81.

onald I. Hovde,

nder Secretary, Department of Housing and rban Development.

[Doc. 81-28545 Filed 9-30-81; 8:45 am]

LING CODE 4210-01-M

EPARTMENT OF THE INTERIOR

sh and Wildlife Service

ndangered Species Permits; Issued r the Month of August; U.S. Forest ervice, et al.

Notice is hereby given that the Fish nd Wildlife Service has taken the llowing action with regard to permit plications duly received according to ction 10 of the Endangered Species ct of 1973 as amended, 16 U.S.C. 1539. ich permit listed as issued was granted ly after it was determined that it was plied for in good faith, that by anting the permit it will not be to the sadvantage of the endangered species; nd that it will be consistent with the rposes and policy set forth in the ndangered Species Act of 1973 as nended.

Additional information on these permit actions may be requested by contacting the Federal Wildlife Permit Office, Box 3654, Arlington, VA 22203, telephone (703/235-1903) or by appearing in person at the Federal Wildlife Permit Office, 1000 N. Glebe Road, Room 605, Arlington, VA, between the hours of 9:00 a.m. and 3:00 p.m. weekdays.

US Forest Service: X2519, 08-27-81.
Smithsonian Inst.: X7024, 08-10-81.
St. Louis Zoo Park: X7364, 08-04-81.
Inst. for Raptor STU: X7869, 08-05-81.
Foster, Steven C.: X7949, 08-07-81.
Univ. of Co Museum: X8028, 08-19-81.
Moore, Davie L.: X8087, 08-10-81.
Goodson, Nike J.: X8119, 08-06-81.
W. Found of Vert Zoo: X8176, 08-17-81.
Lexington Pheasantry: X8179, 08-31-81.
IAE: X8212, 08-20-81.
Mus. of the Am. Ind.: X8222, 08-11-81.
Zoo Soc of San Diego: X8234, 08-27-81.

Dated: September 24, 1981.

R. K. Robinson,

Chief, Branch of Permits, Federal Wildlife Permit Office.

[FR Doc. 81-28555 Filed 9-30-81; 8:45 am]

BILLING CODE 4310-55-M

Endangered Species Permit; Issuance of Permit for Marine Mammals; Vancouver Public Aquarium

On August 4, 1981, a notice was published in the Federal Register (46 FR 16, No. 149), that an application had been filed with the Fish and Wildlife Service by the Vancouver Public Aquarium, P.O. Box 3232, Vancouver, British Columbia, Canada V6B 3X8 for a permit to capture four sea otters (*Enhydra lutris*) for the purpose of public display.

Notice in hereby given that on Septmeber 11, 1981, as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), the Fish and Wildlife Service issued a permit PRT 2-2507 to the Vancouver Public Aquarium subject to certain conditions set forth therein.

The permit is available for public inspection during normal business hours at the Fish and Wildlife Service's Office in Room 601, 1000 N. Glebe Road, Arlington, Virginia.

Dated: September 25, 1981.

R. K. Robinson,

Chief, Branch of Permits, Federal Wildlife Permit Office.

[FR Doc. 81-28554 Filed 9-30-81; 8:45 am]

BILLING CODE 4310-55-M

Endangered Species Permit; Receipt of Applications; James E. Schrope, et al.

The applicants listed below wish to conduct certain activities with various endangered species:

PRT 2-8415

Applicant: James E. Schrope, Easthampton, MA.

The applicant requests a permit to purchase in interstate commerce captive-bred nene geese (*Branta sandvicensis*) from Dr. S. Dillon Ripley, Litchfield, Connecticut, for enhancement of propagation.

PRT 2-8485

Applicant: Chicago Zoological Park, Brookfield, IL.

The applicant requests a permit to import one male captive-bred snow leopard (*Panthera uncia*) from the Helsinki Zoo for enhancement of propagation.

PRT 2-8471

Applicant: Lawler, Matusky and Skelly Engineers, Pearl River, NY.

The applicant requests a permit to capture incidentally shortnose sturgeon (Acipenser brevirostrum) from the Hudson River during normal field collection operations for scientific research. No efforts will be made to purposely capture shortnose sturgeon.

PRT 2-8474

Applicant: Caribbean National Forest, U.S. Forest Service, Luquillo, PR.

The applicant requests a permit to take (capture) Puerto Rican boas (*Epicrates inornatus*) at the Caribbean National Forest to determine the distribution, abundance, and habitat requirements of this species for scientific research. No snakes are to be removed from the wild.

Humane care and treatment during transport, if applicable, has been indicated by the applicants.

Documents and other information submitted with these applications are available to the public during normal business hours in Room 601, 1000 N. Glebe, Arlington, Virginia, or by writing to the U.S. Fish & Wildlife Service, WPO, P.O. Box 3654, Arlington, VA 22203.

Interested persons may comment on these applications on or before November 2, 1981, by submitting written data, views, or arguments to the above address. Please refer to the file number when submitting comments.

Dated: September 24, 1981.

R. K. Robinson,

Chief, Branch of Permits, Federal Wildlife Permit Office.

[FR Doc. 81-28556 Filed 9-30-81; 8:45 am]

BILLING CODE 4310-55-M

Bureau of Land Management

[AA-29383]

Alaska Native Claims Selection

The document entitled "Terms and Conditions for Land Consolidation and Management in the Cook Inlet Area" was ratified by Public Law (Pub. L.) 94-204 (89 Stat. 1145, 1151) on January 2, 1976, and clarified on August 31, 1976. Section II of the Terms and Conditions authorized reconveyance by the United States to Cook Inlet Region, Inc., of lands conveyed by the State of Alaska to the United States. On November 15, 1977, Sec. 3(a) of Pub. L. 95-178 (91 Stat. 1369) authorized the Secretary of the Interior to identify and reserve within two years after initial conveyance of such lands to Cook Inlet Region, Inc., any easement he could have lawfully reserved prior to conveyance and to issue immediately thereafter a revised conveyance reflecting such reservation.

On November 16, 1979 Patent No. 50-80-0011 and Interim Conveyance No. 258 were issued to Cook Inlet Region, Inc., for 4,191.84 acres and 321.75 acres, respectively, or the surface and subsurface estates of lands conveyed to the United States by the State of Alaska. The lands were conveyed pursuant to Secs. 14(e) and 22(j) of the Alaska Native Claims Settlement Act of December 18, 1971 (43 U.S.C. 1601, 1613(e), 1621(j)) (ANCSA), and Sec. 12(c) of Pub. L. 94-204 (89 Stat. 1145, 1152), as amended by Sec. 3(a) of Pub. L. 95-178 (91 Stat. 1369), and are described as follows:

Seward Meridian, Alaska (Surveyed)

T. 5 N., R. 8 W.
- Sec. 21, lots 11 and 12, SW¼NE¼NE¼ SW¼, W½NE¼SW¼, SE¼NE¼SW¼, NW¼SW¼, S½SW¼;
- Sec. 22, SW¼SE¼;
- Sec. 27, lots 4, 5 and 18, SW¼NW¼;
- Sec. 34, NE¼, E½NW¼.
- Containing 559.25 acres.

T. 5 N., R. 9 W.
- Sec. 31, lot 7;
- Sec. 32, lots 8 and 9.
- Containing 71.84 acres.

T. 5 N., R. 10 W.
- Sec. 8, NE¼SE¼;
- Sec. 9, S½;
- Sec. 10, N½, N½SW¼, SW¼SW¼;
- Sec. 16, E½NW¼.
- Containing 880 acres.

T. 7 N., R. 11 W.
- Sec. 29, SE¼NW¼
- Containing 40 acres.

T. 8 N., R. 11 W.
- Sec. 17, lot 1;
- Sec. 20, lots 1 to 4, inclusive, N½NE¼SW¼, E½SW¼NE¼SW¼, SE¼NE¼SW¼, SE¼SW¼, SE¼;
- Sec. 21, lot 2, SW¼, W½SE¼;
- Sec. 28, lots 3, 4 and 5, SW¼NE¼, S½NW¼, W½SE¼;
- Sec. 29, lots 1 and 2, E½, E½W½;
- Sec. 30, lots 5, 6, 7 and 9 to 21, inclusive;
- Sec. 31, lots 7, 8 and 10 to 15, inclusive;
- Sec. 32, N½NW¼, SE¼NW¼.
- Containing 1,721.05 acres.

T. 7 N., R. 12 W.
- Sec. 3, lots 1, 2, 3 and 9 to 12, inclusive; NW¼NE¼, S½NW¼, NW¼SW¼;
- Sec. 4, E½SE¼SW¼;
- Sec. 9, lots 3, 4 and 7, NE¼, E½NW¼, E½SW¼, NW¼SE¼;
- Sec. 10, lot 7.
- Containing 914.86 acres

T. 8 N., R. 12 W.
- Sec. 34, lot 1.
- Containing 4.84 acres.
- Aggregating 4,191.84 acres.
- Interim Conveyance No. 258 of November 16, 1979

Seward Meridian, Alaska (Surveyed)

T. 5. N., R. 8 W.
- Sec. 21, those portions of lot 7 more particularly described as NW¼SW¼SE¼ NW¼ and S½SW¼SE¼NW¼;
- Sec. 22, Lot 1, excluding that portion of lot 1 designated on the State status plats as lot 19A; SE¼SW¼, excluding State lot 19B;
- Sec. 27, those portions of lot 1 more particularly described as N½NW¼NE¼ and N½SE¼NW¼NE¼;
- That portion of lot 1 and lot 8 designated on the State status plats as lot 1D;
- Those portions of lot 8 designated on the State status plats as lots 8A and 8C.
- Containing approximately 119.25 acres.

T. 5 N., R. 10 W.
- Sec. 16, W½NE¼, excluding land lease 24099, lake, and all land southeast (SE) of platted access road.
- Containing approximately 69.00 acres.

T. 7 N., R. 12 W.
- Sec. 4, Tracts 3, 4, 5, 6, 7, and 8 of ASLS 70-6.
- Containing approximately 133.50 acres.
- Aggregating approximately 321.75 acres.

Pursuant to Sec. 17(b) of the Alaska Native Claims Settlement Act of December 18, 1971 (43 U.S.C. 1601, 1616(b)), the following public easements, referenced by easement identification number (EIN) on the easement maps attached to this document, copies of which will be found in case file AA-31242, are reserved to the United States. All easements are subject to applicable Federal, State, or Municipal corporation regulation. The following is a listing of uses allowed for each type of easement. Any uses which are not specifically listed are prohibited.

25 Foot Trail—The uses allowed on a twenty-five (25) foot wide trail easement are: travel by foot, dogsled, animals, snowmobiles, two- and three-wheel vehicles, and small all terrain vehicles (less than 3,000 lbs. Gross Vehicle Weight (GVW)).

60 Foot Road—The uses allowed on a sixty (60) foot wide road easement are: travel by foot, dogsled, animals, snowmobiles, two- and three-wheel vehicles, small and large all-terrain vehicles, track vehicles, four-wheel drive vehicles, automobiles, and trucks.

Easements to be Reserved:

a. (EIN 3 L) An easement sixty (60) feet in width for an existing road paralleling the Kenai River in Sec. 34, T. 5 N., R. 8 W., Seward Meridian. The uses allowed are those listed above for a sixty (60) foot wide road easement.

b. (EIN 4 D4) An easement twenty-five (25) feet in width for an existing trail from the North Kenai Road on the section line between Secs. 2 and 11, T. 7 N., R. 12 W., Seward Meridian, westerly to the southeast shore of Foreland Lake in Sec. 3, T. 7 N., R. 12 W., Seward Meridian. The uses allowed are those listed above for a twenty-five (25) foot wide trail easement.

c. (EIN 5 D4) An easement sixty (60) feet in width for an existing road which traverses Secs. 20, 21, 29, 30 and 31, T. 8 N., R. 11 W., Seward Meridian. The uses allowed are those listed above for a sixty (60) foot wide road easement.

d. (EIN 6 L) An easement twenty (20) feet in width for an existing power line which traverses Sec. 27, T. 5 N., R. 8 W., Seward Meridian. The uses allowed are those uses associated with the construction, operation and maintenance of a powerline.

e. (EIN 7 L) An easement twenty (20) feet in width for an existing power line which traverses Secs. 21 and 28, T. 8 N., R. 11 W., Seward Meridian. The uses allowed are those uses associated with the construction, operation and maintenance of a powerline.

f. (EIN 8 L) An easement sixty (60) feet in width for an existing road which traverses Lot 8, Sec. 27, T. 5 N., R. 8 W., Seward Meridian. The uses allowed are those listed above for a sixty (60) foot wide road easement.

g. (EIN 34 L) An easement twenty (20) feet in width for an existing power line which traverses the N½NE¼, NE¼NW¼ Sec. 34, T. 5 N., R. 8 W., Seward Meridian. The uses allowed are those associated with the construction, operation and maintenance of a powerline.

When this decision becomes final, revised conveyance documents will be issued to Cook Inlet Region, Inc., for the above-described lands reflecting the easements identified above. The revised conveyance documents will remain subject to all other rights, terms, conditions, and covenants contained in Patent No. 50-80-0011 and Interim Conveyance No. 258, respectively.

In accordance with Department regulation 43 CFR 2650.7(d), notice of this decision is being published once in the Federal Register and once a week,

for four (4) consecutive weeks in the ANCHORAGE DAILY NEWS.

Any party claiming a property interest in lands affected by this decision, an agency of the Federal government, or regional corporation may appeal the decision to the Alaska Native Claims Appeal Board, P.O. Box 2433, Anchorage, Alaska 99510 with a copy served upon both the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513 and the Regional Solicitor, Office of the Solicitor, 510 L Street, Suite 408, Anchorage, Alaska 99501. The time limits for filing an appeal are:

1. Parties receiving service of this decision shall have 30 days from the receipt of this decision to file an appeal.

2. Unknown parties, parties unable to be located after reasonable efforts have been expended to locate, and parties who failed or refused to sign the return receipt shall have until November 2, 1981 to file an appeal.

Any party known or unknown who is adversely affected by this decision shall be deemed to have waived those rights which were adversely affected unless an appeal is timely filed with the Alaska Native Claims Appeal Board.

To avoid summary dismissal of the appeal, there must be strict compliance with the regulations governing such appeals. Further information on the manner of and requirements for filing an appeal may be obtained from the Bureau of Land Management, 701 C Street, Box 13, Anchorage, Alaska 99513.

If an appeal is taken, the party to be served with a copy of the notice of appeal is: Cook Inlet Region, Inc., P.O. Drawer 4-N, Anchorage, Alaska 99509.

Ann Johnson,

Chief, Branch of ANCSA Adjudication.

[FR Doc. 81-28346 Filed 9-30-81; 8:45 am]

BILLING CODE 4310-84-M

Invitation To Participate in Exploration Project on Lands

Ark Land Company proposes to conduct an exploration project on lands containing Federal minerals which are described below. All parties wishing to participate on a pro rata cost sharing basis are invited to contact David George, c/o Ark Land Company, P.O. Box 1688, Jasper, Alabama 35501, phone (205) 622-3301, and Roger Hildebeidel, Eastern States Director, Bureau of Land Management, 350 South Pickett Street, Alexandria, Virginia 22304. This exploration project will be conducted on the following lands:

Huntsville Meridian

T. 14 S., R. 10 W.,

Sec. 2, SW¼NE¼, SE¼SW¼, SW¼SW¼, SE¼SE¼, SW¼SE¼, NW¼SE¼;
Sec. 3, NE¼NE¼, SE¼NE¼, NE¼SE¼, SE¼SE¼;
Sec. 10, SE¼SE¼;
Sec. 11, NE¼NE¼, SE¼NE¼, SW¼NE¼, NW¼NE¼, NE¼NW¼, SE¼NW¼, SW¼NW¼, NE¼SW¼, SE¼SW¼, SW¼SW¼, NW¼SW¼, SW¼SE¼;
Sec. 14, NE¼NW¼, NW¼NW¼, NW¼NE¼;
Sec. 15, NE¼NE¼, SE¼NE¼, SW¼NE¼, NW¼NE¼, SE¼NW¼, NW¼NW¼.

Lonna McKenna,

Acting Chief, Division of Lands and Minerals.

[FR Doc. 81-28523 Filed 9-30-81; 8:45 am]

BILLING CODE 4310-84-M

Extension of Public Comment Period on Draft Environmental Statement and Draft Wilderness Study Report, El Malpais Area, New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of extension of public comment period on the Draft Environmental Impact Statement and Draft Wilderness Study Report for the El Malpais Areas in New Mexico.

SUMMARY: Pursuant to Section 3(d) of the Wilderness Act of 1964, notice is hereby given that the comment period on the El Malpais wilderness proposal will be held open 30 days past the public hearings scheduled for September 29 and 30, 1981.

DATE: Comments on the proposed wilderness designation and on the content of the Draft Environmental Impact Statement and Wilderness Study Report will be accepted up to and including October 30, 1981.

SUPPLEMENTARY INFORMATION: This notice extends the close-of-comment period date provided in the Federal Register on Monday, August 24, 1981 (46 FR 42769), from October 19, 1981, to October 30, 1981.

Dated: September 25, 1981.

D. Dean Bibles,

Assistant Director.

[FR Doc. 81-28523 Filed 9-30-81; 8:45 am]

BILLING CODE 4310-84-M

National Park Service

Gateway National Recreation Area; Gateway Advisory Commission Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act, that a meeting of the Gateway National Recreation Area Advisory Commission will be held commencing at 3 p.m., Tuesday, October 6, 1981, at the William F Ryan Visitor Center at Floyd Bennett Field, Brooklyn, New York.

The Commission was established by Pub. L. 92-592 to meet and consult with the Secretary of the Interior on general policies and specific matters relating to the development of Gateway National Recreation Area.

The matters to be discussed at this meeting include:

1. Coney Island/Breezy Point Ferry update including funding.
2. Development Concept Plan—publication schedule and update.
3. Status of Human Resources Administration request for use of Floyd Bennett Field.
4. Summer Program Evaluation.
5. Fort Wadsworth update, including perceptions of Secretary of the Interior James Watt and Congressman Molinari differences and future role of Gateway Advisory Commission.
6. New schedule for the year for meetings of Gateway Advisory Commission meetings.

The meeting will be open to the public. However, facilities and space to accommodate members of the public are limited, and persons will be accommodated on a first-come, first-served basis. Any member of the public may file with the Commission a written statement concerning the matters to be discussed.

Persons wishing further information concerning this meeting, or who wish to submit written statements, may contact Herbert S. Cables, Jr., Superintendent, Gateway National Recreation Area, Headquarters, Building No. 69, Floyd Bennett Field, Brooklyn, New York 11234, (212) 630-0353.

Minutes of the meeting will be available for inspection four weeks after the meeting, at the Gateway National Recreation Area Headquarters Building.

Dated: September 14, 1981.

Herbert S. Cables, Jr.,

Superintendent, Gateway National Recreation Area.

[FR Doc. 81-28514 Filed 9-30-81; 8:45 am]

BILLING CODE 4310-70-M

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before September 18, 1981. Pursuant to §1202.13 of 36 CFR Part 1202, written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded

to the National Register, National Park Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by October 16, 1981.

Carol Shull,

Acting Keeper of the National Register.

MASSACHUSETTS

Middlesex County

Winchester, *Sanborn House*, 15 High St.

Suffolk County

Boston, *Fields Corner Municipal Building*, 1 Arcadia St.

NEW YORK

Fulton County

Johnstown, *Fulton County Jail (Tryon County Jail)* Perry and Montgomery Sts.

SOUTH CAROLINA

Courthouses in South Carolina Designed by William Augustus Edwards Thematic Resources—Reference—see individual listings under Abbeville, Calhoun, Dillon, Jasper, Lee and York Counties.

Abbeville County

Abbeville, *Abbeville County Courthouse (Courthouses in South Carolina Designed by William Augustus Edwards Thematic Resources)* (previously listed in Abbeville Historic District 9-14-72).

Calhoun County

St. Matthews; *Calhoun County Courthouse (Courthouses in South Carolina Designed by William Augustus Edwards Thematic Resources)* S. Railroad Ave.

Charleston County

McClellanville vicinity, *Cape Romain Lighthouses, SE of* McClellanville on Lighthouse Island.

Dillon County

Dillon, *Dillon County Courthouse (Courthouses in South Carolina Designed by William Augustus Edwards Thematic Resources)* 1303 W. Main St.

Jasper County

Ridgeland, *Jasper County Courthouse (Courthouses in South Carolina Designed by William Augustus Edwards Thematic Resources)* Russell St.

Lee County

Bishopville, *Lee County Courthouse Courthouses in South Carolina Designed by William Augustus Edwards Thematic Resources)* 123 Main St.

Richland County

Columbia, *Babcock Building, South Carolina State Hospital*, Bull St.

York County

York, *York County Courthouse (Courthouses in South Carolina Designed by William Augustus Edwards Thematic Resources)* (previously listed in York Historic District 10-18-79).

[FR Doc. 81-28515 Filed 9-30-81; 8:45 am]

BILLING CODE 4310-70-M

Big Cypress National Preserve; Availability of Master Plan of Operations for the Purpose of Oil Drilling

In accordance with § 9.52 of Title 36 of the Code of Federal Regulations, Big Cypress National Preserve has received a draft Master Plan of Operations from Exxon Company, U.S.A. for the purpose of oil drilling operations in the Raccoon Point Field area of Big Cypress National Preserve. The public is invited to review and comment on the Master Plan of Operations, copies of which are available for review during normal business hours at Everglades National Park Headquarters, Route 27, 12 miles south of Homestead, Florida; Big Cypress National Preserve, Star Route, Box 11, Ochopee, Florida; Miami-Dade Public Library, Main Library, 1 Biscayne Boulevard, Miami, Florida; Collier County Public Library, 650 Central Avenue, Naples, Florida; and at the National Park Service, Southeast Regional Office, 75 Spring Street, S.W., Atlanta, Georgia. Comments should be received by October 31, 1981. For further information contact Pat Tolle, Management Assistant, Everglades National Park, (305) 247-6211.

Dated: September 10, 1981.

Neal G. Guse, Jr.,

Acting Regional Director, Southeast Region.

[FR Doc. 81-28535 Filed 9-30-81; 8:45 am]

BILLING CODE 4310-70-M

Biscayne National Park, Florida; Designation of Boundary

Section 101 of the Act of June 28, 1980, (94 Stat. 599), established Biscayne National Park.

Notice is given that the boundary of Biscayne National Park has been established, pursuant to the Act, to include the land depicted on boundary map number 169-90,003, dated April 1980, prepared by the Land Acquisition Division of the Southeast Regional Office of the National Park Service.

This map is on file and available for inspection in the administrative office of the Biscayne National Park, P.O. Box 1369, Homestead, Florida 33030, and in offices of the National Park Service, Department of the Interior, Washington, D.C. 20240.

Following is a detailed description of the boundary as depicted on boundary map 169-90,003:

Commencing at the Northwest corner of Section 35, Township 55 South, Range 40 East, Tallahassee Meridian;

Thence Easterly 1,978.35 feet, more or less, along the north line of said Section 35 to a point on the center line of Old Cutler Road, as shown on Sheet 11 of 14 Sheets of Part Three of the drawings titled Metropolitan Dade County, Florida, Bulkhead Line, and recorded in Plat Book No. 74, Page 3 of the Public Records of Dade County, Florida, February 23, 1962;

Thence Southwesterly 2,700 feet, more or less, along the center line of said Old Cutler Road to a point, said point being the intersection with the center line of S.W. 176 Street;

Thence Easterly along the extension of the center line of S.W. 176 Street bearing North 87°39'08" East, 700 feet, more or less, to the Point of Beginning;

Thence South 80°53'53" East, 30,000 feet, more or less, to a point on the Intracoastal Waterway;

Thence Northeasterly along the Intracoastal Waterway 28,950 feet, more or less, to a point of intersection with Latitude 25°40'16" North;

Thence East along the Parallel at Latitude 25°40'16" North 6,600 feet, more or less, to a point on the Southwest side of a cable area lying generally South of Cape Florida (said cable area shown on the National Oceanic and Atmospheric Administration Nautical Chart 11451);

Thence Southeasterly along the Southwest side of the cable area 18,000 feet, more or less, to a point where the Southwest line of said cable area deflects to the right (said point being approximately at Latitude 25°38'40" North);

Thence East 14,000 feet, more or less, to a point of intersection with the 10 fathom line (water depth of 60 feet);

Thence Southerly along the 10 fathom line (60 foot depth curve line), 133,000 feet, more or less, to a point on the North line of The Key Largo Coral Reef Marine Sanctuary (also known as John Pennekamp Coral Reef State Park), at Latitude 25°17'36" North, Longitude 80°10'00" West;

Thence Northwesterly along the boundary of the Preserve and State Park 21,000 feet, more or less, to Latitude 25°20'06" North, Longitude 80°12'36" West;

Thence Southwesterly 9,400 feet, more or less, to a point on the Monroe-Dade County line at Latitude 25°19'55" North, Longitude 80°14'18" West;

Thence Northwesterly 11,100 feet, more or less, along the meanderings of said County line to a point in Broad Creek, located about mid-channel between Swan Key and the easternmost tip of Broad Key, Latitude 25°21'04" North, Longitude 80°15'25" West;

Thence Northwesterly 10,350 feet, more or less, to a point adjacent to flashing red light marker "14" in Card Sound at the south end of the Intracoastal Waterway Channel through Cutter Bank, Latitude 25°21'58" North, Longitude 80°17'01" West;

Thence continue across the open waters of Card South North 77°00'00" West 16,400 feet, more or less, to a point on the west line of Section 15, Township 58 South, Range 40

East. Said west line also being a portion of the western boundary of the Turkey Point Wilderness Area as established by an agreement entitled "Deed", recorded in Book 7624, Page 457–464 of the Official Records of Dade County, Florida, March 22, 1972;

Thence Northerly along the west line of Section 15, Section 10, and Section 3 to a point, said point being the Northwest corner of Section 3, all in Township 58 South, Range 40 East. The west line of Section 15, Section 10, and Section 3 also being a portion of the western boundary of the Turkey Point Wilderness Area;

Thence Easterly along the north line of Section 3, Township 58 South, Range 40 East, passing Turtle Point, over the waters of Biscayne Bay, passing the Metropolitan Dade County, Florida, Bulkhead Line to a point on a line 350 feet easterly of and parallel to the Metropolitan Dade County, Florida, Bulkhead Line as shown on Sheet 6 of 12 Sheets of Part Five of the drawings titled Metropolitan Dade County, Florida, Bulkhead Line, and recorded in Plat Book No. 74, Page 5 of the Public Records of Dade County, Florida, May 10, 1963. The north line of Section 3, Township 58 South, Range 40 East, also being the north boundary of the Turkey Point Wilderness Area;

Thence northerly along a line 350 feet easterly of and parallel to the Metropolitan Dade County, Florida, Bulkhead Line, (as shown on Sheets 5 and 6 of 12 Sheets of Part Five of the drawings titled Metropolitan Dade County, Florida, Bunkhead Line, and recorded in Plat Book 74, Page 5 of the Public Records of Dade County, Florida, May 10, 1963), passing and going around Turkey Point to the intersection with a line being the extension eastward of the south boundary of Homestead Bayfront Park;

Thence Westerly along the south line of Homestead Bayfront Part to the Southwest corner thereof;

Thence Northerly along the west line of Homestead Bayfront Part to the Northwest corner of said park, also being the Southwest corner of Section 9, Township 57 South, Range 40 East;

Thence Easterly along the north line of Homestead Bayfront Part (also the south line of Section 9, Township 57 South, Range 40 East), 1,870 feet, more or less, to a point;

Thence North 00°35'00" West, 4,080 feet, more or less, to a point;

Thence North 04°35'00" West, 3,360 feet, more or less, to a point;

Thence North 17°05'00" East, 1,995 feet, more or less, to a point;

Thence North 39°10'00" East, 2,260 feet, more or less, to a point;

Thence North 18°25'00" West, 1,080 feet, more or less, to a point;

Thence North 17°20'00" East, 2,820 feet, more or less, to a point;

Thence North 03°00'00" East, 3,500 feet, more or less, to a point;

Thence North 17°45'00" East, 3,380 feet, more or less, to a point on the southwesterly bank of Goulds Canal;

Thence Southeasterly along the southwesterly bank of Goulds Canal 2,200 feet, more or less, to a point;

Thence Northeasterly crossing Goulds Canal to a point on a tip of land being the southeasterly-most tip of a triangular shaped parcel of land lying between Goulds Canal and Black Creek (also known as C–1 Canal);

Thence Northwesterly following the northeastern shoreline of the above-mentioned triangular shaped parcel of land 300 feet, more or less, to a point;

Thence North 45°15'00" East, 525 feet, more or less, to a point;

Thence North 32°00'00" West, 2,980 feet, more or less, to a point;

Thence North 0°30'00" West, 640 feet, more or less, to a point;

Thence Northeasterly to a point on the north line of Section 22, Township 56 South, Range 40 East, said point being 3,330 feet East of the Northwest corner of Section 22, Township 56 South, Range 40 East;

Thence Easterly along the north line of Section 22 to the Northwest corner of Section 23, Township 56 South, Range 40 East;

Thence Easterly along the north line of said Section 23, 460 feet, more or less, to a point;

Thence North 17°54'00" East, 2,780 feet, more or less, to a point on the north line of the south half of Section 14, Township 56 South, Range 40 East;

Thence North 14°25'00" East, 320 feet, more or less, to a point;

Thence North 09°25'00" East, 980 feet, more or less, to a point;

Thence North 00°50'00" West, 1,045 feet, more or less, to a point;

Thence North 14°00'00" East, 255 feet, more or less, to a point;

Thence North 25°45'00" East, 600 feet, more or less, to a point;

Thence North 16°50'00" East, 495 feet, more or less, to a point;

Thence North 27°00'00" East, 255 feet, more or less, to a point;

Thence North 26°25'00" East, 1,050 feet, more or less, to a point;

Thence North 22°25'00" East, 640 feet, more or less, to a point;

Thence North 08°15'00" East, 410 feet, more or less, to a point;

Thence North 07°10'00" West, 460 feet, more or less, to a point;

Thence North 14°45'00" West, 440 feet, more or less, to a point;

Thence North 19°50'00" West, 260 feet, more or less, to a point;

Thence North 30°06'00" West, 1,235 feet, more or less, to a point;

Thence North 00°06'00" West, 1,410 feet, more or less, to a point;

Thence North 55°52'30" West, 590 feet, more or less, to a point;

Thence North 5°45'00" East, 1,980 feet, more or less, to a point;

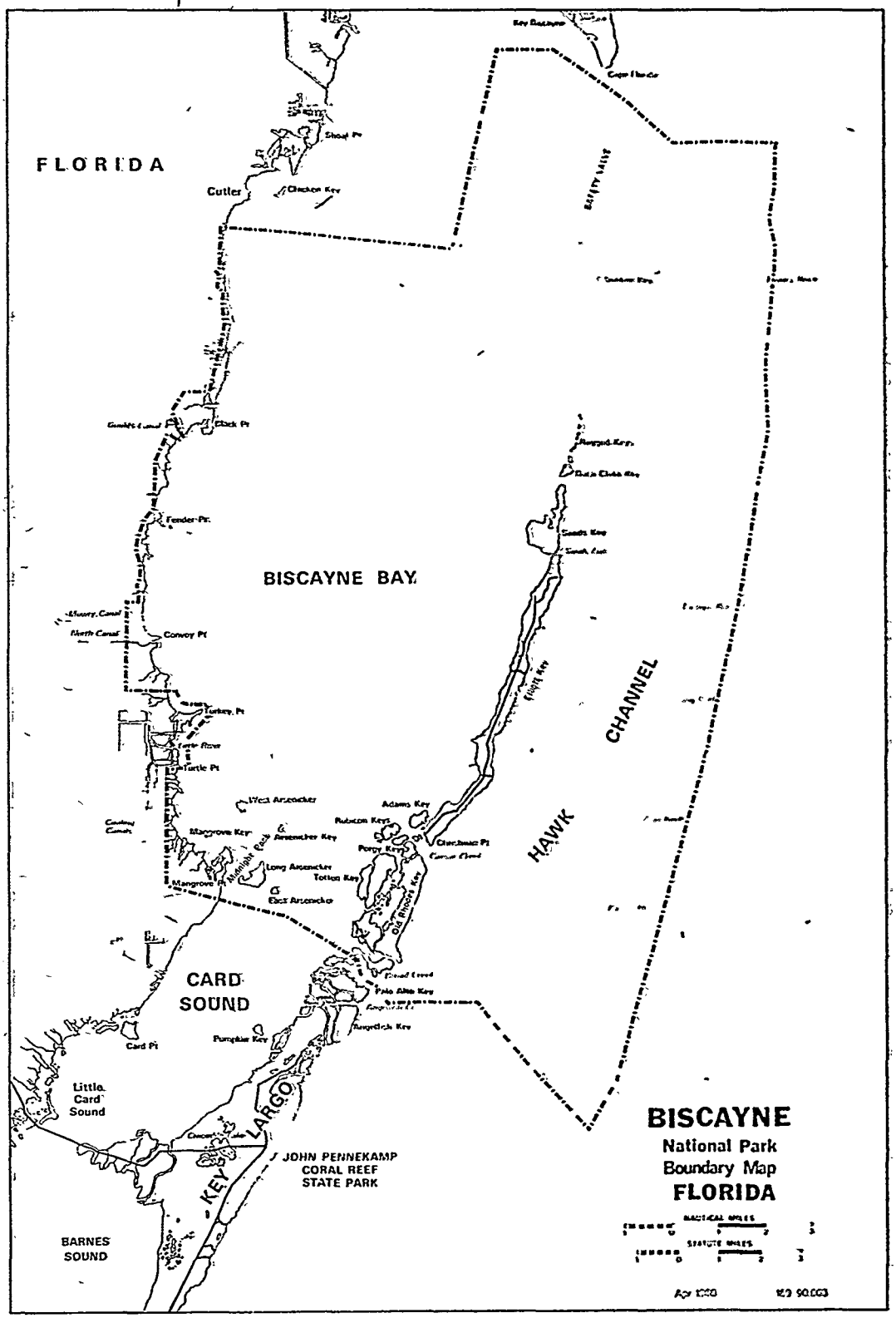
Thence North 16°45'00" West, 950 feet, more or less, to a point;

Thence North 88°40'00" East, 470 feet, more or less, to a point;

Thence North 05°00'00" West, 2,035 feet, more or less, to a point on the south line of Section 35, Township 55 South, Range 40 East;

Thence North 06°07'30" East, 2,900 feet, more or less, to a point, the Point of Beginning.

BILLING CODE 4310-70-M



BILLING CODE 4310-70-C

Dated: August 31, 1981.

Robert M. Baker,

Regional Director, Southeast Region, National Park Service.

[FR Doc. 81-28629 Filed 9-30-81; 8:45 am]

BILLING CODE 4310-70-M

Corpus Christi Oil and Gas Co., Padre Island National Seashore, Tex.; Availability of Plan of Operations and Environmental Review and Analysis for the Purpose of Drilling and Exploratory Oil/Natural Gas Well No. 1

Notice is hereby given in accordance with § 9.52(b) of Title 36 of the Code of Federal Regulations that the National Park Service has received from Corpus Christi Oil and Gas Company a plan of operations for the purpose of drilling an exploratory oil/natural gas well in State Tract 182, Padre Island National Seashore, Kleberg County, Texas.

The Plan of Operations and Environmental Review and Analysis are available for public review and comment on or before November 2, 1981 in the Office of the Superintendent, Padre Island National Seashore, 9405 South Padre Island Drive, Corpus Christi, Texas 78418. Copies of the document are available from Padre Island National Seashore and will be sent, upon request, to individuals or groups at a charge of $7.60 per copy, pursuant to the Freedom of Information Act. The documents are 76 pages in length.

Dated: September 17, 1981.

Donald A. Dayton,

Acting Regional Director, Southwest Region.

[FR Doc. 81-28632 Filed 9-30-81; 8:45 am]

BILLING CODE 4310-70-M

San Antonio Missions National Historical Park, Bexar County, Tex.; Availability and Public Meetings, Envorionmental Assessment/General Management Plan/Development Concept Plan

Pursuant to the National Environmental Policy Act of 1969, Title 40 of the Code of Federal Regulations, and Part 516 of the Departmental Manual, the National Park Service has prepared an Envorinmental Assessment/General Management Plan/Development Concept Plan for San Antonio Missions National Historical Park, Bexar County, Texas.

The Environmental Assessment/General Management Plan/Development Concept Plan outlines alternative management strategies to insure all reasonable ways of achieving the intent of Congress and the management objectives of San Antonio Missions National Historical Park have been considered and that the positive and negative impact of each strategy have been identified and analyzed.

Copies of the Environmental Assessment/General Management Plan/Development Concept Plan will be available on October 5, 1981, at the following locations. A Spanish translation of the document will also be available.

Southwest Regional Office, National Park Service, 1100 Old Santa Fe Trail, Post Office Box 728, Santa Fe, New Mexico 87501.

San Antonio Missions National Historical Park, 727 E. Durango, Room A612, San Antonio, Texas 78206.

Public Meetings are scheduled for the week of October 19, 1981, in San Antonio, Texas. The actual times and locations of the public meetings are not available at the time of publication of this notice. Please write the Superintendent at San Antonio Missions National Historical Park at the above address, or telephone 512-229-6000 for futher information.

Anyone wishing to provide comments on the Environmental Assessment/General Management Plan/Development Concept Plan should provide them to the Superintendent, San Antonio Missions National Historical Park, at the address provided above, by November 3, 1981.

Dated: September 11, 1981.

Robert Kerr,

Regional Director, Southwest Region.

[FR Doc. 81-28634 Filed 9-30-81; 8:45 am]

BILLING CODE 4310-70-M

Bureau of Reclamation

Proposed Contract With the Wellton-Mohawk Irrigation and Drainage District for Drainage and Minor Construction; Intent To Initiate Contract Negotiations

The Department of the Interior, through the Bureau of Reclamation (Bureau), intends to enter into a drainage and minor construction (D&MC) contract with the Wellton-Mohawk Irrigation and Drainage District (District), Wellton, Arizona. The proposed contract will amend and supplement the existing contract between the District and the United States and provide Federal funding for construction of three bridges and one culvert across the Gila River and associated Gila River channel works in the area of the crossings. The work to be accomplished under the proposed contract is to replace or improve river crossings which impede the passage of floodflows in the portion of Gila River within the Wellton-Mohawk Division of the Bureau's Gila Project. Improved passage of floodwater will reduce the infiltration of such water into adjacent lands thereby reducing District groundwater pumping requirements for drainage purposes. The estimated cost of the proposed D&MC program is $2,079,000. The expenditures will be repaid pursuant to the terms of the District's existing repayment contract with the United States.

The proposed contract will be written pursuant to the Act of Congress approved June 17, 1902 (32 Stat. 388), and acts amendatory thereof and supplementary thereto, particularly the Act of July 30, 1947 (61 Stat. 628), and the Act of June 13, 1956 (70 Stat. 274).

Negotiating sessions will be open to public observation. Upon completion of negotiations, the proposed contract will be made available to the public for review and written comments for 30 days after it has been declared available for such review. If there is little or no public interest shown during the negotiations, as indicated by the response to this notice and local press releases, the availability of the proposed contract for public review and comment will not be published in the Federal Register.

All written correspondence pertaining to the proposed contract will be made available for review pursuant to the Freedom of Information Act, as amended.

Inquiries or comments concerning the proposed contract should be directed to: Regional Director, Lower Colorado Region, Bureau of Reclamation, P.O. Box 427, Boulder City, Nevada 89005; or call Mr. Ralph Pederson at (702) 293-8652.

September 25, 1981.

Aldon D. Nielsen,

Acting Assistant Commissioner of Reclamation.

[FR Doc. 81-28548 Filed 9-30-81; 8:45 am]

BILLING CODE 4310-09-M

Office of the Secretary

Commission on Fiscal Accountability of the Nation's Energy Resources; Meeting

Notice is given that a meeting of the Commission on Fiscal Accountability of the Nation's Energy Resources will be held on October 19 and 20, 1981, in New York City in Room 305 of the Federal Office Building at 26 Federal Plaza, New York, New York 10007.

Purpose of the Commission

The mission of this Commission includes the review of waste and loss of revenue due to the theft of oil and royalty management problems. The Commission will examine the problems of waste and loss of revenues from energy resources from Federal and Indian tribal lands. Concern has been expressed by Congress, the Department of the Interior, the General Accounting Office, the Indian community, State governments, and the taxpayers over the fiscal accountability of mineral royalty revenues. A final report of the Commission will be presented to the Secretary evaluating the Royalty Management System, internal controls and actions relating to the allegations of oil theft.

Purpose of This Meeting

The purpose of this meeting is to hear testimony relating to the problems of oil theft and royalty management, particularly from oil companies and independent operators. The hearing will be devoted to oral testimony to assist the Commission in understanding the nature and extent of the problems. It is expected that the second day will be devoted entirely to a business meeting. All proceedings will be open to the public. Any member of the public may file a written statement and/or present testimony concerning matters to be discussed by the Commission. Witnesses will be invited by the Commission to testify. Additional persons who wish to present testimony to the Commission should contact the Commission staff at the Commission on Fiscal Accountability of the Nation's Energy Resources, Suite 403, 1111 18th Street, N.W., Washington, D.C. 20036, telephone (202) 653-9051. For additional information on the meeting contact the same office.

Minutes of the meeting will be available for public inspection within 30 days in Suite 403, 1111 18th Street, N.W., Washington, D.C. 20036.

Dated: September 25, 1981.

William L. Kendig,

Director, Office of Financial Management.

[FR Doc. 81-28375 Filed 9-30-81; 8:45 am]

BILLING CODE 4310-10-M

INTERSTATE COMMERCE COMMISSION

Motor Carriers; Finance Applications; Decision-Notice

As indicated by the findings below, the Commission has approved the following applications filed under 49 U.S.C. 10924, 10926, 10931 and 10932.

We find:

Each transaction is exempt from section 11343 (formerly section 5) of the Interstate Commerce Act, and complies with the appropriate transfer rules.

This decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

Petitions seeking reconsideration must be filed within 20 days from the date of this publication. Replies must be filed within 20 days after the final date for filing petitions for reconsiderations; any interested person may file and serve a reply upon the parties to the proceeding. Petitions which do not comply with the relevant transfer rules at 49 CFR 1132.4 may be rejected.

If petitions for reconsideration are not timely filed, and applicants satisfy the conditions, if any, which have been imposed, the application is granted and they will receive an effective notice. The notice will indicate that consummation of the transfer will be presumed to occur on the 20th day following service of the notice, unless either applicant has advised the Commission that the transfer will not be consummated or that an extension of time for consummation is needed. The notice will also recite the compliance requirements which must be met before the transferee may commence operations.

Applicants must comply with any conditions set forths in the following decision-notices within 30 days after publication, or within any approved extension period. Otherwise, the decision-notice shall have no further effect.

It is ordered:

The following applications are approved, subject to the conditions stated in the publication, and further subject to the administrative requirements stated in the effective notice to be issued hereafter.

By the Commission, Review Board Number 3, Krock, Joyce, and Dowell.

MC-FC-78872. By decision of April 16, 1981 issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR Part 1132, Review Board Number 3 approved the transfer to W. C. HALL GENERAL HAULING, INC., of Callao, VA, of Certificate No. MC-99213 issued to Virginia Freight Lines, of Kilmarnock, VA authorizing the transportation of *Roofing and roofing materials, asphalt and Asbestos siding, building paper, wallboard,* and *materials and supplies* used in the installation thereof, *paint, steel sash weights, steel windows* and *casements, steel ventilators* and *steel dampers,* From Bound Brook and Jersey City, NJ and Philadelphia and Reading, PA to points in Essex, Richmond, Lancaster, Northumberland and Westmoreland Counties, VA with no transportation for compensation on return except as otherwise authorized. *Roofing and roofing materials, asphalt and asbestos siding, building paper, wallbord,* and *materials* and *supplies* used in the installation thereof, From Perth Amboy and Manville, NJ to points in Essex, Richmond, Lancaster, King and Queen, King William, Middlesex, Northumberland and Westmoreland Counties, VA with no transportation for compensation on return except as otherwise authorized. From Tappahannock, VA to points in DE, PA, NJ, NY, OH and MD, (except Baltimore), with no transportation for compensation on return except as otherwise authorized. *Malt beverages,* in containers, From Norristown, PA and Newark, NJ to Lottburg, VA and *Empty Malt beverage containers,* from Lottsburg, VA to Norristown PA and Newark, NJ. *Canned goods, seafood and frozen food,* From points in Lancaster and Northumberland Counties, VA, to Richmond and West Point, VA and *Feeds, seeds, fertilizer, building materials, salt, and empty seafood containers* and *rejected or damaged shipments* of the commodities specified next above, From Richmond and West Point, VA. to points in Lancaster and Northcumberland Counties, VA. *Seaford, fruits, and vegetables, fresh, frozen, canned* or processed, and *seafood by-products,* From points in Gloucester, Lancaster, Mathews, Middlesex, Northumberland, Richmond, and Westmoreland Counties, VA. to points in VA, MD, PA, DE, NJ, NY, NC, SC and GA (except from points in Gloucester, Mathews and Middlesex Counties, VA to Baltimore, MD) and *Empty fruit, vegetable, and seafood by-product containers, Lumber,* From points in King and Queen, King William, Middlesex, and Essex Counties, VA, (except Tappahannock) to Baltimore, MD., with no Transportation for compensation on return except as otherwise authorized. From points in Essex, King William, and Middlesex Counties, VA to points in DE, PA, NJ and MD (except Baltimore), with no transportation for compensation on return except as otherwise authorized. From Tappahannock, VA to points in NY and OH, with no transportation for compensation on return except as otherwise authorized. *Canned goods,* From points in Essex, and King and Queen Counties, VA to Baltimore, MD

and DC, with no transportation for compensation on return except as otherwise authorized. *Canned vegetables,* From Urbanna, VA to Philadelphia, PA, and Mullica Hill and Woodstown NJ with no transportation for compensation on return except as otherwise authorized. *Tin cans,* From Baltimore, MD, to points in Essex, and King and Queen Counties, VA with no transportation for compensation on return except as otherwise authorized. *Fertilizer,* From Baltimore, MD to points in Essex,
King and Queen, and Caroline Counties, VA with no transportation for compensation on return except as otherwise authorized. *Mineral wool,* from Manville NJ to Tappahannock, VA with no transportation for compensation on return except as otherwise authorized. *Empty wooden boxes, furniture frames (wood), appliance bases (wood), and pallets and crates (wood),* From the destination points specified next above, to points in Gloucester, Lancaster, Mathews, Middlesex, Northumberland, Richmond and Westmoreland Counties, VA. *Fishing boats and rigging therefor* Between points in Gloucester, Mathews, Middlesex, Lancaster, and Northumberland Counties, VA, on the one hand, and, on the other, points in DE, MD, NJ, NY, NC, SC, and VA. *Lumber,* Between points in Lancaster, Northumberland, Richmond, and Westmoreland Counties, VA on the one hand, and on the other, points in MD within 25 miles of Baltimore, not including DC, or points in MD within 25 miles of Baltimore; MC 99213 Sub 11, Irregular Routes: (1) *Wooden boxes, furniture frames, appliance bases, pallets, and crates* and (2) *lumber* (except plywood and veneer), in mixed loads with one or more of the commodities in (1), From points in Richmond, Lancaster and Northumberland Counties, VA to points in DE, PA, NJ, NY, OH, MD (except Baltimore), WV and NC, with no transportation for compensation on return except as otherwise authorized. MC-99213, Sub 12, Irregular Routes: *Fish products, commercial fishing boats, equipment and supplies* for commercial fishing boats, and *fish processing equipment and supplies,* Between the plant site and storage facilities of Haynie Products, to Cape Charles and Reedville, VA, Morehead City, NC, Baltimore, Md, Wildwood, NJ and Moss Point, MS; MC99213 Sub 13, Regular Routes: *Processed fruits and vegetables, relishes, and materials and supplies* used in the canning and processing of fruits, vegetables and relishes, Serving the plant site of Mount Rose Canning Co., Inc. at or near Office Hall, VA, as an intermediate point in connection with carrier's presently authorized regular-route operations between Baltimore, MD and Burgess Stores, VA (Restriction: The operations authorized herein are restricted to the transporation of traffic originating at or destined to the plant site of Mount Rose Canning Co., Inc., at or near Office Hall, VA). MC 99213 Sub 15, Irregular Routes: *Fish meal, fish oil, and fish solubles,* From Reedville, VA to points in CT and OH, with no transportation for compensation on return except as otherwise authorized. MC 99213 Sub 18, Irregular Routes: *Fish oil, in bulk,* in tank vehicles, From points in Northumberland County, VA to points in FL, IL, IN, KY, MA, MI, WI, and Memphis, TN, with no transportation for compensation on return except as otherwise authorized. From points in ME, LA, MS, NJ, NY, NC (except Charlotte and Wilson), and VA, (except Smithfield and Crozet), to points in Northumberland County, VA with no transportation for compensation on return except as otherwise authorized. MC 99213 Sub 20, Irregular Routes: *Fish solubles,* in tank vehicles, From Cambridge, MD, to points in NY, NC, PA, and VA with no transportation for compensation return except as otherwise authorized. Applicant's representative is: Calvin F Major, Attorney, 200 W. Grace Street, Suite 415, Richmond, VA 23220, 804-649-7591. Application for TA has been filed. Transferee holds authority under Certificate No. MC-143210.

MC-FC-79191. By decision of June 9, 1981 issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR Part 1132, Review Board Number 3 approved the transfer to SOUTHERN FEDERAL TRANSPORTATION, INC. of Permit No. MC-143540 (Sub-No. 6F) issued May 16, 1979 to Marine Transport Company authorizing the transportation of (1) *paper, paper articles, wood pulp,* and *lumber,* (except commodities in bulk), from the facilities of Federal Paper Board Company, Inc., at (a) Riegelwood, Wilmington, Cape Fear, and Roanoke Rapids, NC, and (b) Richmond, VA, to points in the United States (except Alaska and Hawaii), and (2) *material, equipment,* and *supplies* used in the manufacture and distribution of the commodities named in (1) above, (except commodities in bulk), in the reverse direction under contract with Federal Paper Board Company, Inc. of Montvale, NJ. Applicants' represenative: Ralph McDonald, P.O. Box 2246, Raleigh, NC 27602.

Notes.—(1) Transferee presently holds no authority from the Commission. (2) An application for temporary authority has not been filed.

MC-FC-79306. By decision of September 15, 1981, issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR Part 1132, Review Board Number 3 approved the transfer to CONTINENTAL CARTAGE, LTD. of Des Moines, IA, of Permit No. MC-142913 (Sub-No. 2F) issued March 10, 1981, to Travis Transport, Inc. of Des Moines, IA, authorizing the transportation of *general commodities* (except household goods as defined by the Commission and classes A and B explosives), between points in the United States, under contract(s) with Continental Warehouse Group, Ltd. of Des Moines, IA. TA lease is not sought. Transferee is not a carrier. Applicants' representative: Bradford E. Kistler, P.O. Box 82028, Lincoln, NE 68501.

MC-FC-79312. By decision of September 15, 1981, issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR Part 1132, Review Board Number 3, approved the transfer to ON TIME FREIGHT SYSTEMS, INC. of Omaha, NE 68130 of Certificate No. MC-138069 (Sub-Nos. 12, 13, 14, and 16) issued to Lucius, Inc. of Omaha, NE authorizing the transportation of *general commodities* (except classes A and B explosives), between points in Douglas County, NE and Pottawattamie County, IA, on the one hand, and, on the other, points in the United States; *such commodities* as are dealt in or used by manufacturers of pet foods and pet supplies, between Omaha, NE, on the one hand, and, on the other, points in the United States; *food and related products,* between points in York County, NE, on the one hand, and, on the other, points in the United States; *food and related products,* between points in Finney County, KS, on the one hand, and, on the other, those in the United States in and east of ND, SD, NE, CO, and NM. Applicant's representative is: James P. Beck, 717 17th St., Suite 2600, Denver, CO 80202. TA lease is not sought. Transferee is not a carrier.

Note.—By this same transaction, applicant seeks to transfer MC-138069 (Sub-No. 17). Sub-No. 17 is pending a final decision before the Commission and therefore, is not susceptible to the transfer at this time.

MC-FC-79313. By decision of September 15, 1981, issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR Part 1132, Review Board Number 3 approved the transfer to FELTMAN TRUCKING of Worthington, MN certificates No. MC-93573 issued to Douglas W. Kluever of Bigelow, MN

authorizing *livestock*, between Bigelow, MN, and points within 15 miles of Bigelow, on the one hand, and, on the other, Sioux Falls, SD, and Sioux City, IA, and points in Gilman Township, and Floyd Township in Osceola and O'Brien Counties, IA, respectively. *Farm machinery, livestock, emigrant movables,* and *feed,* between points and places within 15 miles of Bigelow, MN. *Sand* and *gravel,* between points within 120 miles of Bigelow, MN. Applicant's representative: Frank Riley, 921 4th Avenue, Worthington, MN. TA lease is not sought. Transferee is not a carrier.

MC-FC-79331. By decision of September 11, 1981, issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR Part 1132, Review Board Number 3 approved the transfer to CHARLES T. LUDY, JR. doing business as CHARLES T. LUDY, JR. TRUCKING of Certificate No. MC-88575 issued April 6, 1962 to C. E. Mostoller, Kenneth R. Mostoller & Clifford F. Mostoller, a partnership doing business as C. E. Mostoller & Sons generally authorizing the regular-route transportation of hay, coal, farm products, fertilizer oyster shells, grit, tar, grass seed, spray and dusting materials, canned goods, and sugar, from and to Berlin, Somerset, Shanksville and Meyersville, PA, and Baltimore, MD. Applicant's representative: Charles E. Creager, 1329 Pennsylvania Avenue, P.O. Box 1417, Hagerstown, MD 21740. An application for temporary authority has not been filed. Transferee is not a carrier or freight forwarder.

MC-FC-79332. Filed August 10, 1981. By decision of September 10, 1981, Review Board Number 3 approved the transfer to MER-BUZ CORP., d.b.a. BOWERS TRANSFER & STORAGE CO., of Denver, CO, of Certificate No. MC-126183 and MC-126183 (Sub-No. 2) issued to R. E. Robinson, d.b.a. Bowers Transfer & Storage Co. of Denver, CO authorizing the transportation of *uncrated store and office furnishings, fixtures, and equipment and component parts* of the commodities described above, between Denver, CO, and points in Denver County, CO, on the one hand, and, on the other, points in CO; and *uncrated business machines,* between Denver, CO, and points in Denver County, CO, on the one hand, and, on the other, points in CO; *refrigeration equipment, business machines, store and office furnishings, fixtures, and equipment,* all uncrated, *uncrated parts* of the commodities above, and *machinery, equipment, materials, and supplies* used in the operation and maintenance of industrial plants, offices, and other business establishments, when involved in, or part of the effects of, a removal of the plants, offices, and business establishments from one location to another, between Denver, CO, and LaFayette, CO, on the one hand, and, on the other, points in AR, KS, NE, NM, OK, TX, UT, and WY, restricted to traffic originating at or destined to Denver or Lafayette, CO. TA lease is sought. Transferee is not a carrier. Applicant's representative: Thomas J. Burke, Jr., 1660 Lincoln Street, Suite 1600, Denver, CO 80264.

MC-FC-79334. By decision of September 10, 1981, issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR Part 1132, Review Board Number 3 approved the transfer to ALASKA TEXAS FREIGHT, INC., of Seattle, WA, of Certificate No. MC-129789 issued to Alaska-Texas Express, Inc. of Seattle, WA, authorizing: *Mercer* commodities, and machinery, equipment, materials, and supplies used in, or in connection with, the drilling of water wells, between points in described portions of OR, MT, ND, and SD. Applicant's represenative: J. G. Dail, Jr., 6810 Fleetwood Rd., Box LL, McLean, VA 22101. TA lease is not sought. Transferee is not a carrier, but is affiliated with transferor.

MC-FC-79338. By decision of September 11, 1981, issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR Part 1132, Review Board Number 3 approved the transfer to H & S MOTOR LINES, INC., of Wesson, MS, of permit No. MC-145230 and Subs 3, 4, 5, 6, and 7 issued to H & S Trucking, Inc., of Wesson, MS, authorizing: such commodities as are dealt in or used by manufacturers of lawn and snow removal products (except commodities in bulk), between the facilities of Jacobsen Manufacturing Co., a division of Sextron, at Brookhaven, MS, on the one hand, and, on the other, points in the United States (except AK and HI); foodstuffs and specialty gift items, from the facilities of the Wisconsin Cheeseman, Inc., at or near Sun Prairie, WI, to Phoenix, AZ, Los Angeles and Oakland, CA, Jacksonville and Miami, FL, Shreveport, LA, Albuquerque, NM, Portland, OR, Salt Lake City, UT, and Seattle, WA under contract with the Wisconsin Cheeseman, Inc., of Madison, WI; prefabricated steel buildings, and materials, equipment and supplies used in their manufacture and distribution, between points in the United States, under contract with Ruffin Pre-Fab Co. Inc., of Oak Grove, LA; wood burning stoves, and accessories for wood burning stoves, and materials, equipment, and supplies used in their manufacture and distribution, between points in the U.S., under contract with Bart Manufacturing Company, of Charlotte, NC, building materials and supplies, between points in the United States, under contract with Woodstocks, Inc., of Terry, MS; building materials, between points in the United States, under contract with Apache Building Products Company, of Linden, NJ. Transferee is not a carrier. TA lease is not sought. Applicant's representative: Donald B. Morrison, Suite 1500, Deposit Guaranty Plaza, P.O. Box 22628, Jackson, MS 39205.

MC-FC-79342. By decision of September 18, 1981 issued under 49 U.S.C. 10926 and 10931 and the transfer rules at 49 CFR Part 1132, Review Board Number 3 approved the transfer to BLUE LINE TRANSPORTATION COMPANY, INC. of Bloomington, CA of Certificate No. MC-89007, MC-89007 Sub 1 issued on August 16, 1981 authorizing general commodities (except the usual exception) between Los Angeles, CA, on the one hand, and, on the other, Los Angeles Harbor and Long Beach, CA, between points in the Los Angeles Harbor Commercial Zone, on the one hand, and, on the other, points in the Los Angeles, CA Commercial Zone, frozen shrimp, frozen lobster, and Mexican flake agar from San Diego, CA, to the port of San Pedro, CA and frozen fruit juices, from Whittier and La Habra, CA, to the port of San Pedro, CA and of Certificate of Registration No. MC-89007 (Sub-No. 4) issued April 23, 1964 to Citizens Warehouse Trucking Company, Inc. evidencing a right to engage in transportation authorizing, as a highway common carrier, of general commodities with exceptions between the points and over the routes between all points within the Los Angeles Basin Territory and between the Los Angeles Basin Territory, on the one hand, and, on the other hand, the San Diego Territory, over U.S. Highways Nos. 101 and 395 serving all intermediate points on U.S. Highway 101, and all points laterally within five miles of that portion of U.S. Highway No. 101 extending from the Los Angeles Basin Territory to the San Diego Territory, including Camp Pendleton in interstate commerce corresponding in scope to Decision No. 60458 dated August 2, 1960 issued by the Public Utilities Commission of the State of California. Applicant's representative: Jerry I. Michael, P.O. Box 188, Bloomington, CA 92316. TA lease is not sought.

Note.—In No. MC-141086 (Sub-No. 3), Blue Line Transportation Company, Inc. sought authority to transport certain specified commodities between points in Arizona, California, Nevada, and Utah. That application was filed June 1, 1981 and

published in the Federal Register June 22, 1981. A certificate in that proceeding was served August 25, 1981, thereby constituting Blue Line as a multi-state carrier. Therefore, upon consummation of this transaction, the holding by Blue Line of the Certificate of Registration in No. MC-89007 (Sub-No. 4) will render that Certificate of Registration invalid, and operations may not be conducted thereunder by Blue Line.

MC-FC-79344. By decision of September 11, 1981 issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR Part 1132, Review Board Number 3 approved the transfer to B&M TRUCKING, INC. of Gwinner, ND, of Permit No. MC-148646 and Certificate 149477 to Beckstrom Enterprises, Inc., of Gwinner, ND, which authorize the transportation of (A) *iron and steel articles* from Minneapolis, MN, and Chicago, IL, to the facilities of Concord, Inc., at Fargo, ND; and (2) *airline baggage wagons*, from the facilities of Concord, Inc., at Fargo, ND, to Chicago, IL and Memphis, TN, under continuing contract(s) in (1) and (2) above with Concord, Inc. of Fargo, ND; and (B) of *metal building system components, and material equipment and supplies* used in the erection and distribution of metal building system components, from Kansas City, MO, Galesburg, IL, Omaha, NE, and Story City, IA, to points in MN, ND, and SD respectively. Applicant's representative is: Richard P Anderson, 502 First National Bank Bldg., Fargo, ND 58126.

Notes.—(A) Temporary authority has been granted to B&M Trucking to conduct the above-described operations. (B) B&M Trucking also seeks to acquire temporary authority granted to Beckstrom Enterprises in No. MC-149477 (Sub-No. 4-5TA), on March 25, 1981, following publication at 46 FR 15819 on March 9, 1981, authorizing the transportation of (1) rolled steel trucks, axles, and axle components, and (2) equipment, materials and supplies used in the manufacture and distribution of the commodities in (1) above, between points in the United States under continuing contract(s) with Loegering Manufacturing, Inc., of Casselton, ND. However, temporary authority issued pursuant to 49 U.S.C. 10928, is not transferable under 49 U.S.C. 10926, nor is it subject to temporary operating approval under 49 U.S.C. 11349, pending disposition of a 49 U.S.C. 10926 transfer. B&M and Beckstrom must jointly seek to substitute B&M for Beckstrom in No. MC-149477 (Sub-No. 4-5TA) and any pending related application for permanent authority under 49 U.S.C. 10922.

MC-FC-79345. By decision of September 10, 1981 issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR Part 1132, Review Board Number 3 approved the transfer to SOUTHEASTERN SALES AND DESIGN, INC., of Corinth, MS, of Certificate Nos. MC-150612F and MC-150612 (Sub-No. 1), issued to Rhodes Truck and Tractor, Inc., of Corinth, MS, authorizing the transportation of (1) *sawmill machinery and parts*, between Corinth, MS, on the one hand, and, on the other, points in the U.S.; and (2) *Mercer commodities*, between points in Alcorn County, MS, and TN, on the one hand, and, on the other, points in the U.S. Representative: John Davidson, Box 1456, Corinth, MS 38834.

Note.—TA application has been filed. Transferee does not hold any authority from this Commission.

James H. Bayne,

Acting Secretary.

[FR Doc. 81-28507 Filed 9-30-81; 8:45 am]

BILLING CODE 7035-01-M

Motor Carriers; Finance Applications; Decision-Notice

The following applications, filed on or after July 3, 1980, seek approval to consolidate, purchase, merge, lease operating rights and properties, or acquire control of motor carriers pursuant to 49 U.S.C. 11343 or 11344. Also, applications directly related to these motor finance applications (such as conversions, gateway eliminations, and securities issuances) may be involved.

The applications are governed by Special Rule 240 of the Commission's Rules of Practice (49 CFR 1100.240). See Ex Parte 55 (Sub-No. 44), *Rules Governing Applications Filed By Motor Carriers Under 49 U.S.C. 11344 and 11349*, 363 I.C.C. 740 (1981). These rules provide among other things, that opposition to the granting of an application must be filed with the Commission in the form of verified statements within 45 days after the date of notice of filing of the application is published in the Federal Register. Failure seasonably to oppose will be construed as a waiver of opposition and participation in the proceeding. If the protest includes a request for oral hearing, the request shall meet the requirements of Rule 242 of the special rules and shall include the certification required.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.241. A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of $10.00, in accordance with 49 CFR 1100.241(d).

Amendments to the request for authority will not be accepted after the date of this publication. However, the Commission may modify the operating authority involved in the application to conform to the Commission's policy of simplifying grants of operating authority.

We find, with the exception of those applications involving impediments (e.g., jursidictional problems, unresolved fitness questions, questions involving possible unlawful control, or improper divisions of operating rights) that each applicant has demonstrated, in accordance with the applicable provisions of 49 U.S.C. 11301, 11302, 11343, 11344, and 11349, and with the Commission's rules and regulations, that the proposed transaction should be authorized as stated below. Except where specifically noted this decision is neither a major Federal action significantly affecting the quality of the human environment nor does it appear to qualify as a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient protests as to the finance application *or* to any application directly related thereto filed within 45 days of publication (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (unless the application involves impediments) upon compliance with certain requirements which will be set forth in a notification of effectiveness of this decision-notice. To the extent that the authority sought below may duplicate an applicant's existing authority, the duplication shall not be construed as conferring more than a single operating right.

Applicant(s) must comply with all conditions set forth in the grant or grants of authority within the time period specified in the notice of effectiveness of this decision-notice, or the application of a non-complying applicant shall stand denied.

Dated: September 18, 1981.

By the Commission, Review Board Number 3, Members Krock, Joyce, and Dowell.

James H. Bayne,

Acting Secretary.

MC-F-14685, filed August 31, 1981. Authority to purchase by BROWN TRANSFER COMPANY, 1202 East 26th Street, Kearney, Nebraska 68847, a portion of the operating rights of Sullivan Transfer & Storage Company, 301 North 8th Street, Lincoln, Nebraska 68508. Control of the involved operating rights by Dwayne A. Brown, Margaret L. Brown, Gaylene R. Aden, Dean L. Aden, and Edna M. Brown, who together control Brown Transfer Co., is also authorized. Applicant's representative: Donald L. Stern, Suite 610, 7171 Mercy Road, Omaha, Nebraska 68106. Operating rights in Certificate No. MC-

11022 (Sub-No. 2) to be purchased: *general commodities* between points in Lancaster and Hall Counties, NE, on the one hand, and, on the other, points in NE. Application has been filed for temporary authority.

MC-F-14692, filed September 8, 1981. Applicants: Walter Peters, David J. Peters, Theodore Peters, and Barry S. Peters, 1540 Lucas Road, Yreka, CA 96097. Representative: Michael S. Rubin, c/o Silver, Rosen, Fischer & Stecher, P.C., 256 Montgomery Street, Fifth Floor, San Francisco, CA 94104. Applicants are individuals, controlling one carrier, Peters Truck Lines, who seek authority to control a second carrier, Oregon Freightways, Inc., through management and stock ownership. Peters Truck Lines is a regular route carrier having authority to operate as a motor common carrier pursuant to Certificate of Public Convenience and Necessity, No. MC-97710, which authorizes the transportation of general commodities (except those of unusual value, used household goods as defined by the Commission and commodities in bulk, in tank vehicles) over regular routes, generally, (1) between Grant's Pass, OR, and Stockton, CA; (2) between Klamath Falls, OR, and Weed, CA; (3) between Red Bluff and Modesto, CA; (4) between Medford, OR, and Newell, CA; (5) between San Francisco and Auburn, CA; (6) between Oakland and Stockton, CA; (7) between junction Interstate Highway 580 and Interstate Highway 205 and junction Interstate Highway 5 and Interstate Highway 205; (8) between junction California 12 and Interstate Highway 80 near Fairfield, CA, and junction California Highway 12 and U.S. Highway 99 near Lodi, CA; (9) between junction California Highway 4 and Interstate Highway 80 near Benicia, CA, and Stockton, CA; (10) between junction California Highway 3 and Interstate Highway 5 near Yreka, CA, and Callahan, CA; (11) between junction California Highway 161 and U.S. Highway 97 near the Oregon-California State Boundary line and junction California Highway 161 and California Highway 139 near Tulelake, CA; (12) between San Francisco and San Jose, CA; (13) between Los Gatos and Berkeley, CA; (14) between junction California Highway 96 and California Highway 263 and Happy Camp, CA; (15) between Yreka, CA, and junction California Hwy 263 and Interstate Highway 5 near Hornbrook, CA; (16) between junction Interstate Highway 80 and Interstate Highway 505 near Vacaville, CA, and junction Interstate Highway 505 and Interstate Highway 5 near Dunnigan, CA; (17) between junction Interstate Highway 5 and California Highway 120 near Lathrop, CA, and Oakdale, CA; (18) between Oakland, CA, and Walnut Creek, CA; (19) between Orland, CA, and Chico, CA; (2) between Willows, CA, and junction California Highway 162 and U.S. Highway 99; (21) between Yuba City CA, and Auburn, CA; (22) between San Mateo, CA, and Hayward, CA; (23) between junction U.S. Highway 101 and California Highway 84 and junction California Highway 17, and California Highway 84; (24) between junction Interstate Highway 5 and California Highway 20 at or near Williams, CA, and Yuba City, CA, also serving specified off-route points in Contra Costa, Solano, Alameda, Yolo, Sacramento, San Joaquin, Sutter, San Francisco, Siskiyou, Stanislaus, Placer, Butte, Tehama, Yuba, Colusa, Glenn, Shasta, San Mateo, Santa Clara, Modoc, Napa, and Marin Counties, CA, and within OR. By order of the Commission served July 13, 1981, in No. MC-152794 (Sub-No. 1) Oregon Freightways, Inc. was substituted for Tyway, Inc. dba O.N.C. Freight System as applicant for authority to transport general commodities (except commodities in bulk, those requiring special equiment, commodities of unusual value, Classes A and B explosives, and household goods as defined by the Commission) between points in Clark County, WA, Multnomah, Washington, Clarkamas, Marion, Linn, Lane, Douglas, Coos, Klamath, Jackson, and Josephine Counties, OR; and Del Norte and Humboldt Counties, CA. Temporary Authority has not been sought under 49 U.S.C. 11349.

Federal Register Caption Summary

MC-F-14696, filed September 8, 1981. CLEAR WATER TRUCK COMPANY, INC. (Clear Water) (9101 Northwest Street, Valley Center, KS 67148)—purchase (portion)—GASTON FEED TRANSPORTS, INC., (Gaston) (2519 East 14th Avenue, Hutchinson, KS 67501). Representative: Michael J. Ogborn, Nelson & Harding, P.O. Box 82028, 1200 N Street, 500 The Atrium, Lincoln, NE 68501. Clear Water, a Kansas corporation, seeks authority to purchase a portion of the interstate operating rights of Gaston. Claude A. Harpster, Jr., seeks authority to acquire control of said rights through the transaction. Clear Water is purchasing the authority contained in Certificate No. MC-126489 (Sub 39F) which authorizes the transportation of *materials and supplies* used in the manufacture of textile bags (except in bulk), from points in AL, GA, LA, NC, SC, TN and TX to the facilities of Hutchinson Bag Corporation at Hutchinson, KS, and *calcium carbonate* (except in bulk), from Sylacauga, AL, to points in IA, IL, KS, NE, OK and points in TX on and north of Interstate Highway 10 and on and east of U.S. Highway 281. Clear Water is authorized to operate as a contract carrier over irregular routes throughout the continental United States pursuant to authority granted in MC-127304 and subs thereto; and as a common carrier in the states of AZ, CA, CO, ID, KS, MS, MT, NM, NV, OR, TX, UT, WA and WY pursuant to authority granted in MC-134966 and subs thereto.

Note.— Application for TA has not been filed.

MC-F-14697, filed September 9, 1981. STUMPS REFRIGERATED EXPRESS, INC. (Stumps)(R.D. #1, Tiro, OH 44887)—purchase (portion)—TEXAS CONTINENTAL EXPRESS, INC., JOSEPH COLVIN, TRUSTEE IN BANKRUPTCY (Texas) (2002 Continental Bldg., Ft. Worth, TX 76102). Representative: David A. Turano, 100 East Broad Street, Columbus, OH 43215. Stumps seeks authority to purchase a portion of the interstate operating rights of Texas. James M. Stump and Charles Stump, equal stockholders of Stumps, seek authority to acquire control of said rights through the transaction. Stumps seeks to purchase Certificate MC-133095 (Sub-Nos. 18 and 61), which authorize the transportation, as a motor common carrier, over irregular routes, of (1) *pet foods*, in containers, from the facilities of Kal Kan Foods, Inc., at Columbus, OH, to points in that part of the United States east of U.S. Hwy 85 (except points in OH), restricted to shipments originating at the described facilities and destined to the above described destination territory; and (2) *meats, meat products, and meat byproducts, and articles distributed by meat-packing houses*, as described in Sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 109 and 766 (except hides and commodities in bulk), from the facilities of Iowa Beef Processors, Inc., at or near Amarillo, TX, to points in CT, DE, IL, IN KY, ME, MD, MA, MI, MN, NH, NJ, NY, ND, OH, PA, RI, SD, VT, VA, WV, WI, and DC, restricted to traffic originating at the named facility and destined to the named destination points. Impediment: Texas holds authority in Certificate No. MC-133095 (Sub-No. 304)X which duplicates the authority sought to be purchased by Stumps. Because this would result in an objectionable split of authority, approval and authorization of

this transaction is conditioned upon applicants either canceling the retained duplicative authority or submitting evidence of public need or demand for the duplicative service which would result from this transaction.

Note.—Application for TA has been Filed. Stumps is authorized to operate as a motor common carrier under MC 148831 and sub-numbers thereunder.

[FR Doc. 81-28506 Filed 9-30-81; 8:45 am]

BILLING CODE 7035-01-M

[Permanent Authority Decisions, Volume No. OP1-268]

Motor Carriers; Permanent Authority Decisions; Decision-Notice

Decided: September 24, 1980.

The following applications, filed on or after February 9, 1981, are governed by special rule of the Commission's rules of practice, see 49 CFR 1100.251. Special Rule 251 was published in the Federal Register of December 31, 1980, at 45 FR 86771. For compliance procedures, refer to the Federal Register issue of December 3, 1980, at 45 FR 80109.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.252. A copy of any application, including all supporting evidence, can be obtained from applicant's representative upon request and payment to applicant's representative of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.g., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated a public need for the proposed operations and that it is fit, willing, and able to conform the service proposed, and to perform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. This presumption shall not be deemed to exist where the application is opposed. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient opposition in the form of verified statements filed on or before 45 days from date of publication (or, if the application later becomes unopposed) appropriate authorizing documents will be issued to applicants with regulated operations (except those with duly noted problems) and will remain in full effect only as long as the applicant maintains appropriate compliance. The unopposed applications involving new entrants will be subject to the issuance of an effective notice setting forth the compliance requirements which must be satisfied before the authority will be issued. Once this compliance is met, the authority will be issued.

Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

By the Commission, Review Board No. 1, Members Parker, Chandler and Fortier (Chandler not participating in part).

James H. Bayne,

Acting Secretary.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract".

Please direct status inquiries to the Ombudsman's Office, (202) 275-7326.

MC 19550 (Sub-12), filed September 14, 1981. Applicant: OBSERVER TRANSPORTATION COMPANY, P.O. Box 34213, Charlotte, NC 28234. Representative: Warren A. Goff, 2008 Clark Tower, 5100 Poplar Ave., Memphis, TN 38137, (901) 767-5600. Transporting *general commodities* (except classes A and B explosives), (1) between points in NC and SC, and (2) between Atlanta and points in Hall County, GA, on the one hand, and, on the other, points in NC and SC.

MC 35320 (Sub-662), filed September 14, 1981. Applicant: T.I.M.E.-DC, INC., 2598-74th St., P.O. Box 2550, Lubbock, TX 79408. Representative: John T. Coon (same address as applicant), (806) 745-7262. Transporting *classes A and B explosives,* between points in the U.S.

Note.—Applicant intends to tack and/or interline at points of origin and destination in connection with its regular service route operations. The certificate granted in this proceeding shall expire 5 years from the date of issuance.

MC 82841 (Sub-323), filed September 9, 1981. Applicant: HUNT TRANSPORTATION, INC., 10770 I Street, Omaha, NE 68127. Representative: William E. Christensen (same address as applicant), (402) 339-3003. Transporting *iron and steel articles,* between the facilities of Nucor Corporation and its subsidiaries in the U.S., on the one hand, and, on the other, points in the U.S.

MC 141870 (Sub-4), filed September 14, 1981. Applicant: DIVERSIFIED TRUCKING CORP., 309 Williamson Ave., Opelika, AL 36801. Representative: Robert E. Tate, P.O. Box 517, Evergreen, AL 36401, (205) 578-2836. Transporting *food and related products* and *containers,* between points in the U.S., under continuing contract(s) with The Wiki Wiki Corporation, of Carson, CA.

MC 142231 (Sub-5), filed September 15, 1981. Applicant: TRI-L CONTRACT CARRIER, INC., 2400 Tower Place, 3340 Peachtree Rd., NE., Atlanta, GA 30326. Representative: Bruce E. Mitchell, Fifth Floor, Lenox Towers South, 3390 Peachtree Rd., Atlanta, GA 30326, (404) 262-7855. Transporting *general commodities* (except classes A and B explosives), between points in the U.S., under continuing contract(s) with Oxylance Corp., of Atlanta, GA.

MC 142451 (Sub-1), filed August 31, 1981. Applicant: JAMES L. SMITH AND JERRY ATTKISSON, d.b.a. SMITH & ATTKISSON TRUCKING CO., Route 2, Columbia, TN 38401. Representative: James N. Clay, III, 222 E. Mallory Ave., Memphis, TN 38109, (901) 774-9992. Transporting *ores and minerals, clay, concrete, glass or stone products, lumber, building materials, and commodities in bulk,* between points in TN, KY, MS, AL, and GA, on the one hand, and, on the other, points in the U.S.

MC 143580 (Sub-3), filed September 15, 1981. Applicant: FREIGHT SYSTEMS, INC., 6303 Corsair Street, Commerce, CA 90040. Representative: Savery L. Nash, 3838 Carson Street, Third Floor, Torrance, CA 90503, (213) 316-0752. Transporting *printed matter,* between points in Los Angeles County, CA, on the one hand, and, on the other, points in CA.

MC 149321 (Sub-1), filed September 14, 1981. Applicant: SCHMIDT TRUCKING, INC., Seymour Ave., Garner, IA 50438. Representative: Stephen F. Grinnell, 1600 TCF Tower, Minneapolis, MN 55402, (612) 333-1341. Transporting *food and related products,* between points in AL, AR, CO, IA, IL, IN, KS, KY, LA, MD, MI, MN, MS, MO, NE, ND, OH, OK, SD, TN, TX and WI, on the one hand, and, on the other, points in the U.S.

MC 151260 (Sub-2), filed September 14, 1981. Applicant: B & P TRUCK LINES, INC., 2906 South Market St.,

Chattanooga, TN 37410. Representative: Daniel O. Hands, 205 West Touhy Ave., Suite 200–A, Park Ridge, IL 60068, (312) 698–2235. Transporting (1) *metal products*; and (2) *such commodities* as are dealt in or used by discount department stores, between Birmingham, AL, on the one hand, and, on the other, points in the U.S. in and east of ND, SC, NE KS, OK and TX.

MC 151590 (Sub-1), filed September 15, 1981. Applicant: LAKE TRUCKING COMPANY, a corporation, P.O. Box 142, Leesburg, FL 32748. Representative: Robert S. Lee, 1600 TCF Tower, Minneapolis, MN 55402, (612) 333–1341. Transporting *food and related products*, between points in FL, on the one hand, and, on the other, points in AL, AR, CO, GA, IL, IN, IA, KS, KY, LA, MD, MI, MN, MS, MO, NE, NH, NY, NC, OH, OK, PA, SC, TN, TX, VA, WV and WI.

MC 153650 (Sub-2), filed September 14, 1981. Applicant: MIKE MEADORS TRUCKING, P.O. Box 496, Alma, AR 72921. Representative: Don Garrison, P.O. Box 1065, Fayetteville, AR 72702, (501) 521–8121. Transporting *petroleum products*, between points in AR, on the one hand, and, on the other, points in the U.S.

MC 153730 (Sub-1), filed September 14, 1981. Applicant: QUICK TRANSPORT, INC., 5320 Augusta Road, Garden City, GA 31408. Representative: Marcus James Padgett, Jr., 33 Varnedoe Ave., Garden City, GA 31408, (912) 964–7282. Transporting *general commodities* (except classes A and B explosives), between points in GA, SC, FL, NC, AL, LA, MS, TN, KY and VA.

MC 157000 (Sub-1), filed September 1, 1981. Applicant: WALTER E. DLUBAK, d.b.a. DLUBAK GLASS CO., R.D. #1, Box 274, Saxonburg Rd., Natrona Heights, PA 15065. Representative: Arthur J. Diskin, 806 Frick Bldg., Pittsburgh, PA 15219, (412) 224–6611. Transporting *waste or scrap materials*, between points in PA, NY, NJ, CT, RI, NH, VT, MA, ME, MD, DE, VA, WV, NC, SC, TN, KY, OH, IN, IL, MI, WI, and DC.

MC 157060, filed September 10, 1981. Applicant: JANCO, LTD., 34 Burgess Place, Wayne, NJ 07470. Representative: Anthony E. Young, 29 South LaSalle St., Suite 350, Chicago, IL 60603, (312) 782–8880. Transporting (1) *passengers*; and (2) *such commodities* as are used or dealt in by theatrical production companies, between points in the U.S., under continuing contract(s) with Janco Productions, Inc., of New York, NY.

MC 158161, filed September 10, 1981. Applicant: JOHN CONTE, d.b.a. J & R CARTAGE, 1740 Cortland St., Suite G, Addison, IL 60101. Representative: Gerald Cohen, Barrister Hall, 29 South LaSalle St., Suite 345, Chicago, IL 60603, (312) 236–1717. Transporting *metal tubing, paper and paper products, and computer room furniture*, between Chicago, IL, and points in Cook and Du Page Counties, IL, on the one hand, and, on the other, points in WI, IN, OH, PA, and MO.

MC 158171, filed September 11, 1981. Applicant: FIELDER TRUCKING, INC., Route 1, Box 36–A, Branch, LA 70516. Representative: J. Robert Wooley, P.O. Box 289, Baton rouge, LA 70821, (504) 342–5710. Transporting *asphalt*, between points in the U.S., under continuing contract(s) with Bitucote Products Co., of St. Louis, MO.

MC 158220, filed September 15, 1981. Applicant: BERNARD D. (BERNIE) CLARK, d.b.a., C E R & DISTR., P.O. Box 19, Canby, OR 97013. Representative: Bernie Clark (same address as applicant), (503) 266–5943. Transporting (1) *lumber and wood products*; (2) *metal products*; (3) *chemicals and related products*; (4) *machinery*; and (5) *such commodities* as are dealt in or used by manufacturers of paint, ceramics, plastics and insulation, between points in the U.S., under continuing contract(s) with (a) States Industries, Inc., of Eugene, OR; (b) UNR-Leavitt, Division of UNR, Inc., of Chicago, IL; (c) Western Equipment Co., of Eugene, OR; (d) Harrisons & Crosfield (Pacific), Inc., of Seattle, WA; and Robert Weed Plywood Corp., of Bristol, IN.

MC 158250, filed September 14, 1981. Applicant: LIMO–1, INC., 20 W. Graisbury Ave., Aububon, NJ 08106. Representative: Peter L. Cornelli, 1209 Wyndmoor Rd., Cherry Hill, NJ 08034, (609) 795–1479. Transporting *passengers*, between points in NJ, PA, NY, DE, VA, MD, CT, RI, MA, and DC.

[FR Doc. 81-28512 Filed 9-30-81; 8:45 am]
BILLING CODE 7035-01-M

[Permanent Authority Decisions Volume No. OP1–269]

Motor Carriers; Permanent Authority Decisions; Decision-Notice

Decided: September 24, 1981.

The following applications, filed on or after February 9, 1981, are governed by special rule of the Commission's rules of practice, see 49 CFR 1100.251. Special Rule 251 was published in the Federal Register on December 31, 1980, at 45 FR 86771. For compliance procedures, refer to the Federal Register issue of December 3, 1980, at 45 FR 80109.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.252. Applications may be protested *only* on the grounds that application is not fit, willing, and able to provide the transportation service or to comply with the appropriate statutes and Commission regulations. A copy of any application, including all suporting evidence, can be obtained from applicant's representative upon request and payment to applicant's representative of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.g., unresolved common control, fitness, water carrier dual operations, or jusisdictional questions) we find, preliminarily, that each applicant has demonstrated a public need for the proposed operations and that it is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. This presumption shall not be deemed to exist where the application is opposed. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient opposition in the form of verified statements filed on or before 45 days from date of publication (or, if the application later become unopposed), appropriate authorizing documents will be issued to applicants with regulated operations (except those with duly noted problems) and will remain in full effect only as long as the applicant maintains appropriate compliance. The unopposed applications involving new entrants will be subject to the issuance of an effective notice setting forth the compliance requirements which must be satisifed before the authority will be issued. Once this compliance is met, the authority will be issued.

Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

By the Commission, Review Board No. 1, Members Parker, Chandler and Fortier (Chandler not participating in part).

James H. Bayne,

Acting Secretary.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract."

Please direct status inquiries to the Ombudsman's Office, (202) 275-7326.

MC 158151, filed September 8, 1981. Applicant: W. N. PROCTOR COMPANY, INC., 115 Broad Street, Boston, MA 02110. Representative: F. Leo Fitzpatrick (same address as applicant), (617) 482-0360. As a *broker of general commodities* (except household goods), between points in the U.S.

MC 158170, filed September 11, 1981. Applicant: RIEDEL INTERNATIONAL, INC., 4555 N. Channel Ave., Portland, OR 97208. Representative: Lawrence V Smart, Jr., 419 N.W. 23rd Ave., Portland, OR 97210, (503) 226-3755. Transporting, for or on behalf of the United States Government, *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), between point in the U.S.

MC 158210, filed September 11, 1981. Applicant: COMPAGNIE D'AFFRETEMENT ET DE TRANSPORT U.S.A., INC., 499 Park Ave., New York, NY 10022. Representative: Alan F. Wohlstetter, 1700 K St., N.W., Washington, DC 20006, (202) 833-8884. As a *broker* of *general commodities* (except household goods), between points in the U.S.

MC 158240, filed September 8, 1981. Applicant: SPECIALIZED TRANSPORT SERVICES, INC., P.O. Box 5236, Lake Station, IN 46405. Representative: Edward P. Bocko, P.O. Box 496, Mineral Ridge, OH 44440-0496, (216) 652-2789. As a *broker* of *general commodities* (except household goods), between points in the U.S.

[FR Doc. 81-28511 Filed 9-30-81; 8:45 am]

BILLING CODE 7035-01-M

[No. MC-C-10800 (Sub-1)]

Petition for Declaratory Order—Interpretation of Used Pallet, Container, and Shipping Devices Exemption

AGENCY: Interstate Commerce Commission.

ACTION: Notice of related declaratory order proceeding.

SUMMARY: The Commission is expanding the scope of the proceeding in No. MC-C-10800, same title as above, 46 FR 43114, August 26, 1981, to encompass specifically the question of whether the transportation by motor vehicle of empty, used beverage containers is exempt from regulation pursuant to 49 U.S.C. 10526(a)(11). This action is taken in response to a petition for interpretation filed by a trade association.

DATES: Comments are due November 2, 1981.

ADDRESS: Send an original and, if possible, 15 copies of comments to:

MC-C-10800 (Sub-No. 1), Room 5416, Office of Proceedings, Interstate Commerce Commission, Washington, D.C. 20423

Send one copy of comments to petitioner's representatives:

Bruce Rea, Jr. and David H. Coburn, Rea, Cross & Auchincloss, 700 World Center Building, 918 16th Street, NW., Washington, D.C. 20006

FOR FURTHER INFORMATION CONTACT:

Nancy Hurley, (202) 275-7893 or Donald J. Shaw, Jr., (202) 275-7292

SUPPLEMENTARY INFORMATION: The National Motor Freight Traffic Association has filed a petition which seeks the Commission's interpretation of the scope of the exemption from regulation set forth in section 10526(a)(11) of the Interstate Commerce Act. We have previously instituted a declaratory proceeding with a somewhat different focus in No. MC-C-10800, same title as above, 46 FR 43114-16 (August 26, 1981), to interpret the new statutory exemption and solicited public comments. Consequently, it appears that the most expeditious and practical course under these circumstances would be to consider petitioner's inquiry here concurrently with the proceeding in MC-C-10800. A brief review of petitioner's interest in this area is summarized below.

Petitioner seeks a ruling to determine whether the statutory words "used empty shipping containers" embrace, and thereby exempt from regulation, the transportation by motor common carriers of used, empty beverage bottles. It reviews an underlying dispute between a carrier and a shipper over the propriety of employing exempt rates for the transportation of used, empty beer bottles. Petitioner takes the position that the exemption in section 10526(a)(11) does not embrace the transportation of used, empty consumer packages, such as beverage bottles, since the plain terms of that section do not cover these articles and since bottles are not "shipping containers" within the technical transportation meaning derived from trade usage. Petitioner relies on the definition of a "shipping container" as this term appears in the packaging industry's *Glossary of Terms*, the Packaging Institute, U.S.A. and Packaging Machinery Manufacturers Institute, (5th ed. 1979).

Contrary to the petitioner's arguments and definitional distinctions, however, it has been the Commission's long-standing practice to treat the return transportation of certain empty containers, such as used, empty beer barrels and bottles, as covered by implied authority and not subject to separate regulation or licensing requirements. See 49 CFR 1041.10. Petitioner contends that the subsequent passage of the Motor Carrier Act of 1980 limits attention to "shipping containers" and is therefore not as broad as the Commission's earlier rule. Considering the regulations governing our return transportation of used, empty bottles, and given the issue presented by the Petitioner's arguments concerning the exemption in section 10526(a)(11), we believe it would be useful to handle petitioner's inquiry in conjunction with the interpretation efforts already begun in MC-C-10800. We feel that comments from interested members of the public which relate to petitioner's position will be most helpful to our determination of the scope of the involved exemption, and for that purpose a separate comment period is specified below.

Any person (including the petitioner) desiring to participate in this proceeding shall file with the Commission an original and, if possible 15 copies of written representations, views, or arguments. A copy of each representation also must be filed on the petitioner's representatives.

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

It is ordered:

Pursuant to 5 U.S.C. 554(e), and in the sound exercise of our discretion, a declaratory proceeding is instituted. Absent compelling reasons to the contrary, this proceeding and the related proceeding MC-C-10800, as specified above, will be handled concurrently following the expiration of their respective comment periods.

Decided: September 23, 1981.

By the Commission, Chairman Taylor, Vice Chairman Clapp, Commissioners Gresham and Gilliam.

James H. Bayne,

Acting Secretary.

[FR Doc. 81-28510 Filed 9-30-81; 8:45 am]

BILLING CODE 7035-01-M

[Ex Parte No. 290 (Sub-2)]

Railroad Cost Recovery Procedures

AGENCY: Interstate Commerce Commission.

ACTION: Notice of approval of railroad cost index.

SUMMARY: The Commission had decided to approve the cost index filed by the Association of American Railroads under the procedures of Docket Ex Parte No. 290 (Sub-No. 2), *Railroad Cost Recovery Procedures.* The application of the index provides a maximum increase of 1.4% above the level prescribed in our decision served June 25, 1981 (46 FR 34425, July 1, 1981).

EFFECTIVE DATE: October 1, 1981.

FOR FURTHER INFORMATION CONTACT: Jane Mackall (202) 275-7656; or Raymond Hobbs (technical) (202) 275-6780.

SUPPLEMENTARY INFORMATION: By decision served April 17, 1981 (46 FR 25594, April 20, 1981), we outlined the procedures for calculation of the Interim Mid-Quarter Index of railroad costs and the methodology for computing the Rail Cost Adjustment Factor. We also decided to require the Association of American Railroads (AAR), no later than 20 days before the end of each quarter, to calculate and submit to the Commission the mid-quarter index.

We have received AAR's calculations of the mid-quarter index and have found that these calculations comply with the guidelines outlined in our decision served April 17, 1981.

The indices derived from these calculations are shown in the table below:

The carriers may not apply this increase to recyclable commodities, other than scrap iron or steel. We admit this is an extraordinary action, not contemplated by the rules established in this proceeding. However, we believe it is required by our special mandate in the recyclables area and recent court action.

Section 204 of the Staggers Act defines a revenue-to-variable cost ratio to be used as a ceiling for rail rates on these commodities, and states further that "as long as any such rate equals or exceeds such average * * * ratio * * * such rate shall not be required to bear any further rate increase." In Ex Parte No. 394 *Cost Ratio for Recyclables—1980 Determination,* 364 I.C.C. 425 (1980), we calculated that ratio to be 146 percent. Section 204 was further interpreted in a recent court decision which held that the railroads must immediately reduce their rates to the 146 level. *National Ass'n. of Recycling Industries* v. *I.C.C.,* —*F. 2d*— (D.C. Cir. 1981). Since the rate reductions have not yet been made, we may not approve any increase that could produce increases on rates above 146 percent. Furthermore, considering the wording of section 204, and considering, as was emphasized by the court, that Congress intended special treatment for recyclables, we will be issuing a notice in Ex Parte No. 290 (Sub-No. 2), *Railroad Cost Recovery Procedures,* to address this matter. In view of our affirmative duty under Section 204, we believe it necessary that carriers submit specific cost evidence demonstrating that any proposed increases for these commodities will not result in rates that exceed the permissible level before we will approve any increase on these recyclables.

We believe that further study is appropriation as to the manner in which anticipated wage settlements are reflected in the index. The rulemaking portion of this proceeding is hereby reopened on the issue of handling interest accruing on funds collected but not disbursed. A notice of proposed rulemaking will be issued shortly describing in detail our concerns on this issue and perhaps other issues.

This decision will not significantly affect the quality of the human environment or conservation of energy resources. Although this proceeding is not subject to Pub. L. 96-354, it is our opinion that it will not have a significant adverse impact on a substantial number of small entities.

Dated: September 24, 1981.

By the Commission, Chairman Taylor, Vice-Chairman Clapp, Commissioners Gresham and Gilliam. Chairman Taylor will submit a separate expression at a later date.

James H. Bayne,

Acting Secretary

TABLE I.—INTERIM MID-QUARTER INDEX

(1979=100)

Category	Oct. 1, 1980	1981			
		1st quarter	2d quarter	3d quarter	4th quarter
Salaries, wages and supplements	112.6	119.6	119.6	124.7	128.7
Fuel	153.1	170.8	183.8	186.4	176.8
Other materials and supplies	119.1	121.9	123.6	125.0	128.3
Other expenses	117.3	121.7	124.7	127.2	128.7
Weighted average [1]	118.6	125.4	127.7	131.4	133.3

[1] Based on the following 1979 weights: Salaries, wages and supplements—49.9 pct; fuel—9.6 pct; other materials and supplies—12.5 pct; and other expenses—28.0pct.

The Rail Cost Adjustment Factors for first, second, third and fourth quarter, 1981, are computed in the following table.

RAIL COST ADJUSTMENT FACTOR

Item	Oct. 1, 1980	1981			
		1st quarter	2d quarter	3d quarter	4th quarter
Weighted index	118.6	125.4	127.7	131.4	133.3
Rail cost adjustment factor		1.057	1.078	1.108	1.124

The factor of 1.014 (1.4%) applicable to present rates was computed by dividing the fourth quarter adjustment factor (1.124) by the third quarter adjustment factor (1.108).

[FR Doc. 81-28509 Filed 9-30-81; 8:45 am]

BILLING CODE 7035-01-M

[Ex Parte No. 387 (Sub-50)]

Southern Railway Co. Exemption for Contract Tariff ICC-SOU-C-0037

AGENCY: Interstate Commerce Commission.

ACTION: Notice of provisional exemption.

SUMMARY: Petitioner is granted a provisional exemption under 49 U.S.C. 10505 from the notice requirements of 49 U.S.C. 10713(e). Its previously filed contract tariff may become effective on one day's notice. This exemption may be

revoked if protests are filed within 15 days of publication in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Jane F Mackall, (202) 275-7656.

SUPPLEMENTARY INFORMATION: Southern Railway Company filed a petition on September 14, 1981, seeking an exemption under 49 U.S.C. 10505 from the statutory notice provisions of 49 U.S.C. 10713(e). It requests that we advance the effective date of its contemporaneously filed contract tariff ICC-SOU-C-0037, now October 11, 1981, so that the effective date would be on one day's notice. The contract covers coal movements from a number of mines to Morehead City, NC.

Under 49 U.S.C. 10713(e), contracts must be filed on not less than 30 nor more than 60 days' notice. There is no provision for waiving this requirement. CF former section 10763(d)(1). However, the Commission has granted relief under our section 10505 exemption authority in exceptional situations.

The petition is granted. The shipper has held back shipments pending completion of contract negotiations. As a result, the receiver's shipment requirements are reaching a critical level because of a heavy vessel schedule for this fall. Further, a letter from Alla-Ohio Valley Coals, Inc., indicates that its operation has been impaired in not having these contract rates. In these circumstances, authorization of a provisional exemption is warranted, and Southern's contract ICC-SOU-C-0037 may become effective on one day's notice.

We will apply the following conditions which have been imposed in similar exemption proceedings:

> If the Commission permits the contract to become effective on one day's notice, this fact neither shall be construed to mean that this is a Commission approved contract for purposes of 49 U.S.C. 10713(g) nor shall it serve to deprive the Commission of jurisdiction to institute a proceeding on its own initiative or on complaint, to review this contract and to disapprove it.

Subject to compliance with these conditions, under 49 U.S.C. 10505(a) we find that the 30 day notice requirement in these instances is not necessary to carry out the transportation policy of 49 U.S.C. 10101a and is not needed to protect shippers from abuse of market power. Further, we will consider revoking these exemptions under 49 U.S.C. 10505(c) if protests are filed within 15 days of publication in the Federal Register.

This action will not significantly affect the quality of the human environment or the conservation of energy resources.

(49 U.S.C. 10505)

Dated: September 25, 1981.

By the Commission, Division 2, Commissioners Gresham, Gilliam and Taylor. Commissioner Taylor did not participate.

James H. Bayne,
Acting Secretary.

[FR Doc. 81-28508 Filed 9-30-81; 8:45 am]

BILLING CODE 7035-01-M

[Volume No. 174]

Motor Carriers; Permanent Authority Decisions; Restriction Removals; Decision-Notice

Decided: September 28, 1981.

The following restriction removal applications, filed after December 28, 1980, are governed by 49 CFR 1137 Part 1137 was published in the Federal Register of December 31, 1980, at 45 FR 86747.

Persons wishing to file a comment to an application must follow the rules under 49 CFR 1137.12. A copy of any application can be obtained from any applicant upon request and payment to applicant of $10.00.

Amendments to the restriction removal applications are not allowed.

Some of the applications may have been modified prior to publication to conform to the special provisions applicable to restriction removal.

Findings:

We find, preliminarily, that each applicant has demonstrated that its requested removal of restrictions or broadening of unduly narrow authority is consistent with 49 U.S.C. 10922(h).

In the absence of comments filed within 25 days of publication of this decision-notice, appropriate reformed authority will be issued to each applicant. Prior to beginning operations under the newly issued authority, compliance must be made with the normal statutory and regulatory requirements for common and contract carriers.

By the Commission, Restriction Removal Board, Members Sporn, Ewing, and Shaffer.

James H. Bayne,
Acting Secretary.

FF-357 (Sub-1)X, filed September 9, 1981. Applicant: INTERSTATE INTERNATIONAL, INC., 5801 Rolling Road, West Springfield, VA 22152. Representative: Marshall Kragen, 1919 Pennsylvania Avenue, N.W., Suite 300, Washington, DC 20006. Applicant seeks to remove restrictions from its Sub-1 permit to: (1) broaden the commodity description from used household goods and unaccompanied baggage and used automobiles to "household goods, baggage and transportation equipment; and (2) eliminate the restriction limiting the transportation of used automobiles to the transportation of used automobiles to the transportation of export and import traffic.

MC 52869 (Sub-102)X, filed September 18, 1981. Applicant: NORTHERN TANK LINE, P.O. Box 970, Miles City, MT 59301. Representative: Michael E. Miller, 502 First National Bank Building, Fargo, ND 58126. Applicant seeks to remove restrictions in its lead certificate to (1) broaden all commodity descriptions to "commodities in bulk" from petroleum and petroleum products, liquid petroleum products, and crude petroleum, in bulk; (2) authorize two-way in lieu of one-way service; and (3) authorize service at all intermediate points on the specified regular routes.

MC 59336 (Sub-No. 30)X, filed September 14, 1981. Applicant: U.S. TRUCK COMPANY, INC., 2290—24th Street, Detroit, MI 48216. Representative: Wilber M. Brucker, Jr., 38th Floor City National Bank Building, Detroit, MI 48226. Applicant seeks to remove restrictions in its lead and Sub-Nos. 1, 2, 3, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 17, 19, 20, 21, 23, 26, 27, 28, and 29F certificates to (1) broaden the commodity descriptions to (a) "general commodities (except classes A and B explosives)" from uncrated household goods and commodities generally (with exceptions) in Sub-No. 1, commodities generally (with exceptions) in Sub-No. 3 and general commodities (with exceptions) in Sub-Nos. 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 17, 19, 21, 23, 26, 27, 28, and 29F; and (b) "waste or scrap materials not identified by industry producing" from foam padding in Sub-No. 20, and padded foam products in Sub-No. 27 (part 1); (2) allow service at all intermediate points between points in MI and Toledo, OH, in the lead, between Flint and Bay City, MI, Saginaw and Durand, MI, and junction MI Hwys. 78 and 71 and Corunna, MI, in Sub-No. 5, between junction U.S. Hwy 12 and Scio, MI, and Ann Arbor, and Scio, MI, in Sub-No. 6, and between Toledo and Cincinnati, OH, Wapakoneta and Lancaster, OH, Fostoria and Springfield, OH, and Carey and Springfield, OH, in Sub-No. 27; (3) change one-way to radial authority on its irregular routes in Sub-Nos. 20 and 27; (4) authorize interstate service and remove the restriction which limits service to or from points in Canada in Sub-No. 21; (5) remove the plantsite limitations in Sub-Nos. 26, 27, and 29F; (6) remove the restriction against the transportation of local and interlining

traffic moving between points in Michigan, on the one hand, and, on the other, points in that part of Ohio on and north of a line beginning at the Indiana-Ohio State line, thence easterly along U.S. Highway 30 to junction U.S. Highway 30N near Delphos, Ohio, thence easterly along U.S. Highway 30N to junction U.S. Highway 30 near Mansfield, Ohio, and thence easterly along U.S. Highway 30 to the Ohio-Pennsylvania State line in Sub-No. 27; and (7) replace off-route points with county-wide authority as follows: (a) Perry, Morrice, Bancroft, and Durand with Shiawassee County, MI, in Sub-No. 1; (b) Chelsea and Clarkston with Washtenaw and Oakland Counties, MI, in Sub-No. 3; (c) Romeo with Macomb County, MI, in Sub-No. 26; (d) Logan, Newark, Zanesville, South Zanesville, London, and Chillicothe with Hocking, Licking, Muskingum, Madison, and Ross Counties, OH, points within 5 miles of Cincinnati, OH, with Hamilton County, OH, and Kenton, Campbell, and Boone Counties, KY, and points within 3 miles of Columbus, OH, with Franklin County, OH, in Sub-No. 27; (e) Lyons and Coopersville with Ionia and Ottawa Counties, MI, in Sub-No. 28; and (f) Constantine and Three Rivers with St. Joseph County, MI, in Sub-No. 29F.

MC 116602 (Sub-8)X, filed September 15, 1981. Applicant: JAMES F. HERLIHY TRUCKING CO., INC., 20 Emma St., Binghamton, NY 13905. Representative: Warren A. Goff, 2008 Clark Tower, 5100 Poplar Ave., Memphis, TN 38137 Applicant seeks to remove restrictions in its Sub-Nos. 1, 5 and 7F certificates to (1) remove all exceptions from its general commodities authority, except classes A and B explosives, in all certificates; (2) remove the restriction limiting service to the transportation of traffic having an immediately prior or subsequent movement by air, in all certificates, and (3) broaden the airport or city-wide authority to county-wide or city-wide authority: (a) Broome County Airport to Broome County, NY; Newark Airport to Newark, NJ; and John F. Kennedy International Airport to New York, NY in Sub-No. 1, (b) Buffalo, Rochester, Syracuse, Utica, Elmira and Binghamton, NY to Erie, Niagara, Monroe, Onondaga, Oneida, Chemung and Broome Counties, NY, in Sub-No. 5, and (c) Binghamton, NY and Broome County Airporty to Broome County, NY and Stewart Field Airport to Orange County, NY, in Sub-No. 7F.

MC 124111 (Sub-69)X, filed August 10, 1981, published in the Federal Register of September 2, 1981, and republished as follows:

MC 124111 (Sub-69)X, filed August 10, 1981. Applicant: OHIO EASTERN EXPRESS, INC., 300 West Perkins, P.O. Box 2297, Sandusky, OH 44870. Representative: David A. Turano, 100 E. Broad St., Columbus, OH 43215. Applicant seeks to remove restrictions in its Sub-Nos. 3, 4, 11, 14, 15, 17, 18, 19, 23, 24, 25, 26, 27, 29, 31, 32, 35, 38, 39, 40, 42, 44, 45, 46, 50, 51, 53, 55, 57, 59F, 60F, 61F, 62F, 65F, certificates and E-1 letter notice, to (1) broaden the commodity description to (a) "food and related products" from meats, meat products, and meat by-products in Sub-Nos. 3, 11, 15, 17, 18, 19, 24, 27, 59F, and 60F, bananas in Sub-Nos. 4, 23, 32, 35, 38, 40, 51, 55, 57 and E-1, oleomargarine, salad dressing, coconut oil, vegetable oil, vegetable oil—fatty acids, cooking oil, shortening, stearine, stearate and mayonnaise in Sub-No. 14, lard in Sub-No. 15, cheese products in Sub-No. 24, prepared foods, cabbage, sauerkraut, pickles, sugar, fresh fruits and vegetables, packaged vegetables, fresh tomatoes, tomato pulp, tomato juice, ketchup in Sub-No. 25, cole slaw, salads, bakery goods in Sub-No. 26, foodstuffs in Sub-Nos. 27, 31, and 62F, frozen foods and frozen prepared foods in Sub-Nos. 27, 39, and 42, vegetable oil shortening in Sub-No. 44, prepared flour mixes and frosting mixes in Sub-No. 45, food and food products in Sub-No. 46, frozen bakery products in Sub-Nos. 50 and 53, frozen bread, salad dressings, croutons and popcorn in Sub-No. 61F, and spaghetti, macaroni, and noodle products in Sub-No. 65F, non-carbonated fruit drinks, chocolate drink, cider and frozen yogurt in Sub-No. 29, (b) "printed matter" from advertising material in Sub-Nos. 14 and 25; (c) "metal products" from steel, steel stampings, cans and bottle caps in Sub-No. 25; (d) "clay, concrete, glass or stone products" from glass containers, enamelware and enamelware products in Sub-No. 25; (e) "rubber and plastic products" from electric refrigerator parts in Sub-No. 25; (f) "waste or scrap materials" from scrap metals in Sub-No. 25; (g) "chemical and related products" from salt in Sub-No. 25; (h) "coal and coal products" from coal in Sub-No. 25; and (i) "furniture and fixtures" from office supplies in Sub-No. 25; (2) replace facilities limitations and specific point authority with city-wide or country-wide authority to (a) Erie County, OH from Sandusky, OH in Sub-Nos. 3 and 46, (b) Columbus, OH for facilities at Columbus, OH in Sub-Nos. 14, 26, and 62F, (c) Highland County, OH for Greenfield, OH in Sub-Nos. 15 and 17 and facilities at Greenfield, OH in Sub-No. 59F, (d) Sandusky County, OH for Fremont, Cincinnati and Clyde, OH in Sub-No. 25, (e) Huron County, OH for Bellevue, OH in Sub-No. 25, (f) Ottawa County, OH for Oak Harbor, OH in Sub-No. 25; (g) Wood County, OH for Bowling Green, OH in Sub-No. 25, (h) Trumbull County, OH for Warren, OH in Sub-No. 25, (i) Mahoning County, OH for Youngstown, OH in Sub-Nos. 25, (i) Mahoning County, OH for Youngstown, OH in Sub-Nos. 25 and 32, (j) Wayne County, OH for Orrville, OH in Sub-No. 27, (k) Seneca County, OH for new Riegel and Tiffin, OH in Sub-No. 27, (l) Cuyahoga County, OH for Bedford Heights, OH in Sub-No. 61 and facilities at Solon, OH in Sub-No. 31, (m) Jackson County, OH for facilities at Wellston, OH in Sub-No. 42, (n) Dayton, OH for facilities at Dayton, OH in Sub-No. 60F, (o) Preble County, OH for facilities at Lewisburg, OH in Sub-No. 60F, (p) Kane County, IL for facilities at North Aurora, IL in Sub-No. 11 (q) Madison County, IL for Alton, IL in Sub-No. 25, (r) Daviess County, IN for Washington, IN in Sub-No. 24, (s) Fayette County, IN for Connersville, IN in Sub-No. 25, (t) Grant County, IN for Gas City, IN in Sub-No. 25, (u) Adams County, IN for facilities at Decatur, IN in Sub-No. 44, (v) Hillsdale County, MI for Jonesville, MI in Sub-No. 25, (w) Kent County, MI for Grand Rapids, MI in Sub-No. 32, (x) Detroit, MI for facilities at Detroit, MI in Sub-No. 39, (y) Washtenaw County, MI for facilities at Chelsea, MI in Sub-No. 45, (z) Wayne County, MI for facilities at Livonia, MI in Sub-Nos. 50 and 53, (aa) Erie County, NY for Buffalo, NY in Sub-Nos. 25 and 27, (bb) Onondaga County, NY for Syracuse, NY in County, NY Nos. 25 and 27, (cc) Chautauqua, Cattaraugus and Monroe Counties, NY for Jamestown, Olean and Rochester, NY in Sub-No. 25, (dd) Allegheny County, PA for New Kensingston, PA in Sub-No. 25, (ee) Beaver County, PA for Ambridge, PA in Sub-No. 25, (ff) New Castle County, DE for Wilmington, DE in Sub-No. 23, (gg) Cumberland and Hudson Counties, NJ for Rosenhayn and Weehawken, NJ in Sub-No. 55, (hh) Youngstown, OH, with Mahoning County, OH, Grand Rapids, MI, with Kent County, MI, Fort Wayne, IN, with Allen County, IN, in Sub-No. 4; (ii) Erie, PA, to Erie County, PA, in E-1; (3) replace existing one-way authority with radial authority between cities and counties named in (2) and points in several States throughout the United States in Sub-Nos. 3, 4, 11, 14, 15, 17, 18, 19, 23, 24, 25, 26, 27, 29, 31, 32, 35, 38, 39, 40, 42, 44, 45, 46, 50, 51, 53, 55, 57, 59F, 60F, 61F, 62F, 65F, and E-1; (4) delete restrictions (a) originating at the destined to named points in Sub-Nos. 11, 14, 15, 17, 24, 26, 27, 31, 42, 44, 45, 46, 50,

53, and 59F, (b) commodities in bulk, in tank vehicles in Sub-Nos. 11, 14, 15, 17, 45, 46, 59F and 60F, (c) in vehicles equipped with mechanical refrigeration in Sub-Nos. 14, 29, 31, and 62F, (d) hides and pelts in Sub-Nos. 11, 18 and 19, (e) animal and vegetable oil, in bulk, in tank vehicles in Sub-No. 19, (f) meat, meat products, meat by-products in Sub-No. 27; (5) delete restriction against the transportation of traffic moving to points in Canada in Sub-No. 4; (6) delete restriction to traffic originating at points in Seneca and Wyandot Counties, OH, in Sub-No. 18; County, (7) delete mixed loads restriction in Sub-Nos. 23, 57, and E-1; (8) remove restriction limiting transportation to shipments having a prior movement by water with specific destinations in Sub-No. 23; and (9) delete restriction against the transportation of glass containers from three named points in PA in Sub-No. 25.

The purpose of this republication is to reflect applicant's original request to substitute Erie, PA, with Erie County, PA, as noted in No. 2(ii).

MC 125674 (Sub-14)X, filed September 16, 1981. Applicant: JACK RABBITT EXPRESS COMPANY, 3600 N. W. 82nd Avenue, Miami, FL 33166. Representative: Warren A. Goff, 2008 Clark Tower, 5100 Poplar Ave., Memphis, TN 38137. Applicant seeks to remove restrictions from its Sub-No. 5 and 13 certificates to: (1) remove all exceptions except classes A and B explosives from its general commodity authorities in Sub-Nos. 5 and 13; (2) remove the prior or subsequent movement by air restriction in Sub-No. 5; (3) remove the restriction against the transportation service between the McCoy Jetport, Orlando, FL and the Tampa International Airport, Tampa, FL, and, points in thirteen named counties in FL, (4) remove the restriction against transporting any single package or article weighing more than 125 pounds in Sub-No. 13F; and (5) replace airports located at or near cities with countywide authority as follows: Tampa, FL with Hillsborough County, FL, Daytona Beach, FL with Volusia County, FL; Titusville, FL, with Brevard County, FL, Orlando, FL, with Orange County, FL, Melbourne, FL, with Brevard County, FL; Vero Beach, FL, with Indian River County, FL, Ocala, FL, with Marion County, FL; Gainesville, FL, with Alachua County, FL.

MC 134064 (Sub-54)X, filed September 11, 1981. Applicant: INTERSTATE TRANSPORT, INC., 1600 Highway 129 South, Gainesville, GA 30505. Representative: Charles M. Williams, 665 Capitol Life Center, 1600 Sherman Street, Denver, CO 80203. Applicant seeks to remove restrictions in its Sub-Nos. 32F, 35, 39F, 40F, 41F, 42, and 47 certificates to (1) broaden the commodity descriptions to: (a) "food and related products," from alcoholic liquors in Sub-No. 35, from foodstuffs in Sub-No. 42, and from malt beverages in Sub-No. 47; (b) "coal and coal products, petroleum, natural gas and their products, chemicals and related products, and lumber and wood products," from charcoal in Sub-No. 39; and (c) "pulp, paper and related products," from paper and paper products in Sub-No. 32; (2) remove exceptions of "commodities in bulk" in Sub-Nos. 32, 35, 39, 40, and 41; (3) remove exceptions of AK and HI in Sub-Nos. 39 and 40; (4) remove "originating at and destined to" restrictions in Sub-Nos. 35 and 42; (5) change one-way authority to radial authority in Sub-Nos. 35, 40, and 42; and (6) broaden facilities and named points to countywide authority as follows: Sub-No. 35, Sebastian and Crawford Counties, AR and Sequoyah and Le Flore Counties, OK (Ft. Smith, AR), Nelson County, KY (Bardstown, KY), Jefferson, Bullitt and Oldham Counties, KY and Harrison, Floyd and Clark Counties, IN (Louisville, KY), Orleans, St. Bernard, Plaquemines, Jefferson, St. Charles, St. John The Baptist, Lafourche and St. Tammany Parishes, LA and Hancock County, MS (New Orleans, LA), and Will County, IL (Plainfield, IL); Sub-No. 42, Bergen, Hudson, Essex and Union Counties, NJ and Richmond, Kings, Queens, New York, and Bronx Counties, NY (Jersey City, NJ).

MC 144622 (Sub-213)X, filed September 14, 1981. Applicant: GLENN BROTHERS TRUCKING, INC., P.O. Box 9343, Little Rock, AR 72219. Representative: J. B. Stuart, P.O. Box 179, Bedford, TX 76021. Applicant seeks to remove restrictions in its Sub-Nos. 33F, 34F, 35F, 36F, 38F, 39F, 40F, 59F, 61F, 37F, 71F, 100F, 101F, 102F, 103, 104, 118F, 131, 140F, 141, 142F, 153F, 157, 159F, 165F, and 166F, to (A) broaden the commodity descriptions in each certificate to "food and related products," from meats, meat products and byproducts and articles distributed by meat packinghouses, and commodities used by meat packers in the conduct of their businesses, as described in the *Descriptions case*, 61 M.C.C. 209 and 766, from confectionery, from canned and preserved foodstuffs, from canned goods, from foodstuffs, from frozen meats, from foodstuffs and food ingredients, and from gift wrapped and packaged foods and food products, and plants and bulbs when transported in mixed loads with other named commodities; and, in Sub-No. 118 (part 2), to "such commodities as are dealt in by retail gift stores" from commodities dealt in by retail gift shops; (B) delete exceptions of "hides and commodities in bulk" and "frozen," and the vehicle limitation, wherever they appear; (C) delete exceptions prohibiting service in AK and HI in Sub-Nos. 71, 118, 140, 157, 159, and 166; (D) delete restrictions limiting the origin and destination of traffic to the named facilities and specified destinations; (E) authorize radial service in place of one-way authority; and (F) broaden the facilities and named points to countywide authority as follows: Sub-Nos. 33 and 34, Douglas and Madison Counties, NE and Nobles County, MN (facilities at Omaha and Madison, NE, and Worthington, MN); Sub-Nos. 35, 37, 38, and 39, Woodbury County, IA, Dodge, Madison and Douglas Counties, NE, Beadle County, SD, and Nobles County, MN (facilities at Sioux City, IA: Fremont, Madison, and Omaha, NE: Huron, SD: and Worthington, MN); Sub-Nos. 36, 103, and 104, Jefferson County, KY (facilities at Louisville, KY); Sub-No. 40, Freeborn County, MN, Linn, Cherokee and Polk Counties, IA, and Saline County, MO (facilities at Albert Lea, MN: Cedar Rapids, Cherokee, and Des Moines, IA: and Marshall, MO); Sub-No. 59, Cook County, IL (facilities near Chicago, IL), and Washoe County, NV (Reno, NV); Sub-No. 61, Allegheny County, PA, Ottawa County, MI, and Sandusky and Lucas Counties, OH (facilities near Pitsburgh, PA: Holland, MI: and Fremont and Toledo, OH); Sub-No. 71, Vermilion and Peoria Counties, IL, Avoyelles and West Feliciana Parishes, LA, Sampson County, NC, and Dodge County, WI (facilities near Hoopeston and Princeville, IL. Belledeau and St. Francisville, LA: Turkey, NC: and Mayville, WI); Sub-No. 100, Saline County, MO (facilities at Marshall, MO); Sub-No. 101, Cass County, IN (facilities at Logansport, IN); Sub-No. 102, Freeborn County, MN and Linn County, IA (facilities at Albert Lea, MN and Cedar Rapids, IA); Sub-No. 118, Jackson County, OR (facilities near Medford, OR); Sub-No. 131, Warren County, NJ and Lancaster County, PA (facilities at Hackettstown, NJ, and Elizabethtown, PA); Sub-No. 140, Buchanan County, MO (facilities at St. Joseph, MO); Sub-No. 141, Tazewell County, IL (East Peoria, IL), Oklahoma County, OK (Oklahoma City, OK), Cass County, IN (Logansport, IN), Hamilton, Butler and Clermont Counties, OH and Boone, Kenton and Campbell Counties, KY (Cincinnati, OH), Jefferson, Oldham and Bullitt Counties, KY and Harrison, Floyd and

Clark Counties, IN (Louisville, KY), Milwaukee, Osaukee, Waukesha, Racine and Washington Counties, WI (Milwaukee, WI), and Washington County, MS (Greenville, MS); Sub-No. 142, White County, AR (facilities at Searcy, AR); Sub-No. 153, Dougherty County, GA (facilities at Albany, GA); Sub-No. 157, Albermarle County, VA, and White and Pope Counties, AR (facilities near Crozet, VA: and Searcy and Russellville, AR); Sub-No. 159, New Haven County, CT (Naugatuck, CT), Luzerne and York Counties, PA (Hazelton and York, PA), Clinton County, IN (Frankfort, IN), and Monterey County, CA (Salinas, TX); Sub-No. 165, Jefferson County, AL (Birmingham, AL), Denver, Adams, Arapahoe, Douglas and Jefferson Counties, CO (Denver, CO), Duval and Hillsborough Counties, FL (Jacksonville, and Tampa; FL), Jefferson Parish, LA (Harahan, LA), Middlesex County, MA (Watertown, MA), Prince Georges County, MD (Landover, MD), Cass, Jackson, Clay and Platte Counties, MO and Wyandotte, Johnson and Leavenworth Counties, KS (Kansas City, MO), Hudson and Camden Counties, NJ (Bayonne and Camden, NJ), Charleston and Richland Counties, SC (Charleston and Columbia, SC), Davidson, Williamson, Wilson and Summer Counties, TN (Nashville, TN), El Paso and Bexar Counties, TX (El Paso and San Antonio, TX), and King, Snohomish and Kitsap Counties, WA (Seattle, WA); and Sub-No. 166, Hidalgo County, TX (La Joya, TX).

MC 145645 (Sub-1)X, filed September 17, 1981. Applicant: NORTON BROS. TRUCKING CO., INC., P.O. Box 29839, Dallas, TX 75229. Representative: William Sheridan, 1025 Metker, P.O. Drawer 5049, Irving, TX 75063. Applicant seeks to remove restrictions in its lead permit to broaden the territorial description to between all points in the U.S., under continuing contract(s) with a named shipper.

MC 146573 (Sub-18)X, filed September 17, 1981. Applicant: LA SALLE TRUCKING, INC., P.O. Box 46, Peru, IL 81354. Representative: E. Stephan Heisley, 805 McLachlen Bank Building, 666 Eleventh Street, NW., Washington, DC 20001. Applicant seeks to remove restrictions in its Sub-No. 8F certificate to (1) broaden the commodity description from "chemicals, and plastics, in bulk, in tank vehicles," to "chemicals and related products and rubber and plastic products," and (2) broaden the territorial description by (a) replacing facilities at Ottawa, IL with county-wide authority in La Salle County, IL, and (b) eliminate the "except AK and HI" restriction.

MC 146783 (Sub-5)X, filed September 18, 1981. Applicant: S & L TRANSPORTATION, INC., 59-21 156th Street, Flushing, NY 11355. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934. Applicant seeks to (1) broaden the commodity description in its Sub-2F certificate to "metal and metal articles," from copper, brass, and alloys in bars, sheets, strips, and rods; (2) delete the exception of service in AK and HI, and the restriction limiting service to that "having a prior movement by water;" and (3) change one-way service to radial authority, between New York, NY, New Orleans, LA, and Houston, TX, on the one hand, and, on the other, points in the U.S.

MC 148285 (Sub-1)X, filed September 18, 1981. Applicant: A. L. COUEY, d.b.a. COUEY TRUCKING COMPANY, Industrial Boulevard at Southern Railway, P.O. Box 3244, Dalton, GA 30721. Representative: M. C. Ellis, 1001 Market Street, Chattanooga, TN 37402. Applicant seeks to remove restrictions in its lead certificate to (1) broaden the commodity description from general commodities with exceptions, to "general commodities (except Classes A and B explosives)," in connection with its service between points in GA and TN and (2) remove the ex-rail restriction.

MC 148512 (Sub-7)X, filed September 21, 1981. Applicant: WESTERN TANK LINE, INC., 2222 North 11th Street, Omaha, NE 68110. Representative: Donald L. Stern, 7171 Mercy Road, Suite 610, Omaha, NE 68106. Applicant seeks to remove restrictions in its Sub-5 certificate to broaden the commodity description from liquid commodities, in bulk, (except soybean oil, vegetable oils and blends thereof), to "commodities in bulk"

MC 148585 (Sub-1)X, filed September 21, 1981. Applicant: GENERAL LEASING, INC., 1620 South 15th Street, P.O. Box 216, Prairie du Chien, WI 53821. Representative: Michael S. Varda, 121 South Pinckney Street, P.O. Box 2509, Madison, WI 53701. Applicant seeks to remove restrictions in its No. MC 126133 and Sub-2, 4F, and 5F permits, and its No. MC 126133 (Sub-6) certificate, to (1) broaden the commodity description in each permit to do "food and related products" from malt beverages and malt liquor; and, in Sub-6 certificate, to "construction materials" from lumber, lumber products, posts, and ties; (2) Sub-6 certificate, remove the facilities restriction, and replace the named points with countywide authority: Rock and Crawford Counties, WI (Janesville and Prairie du Chien, WI); and (3) in each permit, authorize service between points in the U.S., under continuing contract(s) with the named shippers.

MC 150910 (Sub-1)X, filed September 21, 1981. Applicant: RONALD R. PAYNE, d.b.a. EASTERN PLAINS EXPRESS, 5565 E. 52nd Ave., Commerce City, CO 80012. Representative: Lee E. Lucero, 445 Capitol Life Center, East 16th Avenue at Grant Street, Denver, CO 80203. Applicant seeks to remove restrictions in its lead certificate (1) to remove all exceptions except classes A and B explosives from its general commodities authority; and (2) to authorize service all intermediate points between Denver, CO, and Wray, CO.

MC 151788 (Sub-10)X, filed September 21, 1981. Applicant: MEL JARVIS CONSTRUCTION CO., INC., 2934 Arnold Avenue, Salina KS 67401. Representative: William B. Barker, 641 Harrison Street, P.O. Box 1979, Topeka, KS 66601. Applicant seeks to remove restrictions in its lead and Sub-No. 6 certificates to (1) broaden the commodity descriptions as follows: lead certificate, to "metal products, and machinery" from agricultural and industrial trailers, wood burning stoves, grain dryers, lawn mowers, springtooth harrows, iron and steel articles, tractor cabs and parts for lawn mowers and tractor cabs; and Sub-6, to "construction materials" from insulating materials, mineral wool, and fiberglass; (2) remove exceptions excluding AK, HI and KS, in the lead certificate; (3) remove restrictions limiting the origin and destination of traffic to the named facilities and destinations; (5) authorize radial service in place of one-way service; and (6) broaden the named facilities and points to countywide authority: lead certificate, McPherson County, KS (Moundridge, KS), Will County, IL (Joliet, IL), and Harvey County, KS (Hesston, KS); and Sub-6, McPherson County, KS (facilities at McPherson, KS).

MC 153002 (Sub-3)X, filed September 15, 1981. Applicant: GETZINGER TRUCKING, INC., Morton Avenue, Rosenhayn, NJ 08352. Representative: Larry R. McDowell, 1200 Western Savings Bank Building, Philadelphia, PA 19107. Applicant seeks to remove restrictions in its No. MC 10183 and Sub-8F permits, to (1) broaden the commodity descriptions as follows: (a) "food and related products and farm products" from fruits, vegetables, farm products, poultry and seafood, in the lead permit, and (b) "food and related products" from fresh fruits and vegetables, canned foodstuffs, and

canned goods, in the lead permit, and from meats, meat products and articles distributed by and commodities used by meat packinghouses, in Sub-8; (2) remove (a) the seasonal restriction in the lead permit, (b) the vehicle limitation in Sub-8, and (c) the exception of named commodities in Sub-8; and (3) broaden the territorial descriptions in each permit to authorize service between points in the U.S., under continuing contract(s) with named shippers and specified classes of shippers.

[FR Doc. 81-28637 Filed 9-30-81; 8:45 am]

BILLING CODE 7035-01-M

[Ex Parte No. MC-122 (Sub-2)]

Lease of Equipment and Drivers to Private Carriers

AGENCY: Interstate Commerce Commission.

ACTION: Notice of oral argument on proposed policy statement.

SUMMARY: At 45 FR 86766, December 31, 1980, the Commission published a notice which proposed to reexamine its policy behind the restrictions which prohibits owner-operators and others who do not hold authority from this Commission from leasing their equipment, with drivers directly to private carriers.

Because of the extensive interest expressed in this important proceeding, the Commission will afford interested persons the opportunity to make oral representations for the purpose of further supplementing the record. Written comments are not required, but persons who intend to participate must notify the Office of the Secretary.

DATES: Notification of intent to participate may be made by letter or phone call. Notification must be received at the Office of the Secretary by close of business, Monday, October 5, 1981.

Oral argument has been scheduled for Wednesday, October 14, 1981, at 9 a.m.

ADDRESSES: Notifications of intent to participate should be addressed to:

James H. Bayne, Assistant Secretary, Room 2215, Interstate Commerce Commission, 12th St. & Constitution Ave., N.W., Washington, DC 20423.

The oral argument will be held at the Interstate Commerce Commission Building, 12th Street and Constitution Ave., NW., Washington, DC, in Hearing Room A.

FOR FURTHER INFORMATION CONTACT: James H. Bayne (202) 275-7428.

SUPPLEMENTARY INFORMATION: The Commission is acutely aware of the importance of this proceeding to owner-operators and to the national transportation system as a whole. For this reason, we have determined that interested persons should be afforded an additional opportunity to supplement the record before a final decision is made. Participation in the oral argument is not limited to those parties who filed written comments earlier.

As set forth in the notice of proposed policy statement, published December 31, 1980 (45 FR 86766), this proceeding involves a reexamination of policies, Commission decisions, and judicial precedent which, in combination, generally preclude owner-operators and others who do not hold operating authority from leasing their equipment, with drivers, directly to private carriers. Attention is directed to, and oral argument is sought on, the previously issued notice of proposed policy statement, including the options as we perceive them, alternative courses of action or areas of consideration, as well as the implications of owner-operator leasing to private carriers engaged in compensated intercorporate hauling under Section 9 of the Motor Carrier Act of 1980. Legal and practical views are sought.

Any organization or individual interested in making an oral presentation to the Commission must notify (by letter or phone call) the Office of the Secretary of the Commission on or before October 5, 1981. The notification should indicate both (1) the interest represented (e.g., shipper, consumer, owner-operator, trade or business organization, or other) and (2) the individuals or organizations, if any, represented. To maximize the opportunity for participation, we urge individuals or organizations with similar interests to designate a single spokesperson to advance their commonly held views or arguments. Time for oral argument will be allocated in consideration of the number of individuals or organizations to be represented. Participants will be notified by telephone of scheduling and time allocation. A schedule of appearances also will be available on the day of the oral argument.

Decided: September 25, 1981.

By the Commission, Chairman Taylor, Vice Chairman Clapp, Commissioners Gresham and Gilliam.

James H. Bayne,

Acting Secretary.

[FR Doc. 81-28636 Filed 9-30-81; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. New York County Lawyers' Association; Competitive Impact Statements and Final Consent Judgment

Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16, the Department of Justice has filed the following comment, together with its Response thereto, on the proposed Final Judgment in the case of *United States* v. *New York County Lawyers' Association*, 80 Civ. 6129 (LBS).

Joseph H. Widmar,

Director of Operations.

July 29, 1981.

Re: *United States* v. *New York County Lawyers' Assn.*, 80 Civ. 6129 (LBS).

Douglas C. Foerster, Esq.,
U.S. Department of Justice, Antitrust Division, 26 Federal Plaza, Room 3630, New York, NY 10007.

Dear Mr. Foerster: I have reviewed a copy of the Stipulaton of Settlement dated July 20, 1981, the proposed Final Judgment and the Competitive Impact Statement. I would like to take this opportunity to express our appreciation to you and the other attorneys involved in this case for this reasonable resolution of the serious issues that you had to grapple with. As I mentioned to you at our meeting last summer, Citibank did not find the 1966 Statement of Principles to be a serious impediment to the conduct of fiduciary business, largely because we withdrew from the agreement early on. We are nonetheless pleased that County Lawyers voluntarily abrogated the agreement, albeit 15 years later. In these intervening years I think the practice of law has become less formulized and more competitive, all with the approval of the courts and the more progressive state and local bar associations across the country. In any event you and your colleagues have been of real assistance to both the banks involved and the bar in clarifying the roles of the banks in conducting fiduciary business.

In reviewing your Competitive Impact Statement, especially at the bottom of page three thereof, I note that you, quite correctly we feel, describe as part of our package of fiduciary services provided to our cutomers, the planning of estates, wills, and trusts and also offering forms of such documents to the public. Although the final judgment does not enumerate a laundry list of permissible activities of banks, I assume that the Justice Department and County Lawyers are in agreement that our "providing services" as described in Part IV of the proposed Judgment embraces estate planning and providing forms. I would however appreciate your comments for our records.

Sincerely yours,

Ross R. Scott,

Vice President.

September 24, 1981.

Re: *United States* v. *New York County Lawyers' Assn.*, 80 Civ. 6129 (LBS).

Mr. Ross R. Scott,

Vice President, Citibank, N.A., Private Banking Division, One Citicorp Center, New York, N.Y. 10043.

Dear Mr. Scott: Thank you for the comments in your letter of July 29, 1981, regarding the proposed final judgment. Your letter stated, correctly, that the proposed final judgment does not enumerate "a laundry list of permissible activities of banks." You then asked for our comments on whether the phrase "providing services" in Section IV of the proposed judgment "embraces estate planning and providing forms."

The purpose of the proposed judgment is to allow banks and other corporate fiduciaries to offer, consistent with the law of the State of New York, services in the trusts and estates business, free from restrictions, as defined by the proposed judgment, by the New York County Lawyers' Association. It is not the intent of the proposed final judgment to attempt to define what may or may not constitute the unlawful practice of law by banks or other corporate fiduciaries operating under the law of the State of New York.

I hope this is responsive to your request.

Sincerely yours,

Douglas C. Foerster,

Attorney, Antitrust Division.

[FR Doc. 81-38599 Filed 9-30-81; 8:45 am]

BILLING CODE 4410-01-M

Drug Enforcement Administration

[Docket No. 80-30]

Alan D. Fields, D.O.; Revocation of Registration

On September 15, 1980, the Administrator of the Drug Enforcement Administration (DEA) issued an Order To Show Cause proposing to revoke the DEA Certificate of Registration of Alan D. Fields, D.O. (Respondent), of Detroit and Sterling Heights, Michigan. Simultaneously, citing his preliminary finding of imminent danger to the public health and safety, the Administrator ordered the immediate suspension of the Respondent's registration, pending a final determination in these proceedings.

On October 21, 1980, the Respondent, through an attorney, requested a hearing on the issues raised by the Order To Show Cause. In the months that followed, the Respondent apparently retained and dismissed a number of attorneys and the Administrative Law Judge granted a number of continuances of this matter in order to afford the Respondent an adequate opportunity to decide whether or not he desired to proceed with a hearing or to otherwise defend his registration. After a number of unsuccessful attempts to establish normal correspondence with the Respondent's attorneys, the Administrative Law Judge ordered that the requested hearing in this matter be convened in Washington, D.C., on April 14, 1981. Notice of the hearing was served on the Respondent and on the attorney who originally filed the request for the hearing. Additionally, notice was published in the Federal Register, Vol. 46, page 18124, on March 23, 1981.

On the morning of April 14, 1981, Administrative Law Judge Francis L. Young convened the hearing in this matter. Neither the Respondent nor any person claiming to represent him appeared in the hearing room. The record shows that Government counsel was present and prepared to proceed with the presentation of the Government's case. However, in view of the fact that the Respondent had failed to appear at the hearing scheduled at his request, Government counsel requested that the hearing be cancelled and that this matter be disposed of in accordance with the provisions of 21 CFR 1301.54(d) and 1301.54(e). These regulations provide, in pertinent part, that if a person who is entitled to a hearing fails to request one or if he does request a hearing and fails to appear, the Administrator may cancel the hearing and issue his final order without the necessity of a formal evidentiary proceeding. Indeed, the Order To Show Cause which was served upon the Respondent on September 22, 1980, clearly stated that the procedures set forth in the above-cited regulations would be invoked in the event of the Respondent's failure to appear at the hearing. Accordingly, the Administrative Law Judge, on behalf of the Administrator, cancelled the hearing and ordered that this matter proceed to a final determination pursuant to 21 CFR 1301.54(e).

Subsequent to the cancellation of the hearing in this matter, a new attorney wrote to the Administrative Law Judge, claiming to represent the Respondent and requesting that these proceedings be reopened and a new hearing date established. In view of the fact that both the Respondent and his previous attorney had ample notice of the hearing and since neither the Respondent nor anyone acting in his behalf made any effort to notify this administration of the Respondent's inability to participate in the scheduled hearing, the Administrative Law Judge denied the Respondent's request to reopen these proceedings. The Acting Administrator concurs in the procedural rulings made by the Administrative Law Judge in this matter.

After reviewing the file in this matter, the Acting Administrator of the Drug Enforcement Administration, pursuant to 21 CFR 1301.57, hereby publishes his Final Order in this matter, based on the findings of fact and conclusions of law set forth below.

The Acting Administrator finds that on March 2, 1951, in the United States District Court for the Eastern District of Michigan, the Respondent, who was then using the name Alan F. DeVore, entered a plea of guilty to the charge of violating Title 26, United States Code, Section 2554(a), and was thereupon convicted of unlawfully selling morphine, a felony offense relating to a narcotic drug which is now listed as a Schedule II controlled substance.

The Acting Administrator concludes that there is a lawful or statutory basis for the revocation of the Respondent's DEA registration pursuant to 21 U.S.C. 824(a)(2).

The Acting Administrator further finds that had the Government presented its case at the scheduled hearing session, its evidence would have shown that during the course of the recent investigation of the Respondent's activities, undercover police officers of the Detroit, Inkster and Ypsilanti, Michigan, Police Departments obtained prescriptions for Preludin, a Schedule II, nonnarcotic, controlled substance, which prescriptions were issued by the Respondent outside the usual course of professional practice and without legitimate medical reason. On at least one occasion, a casual visitor to the clinic in which the Respondent was employed was given a prescription for Valium, a Schedule IV controlled substance, without pretense of medical treatment or need. Government testimony would have further shown that one pharmacy filled 5,493 of the Respondent's prescriptions in a 72-day period, from July 10 through September 22, 1980, and that a survey of twenty-five other Detroit area pharmacies revealed 9,209 of the Respondent's prescriptions, written during the period March 27, 1980 through September 22, 1980. This extraordinary number of prescriptions, when considered in light of the circumstances under which the undercover police officers obtained theirs from the Respondent, leads inescapably to the conclusion that the vast majority of the Respondent's prescriptions were issued in a similar manner, without legitimate medical reason and outside the course of the Respondent's professional practice.

In consideration of all of the foregoing facts and circumstances, the Acting Administrator has concluded that the Respondent's registration to handle controlled substances must be revoked. Accordingly, pursuant to the authority vested in the Attorney General by Title 21, United States Code, Section 824, and redelegated to the Administrator of the Drug Enforcement Administration, the Acting Administrator hereby orders that DEA Certificate of Registration AD6338215, previously issued to Alan D. Fields, D.O., of Detroit, Michigan, be, and it hereby is, revoked effective immediately.

Dated: September 25, 1981.

Francis M. Mullen, Jr.,

Acting Administrator, Drug Enforcement Administration.

[FR Doc. 81-28505 Filed 9-30-81; 8:45 am]

BILLING CODE 4410-09-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (81-69)]

NASA Advisory Council, Aeronautics Advisory Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Aeronautics Advisory Committee, Informal Advisory Subcommittee on Rotorcraft Technology.

DATE AND TIME: October 26, 1981, 9 a.m. to 5 p.m., October 27, 1981, 8 a.m. to 4:30 p.m.; October 28, 1981, 8:30 a.m. to 11:30 a.m.

ADDRESS: NASA Ames Research Center, Building N200, Committee Room, Moffett Field, CA.

FOR FURTHER INFORMATION CONTACT: Mr. John F Ward, National Aeronautics and Space Administration, Code RJL-2, Washington, DC 20546 (202/755-2375).

SUPPLEMENTARY INFORMATION: The Informal Advisory Subcommittee on Rotorcraft Technology was established to assist the NASA in assessing the current adequacy of rotorcraft technology and recommend actions to reduce deficiences through modification of the planned NASA research and technology program in rotorcraft aerodynamics, acoustics, structures, dynamics, propulsion system components, flight control, and avionics. The Subcommittee, chaired by Mr. Troy M. Gaffey, is comprised of seven members. The meeting will be open to the public up to the seating capacity of the room (approximately 25 persons including the Subcommittee members and participants).

Type of meeting: Open

Agenda: October 26, 1981

9 a.m.—Summary of NASA Rotorcraft Research and Technology Program, FY 1981 Accomplishments, FY 1982-1983 Plans.

5 p.m.—Adjourn.

October 27, 1981

8 a.m.—Continuation of Summary of NASA Rotorcraft Research and Technology Program.

11 a.m.—Assessment of the State of Rotorcraft Basic Research.

1 p.m.—Discussion of NASA Rotorcraft Research and Technology Program.

4:30 p.m.—Adjourn.

October 28, 1981

8:30 a.m.—Subcommittee Recommendations on NASA Rotorcraft Program.

11 a.m.—Areas for Possible Future Discussion.

11:30 a.m.—Adjourn.

Russell Ritchie,

Deputy Associate Administrator for External Relations.

September 25, 1981.

[FR Doc. 81-28476 Filed 9-30-81; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Atmospheric Sciences

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, the National Science Foundation announces the following meeting:

Name: Advisory Committee for Atmospheric Sciences.

Date: October 19, 20, and 21, 1981.

Time: 9:00 a.m.—5:00 p.m.

Place: Rooms 642, 643, and 628, National Science Foundation, 1800 G Street, NW, Washington, D.C. 20550.

Type of Meeting: Closed—October 19 (all day) and October 20 (9:00 a.m.—12:00 Noon); Open—October 20 (1:00 p.m.—5:00 p.m.) and October 21 (all day).

Contact: Dr. Eugene W. Bierly, Division Director, Division of Atmospheric Sciences, Room 644, National Science Foundation, Washington, D.C. 20550, telephone: (202) 357-9874.

Purpose of Committee: The Advisory Committee for Atmospheric Sciences provides advice, recommendations, and oversight concerning support for research and research-related activities in the atmospheric sciences area. Provides expert assistance in carrying out external oversight which is concerned with the examination of decisions made, procedures and policies in effect and focuses on operations and activities, priorities, program balance and selection of awards.

Agenda:

October 19—9:00 a.m. to 5:00 p.m. and October 20—9:00 a.m. to 12:00 Noon (closed) Rooms 642, 643, and 628.

Committee review of the Atmospheric Chemistry, Climate Dynamics, and Experimental Meteorology and Weather Modification Programs, including examination of proposal jackets, reviewer comments and other privileged material.

October 20, 1981 (Open 1:00 p.m.—5:00 p.m.) Room 642.

1:00 p.m.—Remarks by AD/AAEO

1:20 p.m.—Approval of Minutes from ACAS Meeting April 9-10, 1981

1:30 p.m.—Presentation of Review Reports to ACAS

1:45 p.m.—Remarks by Chairman, ACAS and ACAS Members

October 20, 1981

2:00 p.m.—Budgeting Status

2:10 p.m.—Status of National Astronomy and Ionosphere Center (Arecibo)

2:40 p.m.—Status of Chemistry Proposal Experiment, Master Grant Experiment, Special Creativity Grants

3:00 p.m.—Manpower Survey Results in Atmospheric Sciences

3:45 p.m.—CCOPE Results

4:00 p.m.—Global Atmospheric Chemistry Program Acid Rain Research Program

4:45 p.m.—ATM Facility Needs

October 21, 1981

9:00 a.m.—UCAR Activities

10:00 a.m.—NCAR Activities

10:45 a.m.—NSBF Status

11:00 a.m.—Role of NCAR for 1980s

12:15 p.m.—Program for Spring ACAS 1982, Date, ACAS Replacements, Other Items

1:00 p.m.—Adjourn Meeting

1:00—5:00—Breakthroughs, Opportunities and Trends on Atmospheric Sciences

Reason for Closing: The meeting will deal with a review of grants and declinations in which the Committee will review materials containing the names of applicant institutions and principal investigators and privileged information contained in declined proposals. This meeting will also include a review of peer review documentation pertaining to applicants. Any non-exempt material that may be discussed at this meeting (proposals that have been awarded) will be inextricably intertwined with the discussion of exempt materials and no further separation is practical. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), the Government in the Sunshine Act.

Authority To Close Meeting: This determination was made by the Committee Management Officer pursuant to provisions of Section 10(d) of Pub. L. 92-463. The Committee Management Officer was delegated the authority to make such

determinations by the Director, NSF, on July 6, 1979.

M. Rebecca Winkler,

Committee Management Coordinator.

September 28, 1981.

[FR Doc. 81-28643 Filed 9-30-81; 8:45 am]

BILLING CODE 7555-01-M

Advisory Committee for Physics; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, the National Science Foundation announces the following meeting:

Name: Advisory Committee for Physics.

Date and Time: October 22-24, 1981; 9:00 a.m.-5:00 p.m. each day.

Place: National Science Foundation, 1800 G Street, NW, Washington, D.C. 20550, Room 540 each day.

Type of Meeting: Open.

Contact Person: Dr. Laura P. Bautz, Deputy Director, Division of Physics, National Science Foundation, Washington, D.C. 20550. Telephone (202) 357-7611.

Summary of Minutes: May be obtained from Dr. Laura P. Bautz, Division of Physics, National Science Foundation, Washington, D.C. 20550.

Purpose of Committee: To provide advice and recommendations concerning support for research in physics.

Agenda:

October 22, 1981, 9:00 a.m.-5:00 p.m.

Oversight review of NSF support of atomic, molecular, and plasma physics, including the report of the Subcommittee for the Review of the NSF Atomic, Molecular, and Plasma Physics Program. Introductory discussions on long range planning.

October 23, 1981, 9:00 a.m.-5:00 p.m.

Planning for major projects in Elementary Particle Physics and Nuclear Science. Status of prospective network for Computational Physics and of Large Laser Interferometer. Continuation of previous day's discussions.

October 24, 1981, 9:00 a.m.-5:00 p.m.

Discussion of long range priorities. Continuation of discussions from previous two days. Planning for future meetings.

M. Rebecca Winkler,

Committee Management Coordinator.

September 28, 1981.

[FR Doc. 28640 Filed 9-30-81; 8:45 am]

BILLING CODE 7555-01-M

Ad Hoc Oversight Subcommittee for the Ceramics Program; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Science Foundation announces the following meeting:

Name: Ad Hoc Oversight Subcommittee for the Ceramics Program, Advisory Committee for Materials Research.

Date and Time: October 22, 23, 1981—9:00 a.m.-5:00 p.m. each day.

Place: Room 421, National Science Foundation, 1800 G. Street, NW., Washington, DC 20550.

Type of Meeting: Closed.

Contact Person: Dr. Ben A. Wilcox, Head, Metallurgy, Polymers, and Ceramics Section, Division of Materials Research, Room 411, National Science Foundation, Washington, DC. Telephone: (202) 357-9789.

Purpose of Subcommittee: To provide advice and recommendations concerning support for research in Ceramics.

Agenda:

Thursday, October 22, 1981—9:00 a.m. to 5:00 p.m.—Closed

Review and comparison of declined proposals (and supporting documentation) with successful awards under the Ceramics Program, including review of peer review materials and other privileged material.

Friday, October 23, 1981—9:00 a.m. to 5:00 p.m.—Closed

9:00 a.m.—Further discussions of declined proposals and awards.

12:00 noon—Lunch.

1:00 p.m.—Preparation of report on Subcommittee findings and recommendations.

Reason for Closing: The Subcommittee will be reviewing grants and declination jackets which contain the names of applicant institutions and principal investigators and privileged information contained in declined proposals. This session will also include a review of the peer review documentation pertaining to applicants. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority To Close Meeting: This determination was made by the Committee Management Officer pursuant to provisions of Section 10(d) of Pub. L. 92-463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF on July 6, 1979.

M. Rebecca Winkler,

Committee Management Coordinator.

September 28, 1981.

[FR Doc. 81-28645 Filed 9-30-81; 8:45 am]

BILLING CODE 7555-01-M

Subcommittee on Molecular Biology, Group A, of the Advisory for Physiology, Cellular, and Molecular Biology; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Science Foundation announces the following meeting:

Name: Subcommittee on Molecular Biology, Group A, of the Advisory Committee for Physiology, Cellular, and Molecular Biology.

Date and Time: October 22 and 23, 1981; 9:00 a.m. to 5:00 p.m. each day.

Place: Room 642, National Science Foundation, 1800 G Street, NW., Washington, D.C. 20550.

Type of Meeting: Closed.

Contact Person: Dr. Arthur Kowalsky, Program Director, Biophysics Program, Room 329, National Science Foundation, Washington, D.C. 20550.

Purpose of Subcommittee: To provide advice and recommendations concerning support for research in Molecular Biology.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority to Close Meeting: This determination was made by the Committee Management Office pursuant to provisions of Section 10(d) of Pub. L. 92-463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF, on July 6, 1979.

September 26, 1981.

M. R. Winkler,

Committee Management Coordinator.

[FR Doc. 81-28644 Filed 9-30-81; 8:45 am]

BILLING CODE 7555-01-M

Subcommittee for Psychobiology; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, the National Science Foundation announces the following meeting:

Name: Subcommittee on Psychobiology of the Advisory Committee for Behavioral and Neural Sciences.

Date and Time: October 29 and 30, 1981, 8:30 a.m.-5:00 p.m. each day.

Place: National Science Foundation, 1800 G Street, NW., Room 642, Washington, D.C.

Type of Meeting:

Open—October 30, 12:00-2:00 p.m.

Closed—October 29, all day; October 30, 9 a.m. to noon; 2 p.m. to 5 p.m.

Contact Person: Dr. Fred Stollnitz, Program Director, Psychobiology Program, Room 320, National Science Foundation, Washington, D.C., 20550. Telephone (202) 357-7949.

Summary Minutes: May be obtained from the Contact Person, Dr. Fred Stollnitz, at the above stated address.

Purpose of Subcommittee: To provide advice and recommendations concerning support for research in psychobiology.

Agenda:

Closed—October 29 and 30—To review and evaluate research proposals as part of the selection process for awards. (10/29—all day; 10/30—9 a.m. to noon and 2 p.m. to 5 p.m.).

Open—October 30: To discuss possible subcommittee reorganization in the Neurosciences area. (noon–2 p.m.).

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of U.S.C. 552b(c), Government in the Sunshine Act.

Authority to Close Meeting: This determination was made by the Committee Management Officer pursuant to provisions of Section 10(d) of Pub. L. 92–463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF, on July 6, 1979.

September 28, 1981.

M. Rebecca Winkler,

Committee Management Coordinator.

[FR Doc. 81–28641 Filed 9–30–81; 8:45 am]

BILLING CODE 7555–01–M

Task Group No. 17; Advisory Council; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, the National Science Foundation announces the following meeting:

Name: Task Group No. 17 of the NSF Advisory Council.

Place: Room 1242, National Science Foundation, 1800 G Street, NW., Washington, D.C. 20550.

Date: Monday, October 19, 1981.

Time: 9:00 a.m. to 5:00 p.m.

Type of Meeting: Open.

Contact Person: Ms. Jeanne Hudson, Executive Secretary of the NSF Advisory Council, National Science Foundation, Room 518, 1800 G Street, NW., Washington, D.C. 20550. Telephone: 202/357–9433.

Purpose of Task Group: The purpose of the Task Group, composed of members of the NSF Advisory Council, is to provide the full Advisory Council with a mechanism to consider numerous issues of interest to the Council that have been assigned by the National Science Foundation.

Summary Minutes: May be obtained from the contact person at above stated address.

Agenda: The Task Group is asked to review current patterns of NSF salary support across scientific and engineering disciplines; to consider whether NSF should change its policy on allowance of faculty salaries; to address the need for and the impact of policies and practices in program areas that differ from NSF-wide policies and practices; and to suggest ways current NSF policy might be modified.

September 28, 1981.

M. Rebecca Winkler,

Committee Management Coordinator.

[FR Doc. 81–28639 Filed 9–30–81; 8:45 am]

BILLING CODE 7555–01–M

Task Group No. 18; Advisory Council Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, the National Science Foundation announces the following meeting:

Name: Task Group No. 18 of the NSF Advisory Council.

Place: Holiday Inn O'Hare Kennedy, 5440 North River Road, Rosemont, IL.

Date: Monday, October 26, 1981.

Time: 9:00 a.m.–5:00 p.m.

Type of Meeting: Open.

Contact Person: Dr. H. Frank Eden, Senior Science Associate, National Science Foundation, 1800 G Street NW., Room 510, Washington, D.C. 20550. Telephone: (202) 357–7357

Purpose of Task Group: The purpose of the Task Group, composed of members of the NSF Advisory Council, is to provide the full Advisory Council with a mechanism to consider numerous issues of interest to the Council that have been assigned by the National Science Foundation.

Summary Minutes: May be obtained from the contact person at above stated address.

Agenda: The Task Group is asked to consider how limited resources might be leveraged to provide greater support for university instrumentation and in the general area of education.

M. Rebecca Winkler,

Committee Management Coordinator.

September 21, 1981.

[FR Doc. 81–28642 Filed 9–30–81; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL TRANSPORTATION SAFETY BOARD

[N-AR 81-40]

Reports, Recommendations, Responses; Availability

• Aircraft Accident Report: *Texasgulf Aviation, Inc., Lockheed JetStar L–1329, N520S, Westchester County Airport, White Plains, New York, Feb. 11, 1981 (NTSB–AAR–81–13).*—As a result of this accident, and several others involving general aviation aircraft, the Board has reiterated recommendations A–78–27 through –29. These recommendations, issued Apr. 13, 1978, to the Federal Aviation Administration, concerned flight recorder standards (43 FR 18073, 4–27–78). FAA responded on Nov. 6, 1980 (45 FR 85532, 12–29–80). Also in connection with the subject investigation, the Board on Aug. 26 issued to FAA recommendation A–81–92 concerning Supplemental Type Certificate SA 1596 CE (46 FR 44312, 9–3–81).

• Special Investigation Report: *Flight Service Station Weather Briefing Inadequacies (NTSB–SIR–81–3).*—On Aug. 31 the Board issued to FAA these related recommendations:

Audio record all weather briefings provided by FSS personnel and retain such records for a reasonable period of time (A–81–94). Take steps to insure that all FSS personnel who provide weather briefings comply with the weather briefing procedures published in Flight Services Handbook 7110.10 (A–81–95).

• Marine Accident Report: *Grounding of the U.S. Tankship S.S. CONCHO, Constable Hook Reach of Kill Van Kull, Upper New York Harbor, Jan. 19, 1981 (NTSB–MAR–81–11).*—Following investigation, the Board on Aug. 26 issued these recommendations to—

Sabine Towing and Transportation Company: Develop and issue an operating manual for the CONCHO which includes a clear delineation of each officer's responsibilities, the intended method of vessel operation, and guidance to the master in preparing his standing orders (M–81–77).

American Bureau of Shipping: In conjunction with the U.S. Coast Guard, review the CONCHO's Load Line Certificate and Trim and Stress Loading Instructions and, where necessary, make changes so that information will be accurate and consistent with U.S. Coast Guard requirements (M–81–78).

U.S. Coast Guard: Before approving modified loading restrictions which vary from the vessel's Load Line Certificate, require an approved Trim and Stability Booklet which explains how to use those restrictions, and require that the American Bureau of Shipping modify the vessel's Load Line Certificate and Loading Manual accordingly (M–81–79). In conjunction with the American Bureau of Shipping, review the CONCHO's Load Line Certificate, Trim and Stress Loading Instructions, Stability Letter, and Trim and Stability Booklet and, where necessary, make changes so that the information is accurate regarding loading restrictions and consistent with USCG requirements (M–81–80).

Each of the above recommendations is designated "Class II, Priority Action."

• Recommendation Letter: "Class I, Urgent Action" recommendations sent Sept. 21 to the Federal Aviation Administration concerning an in-flight accident occurring Sept. 19 on a World Airways DC–10–30 aircraft en route from Baltimore-Washington International Airport to England:

Issue an Operations Alert Bulletin to all operators of DC–10 aircraft notifying them of the circumstances of this accident and informing them to implement procedures or temporary circuitry changes which would prohibit flight attendants in the main cabin service center from activating the galley personnel lift upward from the lower lobe galley without verbal confirmation that all personnel are clear and the lower lift door closed (A–81–124). Issued an Airworthiness Directive to require affected DC–10 operators to immediately comply with the Douglas

Aircraft Company's Service Bulletin 25-266 (A-81-125). Require a redesign of the galley personnel and food cart lift doors and door frames to relocate the interlock switches to a position where they would not be susceptible to damage by food service carts, to inadvertant contact by personnel attempting removal of food service carts, and to contamination by foreign substance (A-81-126). Review DC-10 operator training programs for flight attendant personnel and flightcrews to assure that they include a description and discussion of the galley lift system including the electrical circuitry, location of circuit breakers, function of door interlock switches, and emergency operating procedures (A-81-127).

• Recommendation Letter: Issued Aug. 7 to FAA concerning crash on July 31 of a Varga Model 2150A, N8423J, near Stevensville, Md., after control of the elevator was lost because of failure of the elevator horn assembly (P/N VAC 6000K-26):

Issue an emergency Airworthiness Directive to require that all P/N VAC 6000K-26 elevator horn assemblies installed on Varga aircraft be inspected before further flight and therafter at appropriate time intervals. Horn assemblies should be removed from the aircraft and the mounting flange areas stripped of paint. The upper aft corners of the channel bends and the mounting radii should then be inspected by an appropriate nondestructive test method. Horn assemblies found cracked should be removed from service (Class I) (A-81-85). Issue an airworthiness Directive to require that the flange area on all P/N VAC 6000K-26 elevator horn assemblies installed on Varga aircraft be visually inspected before each flight for cracking in the upper aft corners of the channel bends and in the mounting flange radius areas. Horn assemblies found cracked should be removed from service (Class I) (A-81-86). Evaluate the design of the P/N VAC 6000K-26 elevator horn assembly and in the manner in which it is attached to the elevator (Class II) (A-81-87.

• Responses to NTSB Recommendations from the *Federal Aviation Administration*—

A-79-58 and -59 (Sept. 10).-All DHC-7's, except two prototypes, have been modified with squencing nose gear door systems and the requirement that these systems be operational. Canadian authorities have informed FAA that the nose gear closing system effectively prevents accumlation of ice and slush in the nose wheel bay. (44 FR 61478, 10-25-79)

• A-81-71 and 72 (Sept. 11).—FAA has reviewed the reported service problems of the tail rotor pitch horn, P/N 350-A12-1368-01, and reports that the French airworthiness authority has issued an AD to require inspections and to establish a temporary 450-hour service life; this action duplicates the manufacture's Telex Service Bulletins Nos. 01-07A and -B. Aerospatiale helicopter designs are type certified under the import aircraft provisions of 14 CFR 21.29 and the U.S./French bilateral airworthiness agreement; FAA is working closely with the French authorities and will take whatever additional corrective action in necessary. (46 FR 38000, 7-23-81)

A-81-85 through -87 (Sept. 11). Airworthiness Directive 81-17-05, issued by priority mail on Aug. 13, requires inspection of the elevator for integrity and, if found to be cracked, replacement with improved parts; it also requires repetitive checks prior to each flight for a period not to exceed 10 additional hours' time in service, at which time the (steel) improved part is to be installed and the required repetitive inspections may be discontinued; AD-81-17-05 supersedes AD 79-15-06. The P/N VAC 6000K-26 elevator hour assembly will be removed from service and replaced with an improved steel part within 10 hours' additional time in service from the (immediate) effectivity of AD 81-17-05. (Recommendations reported above.)

Note.—Single copies of Board reports are available without charges as long as limited supplies last. (Multiple copies may be purchased from the National Technical Information Service, U.S. Department of Commerce, Springfield, Va. 22161.) Copies of recommendation letters, responses and related correspondence are also free of charge. Address written requests, identified by recommendation or report number, 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.

September 25, 1981.

[FR Doc. 81-28256 Filed 9-30-81; 8:45 am]

BILLING CODE 4910-58-M

NUCLEAR REGULATORY COMMISSION

[Docket No. STN 50-4830L]

Union Electric Co. (Callaway Plant, Unit 1); Memorandum and Order; Modification of Hearing Schedule

September 24, 1981.

To provide additional time for schedule requirements of the Board and parties and for consideration of motions that may be filed. The prior Order establishing a schedule in this proceeding is modified as follows:

1. Filing of summary disposition motions, October 7, 1981.

2. Prehearing conference under 10 CFR 2.752, October 26, 1981, on construction defect contentions.

3. Filing of direct testimony and copies of exhibits, November 6, 1981, on construction defects contentions.

4. Hearing on construction defects contentions, November 17, 1981.

The prehearing conference and hearing on these contentions will be held in St. Louis, Missouri at the Marriot Pavilion Hotel at 1 Broadway with both sessions commencing at 9:00 a.m. Except for November 19. The hearing place for November 19 will be announced later. The Hearing is scheduled to continue each day through November 24, if necessary, not including Sunday November 22.

For the Atomic Safety and Licensing Board.

In Bethesda, Maryland September 24, 1981.

James P. Gleason,

Administrative Judge.

[FR Doc. 81-28362 Filed 9-30-81; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards; Meeting

In accordance with the purposes of Sections 29 and 182b. of the Atomic Energy Act (42 U.S.C 2039, 2232 b.), the Advisory Committee on Reactor Safeguards will hold a meeting on October 15-17, 1981, in Room 1046, 1717 H Street, NW, Washington, DC. Notice of this meeting was published in the Federal Register on September 23, 1981.

The agenda for the subject meeting will be as follows:

Thursday, October 15, 1981

8:30 A.M.-8:45 A.M.. Opening Session (Open)—The Committee will hear and discuss the report of the ACRS Chairman regarding miscellaneous matters relating to ACRS activities.

8:45 A.M.-12:15 P.M.: Shoreham Nuclear Power Station Unit 1 (Open)—The Committee will hear and discuss the reports of its Subcommittee and consultants who may be present regarding the request for a full power operating license for this facility. Representatives of the Applicant and the NRC Staff will also make presentations and respond to questions regarding proposed operation of this unit.

Portions of this session will be closed as necessary to discuss Proprietary Information related to this matter.

1:15 P.M.-5:15 P.M.. Grand Gulf Nuclear Station Units 1 and 2 (Open)—The Committee will hear and discuss the reports of its Subcommittee and consultants who may be present regarding the request for a full power operating license for this facility. Representatives of the Applicant and the NRC Staff will also make presentations and respond to questions regarding proposed operation of this unit.

Portions of this session will be closed as necessary to discuss Proprietary Information related to this matter.

5:15 P.M-6:30 P.M.: Integrity of Primary Coolant System (Open)—The Committee will hear and discuss reports of its Subcommittee and consultants who may be present as well as presentations by representatives of the

NRC Staff and the nuclear industry as appropriate regarding proposed changes in the analysis of primary coolant system pipe failures (WCAP-9558, Mechanistic Fracture Evaluation of Reactor Coolant Pipe Containing a Postulated Circumferential Through Wall Crack and WCAP-9787, Tensile Toughness Properties of Piping Weld Material for Use in Mechanistic Fracture Evaluation).

Friday, October 16, 1981

8:30 A.M.-10:30 A.M.. ACRS Subcommittee Activities (Open)—The Committee will hear and discuss the reports of designated Subcommittees and Subcommittee chairmen regarding the status of current activities including those related to proposed revisions of NRC Regulatory Guides (R.G. 1.23, Rev. 1, Meteorological Programs for Nuclear Power Plants), Anticipated Transients Without Scram (10 CFR Part 50), proposed NRC guide for preparation of Emergency Operating Procedures, and the scope/timing of the annual ACRS reports to the NRC and the U.S. Congress on the proposed NRC safety research budget.

The ACRS Subcommittee on the Sequoyah Nuclear Power Station will report to the Committee regarding the proposed system for control of combustible gasses at this facility as well as other features of the plant design and operation.

Portions of this session will be closed as necessary to discuss Proprietary Information related to the matters being considered.

10:30 A.M.-11:30 A.M.. Control of Combustible Gasses Following a Serious Accident (Open)—The Committee will hear and discuss a report from the NRC Staff regarding the advantages and disadvantages of inerting reactor containment as a method to control combustible gasses.

11:30 A.M.-1:00 P.M.. Discussion of ACRS Position Regarding Safety Related Matters (Open)—The Committee members will discuss proposed ACRS positions/comments in preparation for a meeting with the NRC Chairman and other NRC Commissioners who may have an interest regarding safety related matters including proposed NRC siting criteria for nuclear power plants, reactor pressure vessel integrity, use of rules in the regulatory process to address technical issues, and the impact of NRC regulatory activities on applicants/licensees.

2:00 P.M.-3:30 P.M.: Meeting with NRC Chairman and Other NRC Commissioners (Open)—The Committee will meet with the NRC Chairman and other Commissioners to discuss the safety related and regulatory issues noted above.

3:30 P.M.-3:45 P.M.. Anticipated ACRS Activities (Open)—The Committee will discuss anticipated Subcommittee and full Committee activities.

3:45 P.M.-5:45 P.M.: Floating Nuclear Plant (Open)—The Committee will hear and discuss the report of its Subcommittee and consultants who may be present regarding resolution of outstanding technical issues for this project and application of the TMI-2 Lessons Learned to this plant design. Representatives of the NRC staff and the applicant for a Manufacturing License (Offshore Power Systems) will make presentations and answer questions as appropriate regarding this matter.

Portions will be closed as necessary to discuss Proprietary Information regarding this project.

5:45 P.M.-6:30 P.M.. Application of TMI-2 Lessons Learned to DOE Facilities (Open)—The Committee will discuss a proposed ACRS position and comments regarding the application of TMI-2 Lessons Learned to DOE nuclear facilities.

Saturday, October 17, 1981

8:30 A.M.-11:30 A.M.. ACRS Reports to the NRC (Open/Closed)—The Committee members will discuss proposed ACRS reports to the NRC regarding the projects considered during this meeting.

Portions of this session will be closed as necessary to discuss Proprietary Information applicable to the matters being discussed and to discuss information which will be involved in an adjudiciary proceeding.

11:30 A.M.-12:30 P.M.. Position Regarding DOE Application of TMI-2 Lessons Learned (Open)—The Committee members will discuss proposed testimony regarding DOE application of TMI-2 Lessons Learned to DOE nuclear facilities.

1:30 P.M.-3:30 P.M.. Concluding Session (Open)—The Committee will complete discussion of the items noted above and will discuss other miscellaneous matters related to nuclear safety and regulation including the results of a recent meeting/visit with representatives of Japanese regulatory organizations.

Portions of this session will be closed as necessary to discuss information considered privileged and provided in confidence by a foreign source.

Procedures for the conduct of and participation in ACRS meetings were published in the Federal Register on October 7, 1980 (45 FR 66535). In accordance with these procedures, oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Committee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS Executive Director as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture and television cameras during this meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by a telephone call to the ACRS Executive Director (R. F. Fraley) prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACRS Executive Director if such rescheduling would result in major inconvenience.

I have determined in accordance with Subsection 10(d) Pub. L. 92-463 that it is necessary to close portions of this meeting as noted above to discuss Proprietary Information relating to the matter being considered (5 U.S.C. 552b(c)(4)), information which will be involved in an adjudicatory proceeding (5 U.S.C. 552b(c)(10)), and information considered privileged and provided in confidence by a foreign source (5 U.S.C. 552b(c)(4)).

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the ACRS Executive Director, Mr. Raymond F. Fraley (telephone 202/634-3265), between 8:15 A.M. and 5:00 P.M. EDT.

Dated: September 28, 1981.

John C. Hoyle,

Advisory Committee Management.

[FR Doc. 81-28561 Filed 9-30-81; 8:45 am]

BILLING CODE 7590-01-M

NUCLEAR REGULATORY COMMISSION

State of Washington: Staff Assessment of Proposed Amended Agreement Between the NRC and the State of Washington

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of proposed amended agreement with State of Washington.

SUMMARY: Notice is hereby given that the Nuclear Regulatory Commission is publishing for public comment a proposed amendment to the existing Section 274b. Agreement between NRC and the State of Washington which was effective December 31, 1966. The request dated August 17, 1981 from the Governor of the State of Washington, if approved, would permit the State of Washington to regulate byproduct material as defined in Section 11e.(2) of the Atomic Energy Act, as amended, (uranium mill tailings) after November 8, 1981 in conformance with the requirements of Section 274o. of the Atomic Energy Act of 1954, as amended.

A staff assessment of the State's proposed radiation control program to implement the amended agreement is set forth below as supplementary information to this notice. A copy of the complete program description submitted by Washington including a narrative prepared by the State of Washington and describing the State's proposed program for control over byproduct materials as defined in Section 11e(2) of the Act and appropriate State legislation, and Washington regulations is available for public inspection in the Commission's public document room at 1717 H Street, NW, Washington, D.C.

DATE: Comments must be received on or before October 19, 1981.

ADDRESS: All interested persons desiring to submit comments and suggestions for the consideration of the Commission in connection with the proposed amended agreement should send them to the Nuclear Regulatory Commission, Office of State Programs, Washington, D.C. 20555.

FOR FURTHER INFORMATION CONTACT: Craig Z. Gordon, Office of State Programs, Nuclear Regulatory Commission, Washington, D.C. 20555 Phone: (301) 492-9886.

SUPPLEMENTARY INFORMATION: Assessment of Proposed Washington Programs To Regulate Byproduct Material as Defined in Section 11e(2) of the Act. Reference: Criteria 29-36 of "Guidance of States and NRC in Discontinuance of NRC Regulatory Authority Thereof by States Through Agreement," 44 FR 42818.

I. Introduction

The Uranium Mill Tailings Radiation Control Act of 1978 amended the requirements for Section 274 of the Atomic Energy Act, "Cooperation With States" and imposed certain requirements that must be met by Agreement States in order to regulate uranium mill tailings after November 8, 1981. Governor John Spellman of the State of Washington has requested NRC to amend its agreement with NRC to permit continued State regulation of uranium mill tailings after this date. His request was supported by a description of the State's program for control or uranium mill tailings. NRC staff has completed an assessment of the State's proposal as follows:

II. Assessment of Proposed State of Washington Radiation Control Program for Uranium Mill Tailings

1. Statutes.

State statutes or duly promulgated regulations should be enacted, if not already in place, to make clear State authority to carry out the requirements of Pub. L. 95-604, Uranium Mill Tailings Radiation Control Act (UMTRCA).

In the enactment of any supporting legislation, the State should take into account the reservations of authority to the United States in UMTRCA as stated in 10 CFR 150.15a.

It is preferable that State statutes contain the provisions of Section 6 of the Model Act,[1] but the provisions may be accomplished by adoption of either procedures by regulation or technical criteria. In any case, authority for their implementation should be adequately supported by statute, regulation or case law as determined by the State Attorney General.

In the licensing and regulation of ores processed primarily for their source material content and for the disposal of byproduct material, procedures shall be established which provide a written analysis of the impact on the environment of the licensing activity. This analysis shall be available to the public before commencement of hearings and shall include:

a. An assessment of the radiological and nonradiological public health impacts;

b. An assessment of any impact on any body of water or groundwater;

c. Consideration of alternatives to the licensed activities; and

d. Consideration of long-term impacts of licenses activities.

A detailed evaluation of the pertinent Washington Statutes, Chapter 110, Laws 1979—Senate Bill No. 2197, Chapter 70.121 of the Revised Code of Washington (RCW): Public Health and Safety Statute, and Amendments to Washington Administrative Code (WAC) 402-52 has been performed by NRC staff. The State's statutes provide sufficient authority for Washington agencies to comply with the requirements of UMTRCA. The evaluation was performed against and relates to a checklist (which is included in the Washington proposal) which outlines each statutory requirement and section number contained in UMTRCA. Relevant provisions of the Washington Statute were cited and reflected as to how the UMTRCA requirements are satisfied. Resolution of deficiencies were made by frequent contacts with the State's Department of Social and Health Services (DSHS) and the State's Attorney General's Office. Where deficiencies could not be adequately addressed by regulations, the State has committed to incorporate necessary requirements into the licensing process by appropriate license conditions or order.

2. Regulations

State regulations should be reviewed for regulatory requirements, and where necessary incorporate regulatory language which is equivalent to the extent practicable or more stringent than regulations and standards adopted and enforced by the Commission, as required by Section 274o. (see 10 CFR Part 40 and 10 CFR 150.31(b)).

On January 1, 1980, Title 402 of the Washington Administrative Code was amended by WAC 402-22-150 to incorporate Special Requirements for Issuance of Specific Licenses for Source Material Milling and by WAC 402-52-100, Criteria Related to Disposition for Uranium Mill Tailings or Wastes. These regulations followed the Suggested State Regulations of the Council of State Governments which were deemed by the staff to be equivalent, to the extent practicable to the requirements of 10 CFR 40, Appendix A. Satisfactorily addressed in Title 402 regulations are: bonding requirements, siting requirements, criteria for tailings

[1] The reference is to the Model Uranium Mill Radiation Control Act, a copy of which has been placed in the Commission's Public Document Room. Section 6 of the Model Act requires that, among other things, statutory authority must be enacted to make clear State authority to carry out the requirements of the Uranium Mill Tailings Radiation Control Act (UMTRCA) of 1978, as amended. UMTRCA specifies that when States license an activity involving mill tailings, that has a significant impact on the human environment, they must prepare a written independent analysis of the impact of such license on the environment, including any activities conducted pursuant thereto.

management, dam stability analyses, surety arrangements, requirements for ownership, and criteria for ongoing active maintenance for uranium mill tailings impoundments.

3. Organizational Relationships Within the States

Organizational relationships should be established which will provide for an effective regulatory program for uranium mills and mill tailings.

When personnel in agencies other than the lead agency are included in the professional staff's effort, their availability on a routine and continuing basis must be demonstrated. Arrangements for availability for such resources have been proposed by Washington through interagency memoranda of understanding with the Departments of Ecology and Natural Resources. Contained in each agreement are duties of the agency, the period required for their performance, and procedures to resolve disputes if they should arise. An organization chart outlining the organizational relationships between the Radiation Control Section and other State agencies is also included. The proposal acknowledges that all MOU's between Radiation Control Section and other State agencies are only for the work required by State statutes. Although not contained in the proposal, commitments for assistance by various State agencies assures that consideration for necessary budgeting has been confirmed.

4. Personnel

Personnel needed in the processing of the license applications can be identified or grouped according to the following skills: Technical, Administrative, and Support.

In order to meet the requirements of UMTRCA, current indications are that 2–2.75 total professional person-years' effort is necessary to process and evaluate a new conventional mill license, in-situ license, or major license renewal. A complete review of in-plant safety, production of the environmental assessment, and consultant use are primary considerations in the total professional effort for each licensing case. With respect to clerical support, one secretary is required to process two conventional milling applications, including the pre-licensing and post-licensing phases. Legal support is also an essential element of the mill program, and the effort is set at a minimum of ½ staff-year. In addition, consideration must be given to such post-licensing activities as issuance of minor amendments, mill inspections, and environmental monitoring. Professional staff effort is estimated at 0.5–1.0 person-years for each year of post-licensing activities.

Currently, there are two conventional licensed uranium milling operations in the State of Washington. We estimate the total professional staff-years effort within the Radiation Control Section (RCS) directly responsible for regulation of uranium mills and mill tailings to be well within our guidelines. Specialty functions and responsibilities of each staff member have been outlined and broken down by percentage of time devoted to the mill program in the proposal. Eight of the ten professional positions having full-time and part-time responsibilities in uranium mill regulation have been filled. (This does not include the Supervisor of the Radioactive Materials Program and a Radiation Health Physicist II normally assigned to Special Projects.) State funds are committed for the remainder and there is an active effort to fill the existing vacancies. The make-up of the Uranium Mill Subunit of the RCS is as follows:

a. Nancy P. Kirner, RHP III, Supervisor of Radioactive Materials Program. Will be responsible for planning, directing, and supervising the operations and emergency response activities for the regulation of uranium mills and mill tailings.

b. Terry C. Frazee, RHP II, Compliance Supervisor, Responsible for supervision and planning activities of compliance program and inspection staff.

c. Donaly C. Peterson, RHP II, Environmental Radiation Protection Supervisor. Duties and responsibilities include supervision of professional staff for environmental radiation monitoring at the uranium mill facility.

d. Robert R. Verellen, RHP II, Licensing Supervisor. Will direct and supervise the licensing activities of source materials and prepare licenses in final form.

e. Robert H. Bidstrup, RHP I, Manager of Uranium Milling Control Program. Responsible for planning and coordinating licensing and compliance functions of the uranium mill subunit. Will also supervise health physicists responsible for control of uranium milling operations.

f. Arden C. Scroggs, Kent M. Prendergast, and Leonard Knowles, RHP I—Responsible for evaluation of radiological impacts associated with regulation of uranium mills and mill tailings; conducting field inspections at mills to assure licensee compliance with license conditions; evaluation of license applications, license amendments, preparation of safety evaluation reports; and environmental impact statements prior to issuing licenses.

The Radiation Control Section staff have attended the following short-term training courses related to uranium mill regulation: NRC "Orientation Course in Regulatory Practices and Procedures"—Kirner, Frazee, Peterson, Verellen, Haars; NRC "Inspection Procedures"—Kirner, Frazee, Haars; NRC "Uranium Mill Training for State Regulatory Personnel"—Verellen; NRC "Radiological Emergency Response Training"—Kirner, Frazee, Bidstrup Verellen; "EPA Groundwater Migration Course"—Frazee, Peterson, Verellen, Bidstrup; Eberline Instrument Corp. "Use of Instrumentation and Environmental Surveillance at Uranium Processing Facilities"—Peterson, Scroggs, Frazee.

During evaluations of license applications the State must have access to speciality resources such as hydrologists, geologists, and geotechnical engineers. It is also recommended that radioactive materials regulatory personnel have some training in these areas in addition to specialized training in uranium mill health physics and preparation of environmental assessments. Mr. Knowles has obtained many years of education and training in the field of geology; he will serve as staff geologist. Consultants to provide hydrological, geological and geotechnical assistance have been identified by Washington and are adequately qualified. Such consultants will be utilized to perform an independent review of a proposed license application. Memoranda of Understanding (MOU) or contracts between the Radiation Control Section (RCS) and consultants provide for a RCS evaluation of consultants' work. Consultants will be compensated on a fee-for-service basis to be reimbursed through provisions of State regulation specific to preparation of environmental reports.

5. Functions To Be Covered

The State should develop procedures for licensing, inspection, and preparation of environmental assessments.

Each uranium mill license application will be evaluated against State statutes, regulations, and NRC Regulatory Guides. A list of NRC Regulatory Guides utilized by the State in evaluating licensing actions has been furnished. State personnel will perform in-plant safety reviews. The individual in charge for licensing is also responsible for assuring that the in-plant safety review meets State requirements. The safety

evaluation report is written under guidance from the State's Uranium Mill Project Manager.

Inspections of all byproduct material licensees are conducted by Washington in accordance with general procedures outlined in the State Radiation Control Section's manual. These procedures which are common to all routine inspections have been supplemented by instructions specific to inspections at mills. The general procedures have been judged acceptable during the periodic NRC review meetings with Washington. The functions of State inspectors are to prepare for inspections, conduct on-site inspections, prepare a written report of the inspection, prepare enforcement letters, and review corrective actions. With respect to uranium mill inspections, inspectors are required to review all aspects of mill operations and tailings control with appropriate consultation and review by the division's environmental RCS's Radiation Subunit. The compliance staff and the environmental radiation safety staff conduct both joint and independent inspections. This is to assure that the facility's effluents meet the requirements of the State Environmental Policy Act (SEPA). Inspections of each of the two mills will be conducted at least on an annual basis.

Preparation of an environmental impact statement by persons outside State government is not specifically prohibited by State law. However, Federal statute, i.e., Section 274o.(3)(c) requires the State to prepare a written analysis of the impact on the environment with respect to uranium mill tailings from proposed operations. Sections WAC-402-22-040(5), WAC 402-22-070(6), and WAC 402-52 of the Washington Regulations, and SEPA guidelines (§ 197-10-230(13)) indicate that DSHS will act as lead agency to independently prepare the environmental impact statement (EIS).[2] On January 5, 1981 the State issued its most recent EIS for the Dawn Mining Company application to expand the existing tailings disposal area. With technical assistance from NRC on the radiological assessment, a determination was made that all requirements and criteria had been satisfied by Dawn to minimize the potential for adverse environmental effects.[3]

Procedures for coordinating, organizing, and completing an environmental impact statement have been submitted in a separate section of the proposal. This process, described in detail, basically is as follows: (1) The environmental report is received from the applicant; (2) A review of the report is performed by consultant teams; (3) The consultants' assessments are reviewed by the Radiation Control Section and other State agencies; and (4) These entities submit reports to the State Uranium Mill Project Manager who then prepares the environmental impact statement for issuance.

As a supplement to the reporting requirements required by regulation or license conditions, the State should require the licensee to submit in writing on a semi-annual schedule reports specifying the quantity of each of the principal radionuclides released to unrestricted areas in liquid and gaseous effluents from all pathways during the previous six months of operations. This data shall be reported in a manner that will permit the regulatory agency to confirm annual radiation doses to nearest individuals are within the requirements of 40 CFR Part 190, "Environmental Radiation Protection Standards for Nuclear Power Operations."

The environmental impact statement on Dawn's facility has identified the dose contribution from the expansion operation (with a below-grade pit) as having little bearing on overall site compliance with 40 CFR Part 190. Dose estimates from the existing operation, especially the front end of the mill circuit, indicate a need for better effluent control. The State has required Dawn by license condition to keep all effluent control equipment in good working order and in use at all times during mill operations. Furthermore, the licenses of both mills (the other being Western Nuclear's Sherwood Facility) were amended to require a determination of compliance with 40 CFR Part 190 using on-site data collected from the licensee's radiological monitoring programs. The monitoring programs must conform to specifications of NRC Regulatory Guide 4.14, Radiological Effluent and Environmental Monitoring at Uranium Mills" (issued as revision 1, April 25, 1980). These amendments require the licensee to perform land-use surveys, to develop and maintain a quality assurance program, emergency response procedures, data review programs, and semi-annual reporting specifications.

The Department's Environmental Radiation Subunit is responsible for review and verification of the licensee's environmental monitoring data. Dose assessments have been made at both mills. The assessment for Dawn was completed by NRC using computer models. At Western Nuclear's Sherwood Facility, the Department's report of the assessment shows the mill to be in compliance with 40 CFR Part 190. This finding was based upon field data taken during the period of July 1979-June 1980. Both mills are required to submit their own dose assessments by May 1, 1982 which will be based on data collected during CY 1981. The Environmental Subunit will then assess and confirm that radiation doses to nearest receptors are within the limits of 40 CFR Part 190.

6. Instrumentation

The State should have available both field and laboratory instrumentation sufficient to ensure the licensee's control of materials and to validate the licensee's measurements.

The Radiation Control Section has utilized a portion of funds authorized under its UMTRCA grant to purchase field equipment for monitoring and surveillance purposes. The submitted list shows the following detection capabilities:

a. Sampling of air particulates—The State has four (4) area air samplers to detect natural uranium, Ra-226, Th-230, and Pb-210 in addition to adequate personal air sampling equipment (lapel samplers).

b. Sampling of radioactive gases—scintillation detectors with compatible scintillation cells (ZnS) are utilized for detection of Radon-222.

c. Site surveillance—The State owns two portable survey meters designed to be used with interchangeable detector probes, i.e., proportional, Geiger-Mueller, and scintillation probes for detection of alpha, beta, and gamma radiations, respectively. A micro-R meter for counting of low-level gamma does rates also has been obtained. There are two general purpose survey meters providing versatility for use in field and laboratory. Alpha scintillation probes are currently being used with these survey meters.

d. Equipment calibration—Procedures have been developed and staff has been trained in calibration of radiation detection equipment. National Bureau of Standards traceable sources for calibration of counting equipment have been identified and are utilized. The State is currently working with the University of Washington to establish a regional calibration facility.

The Environmental Radiation Laboratory is a division within the

[2] WAC-402-070(6)(a)(ii)(B) also requires consideration of long-term impacts for decommissioning, decontamination, and reclamation relevant for the proposed activities.

[3] This radiological assessment continues to be refined by NRC and a final radiological assessment will be included in the EIS. Renewal of the Dawn license is expected to be issued by December, 1981.

State's Office of Public Health Laboratories and Epidemiology and provides direct support to the Radiation Control Section in the areas of environmental monitoring and processing of samples. It has all necessary equipment to analyze and evaluate environmental samples taken around milling activities including alpha counters for uranium and thorium, alpha spectrometer, alpha scintillation counter, intrinsic Germanium-Lithium detector, and automatic TLD analyzer.

Procedures have been developed for determining uranium and radium-226 concentration by precipation methods. Development of procedures for Thorium-230 analysis began in July 1981. All laboratory methods are derived from NRC Regulatory Guide 4.14 and EPA procedures and guides used for laboratory support of a uranium will control program. The laboratory also participates regularly in the inter-laboratory quality assurance (QA) program offered by EPA. A full-time chemist contributes to the main staffing effort and is responsible for carrying out effective QA. This is done by supplementing environmental samples with standards, spiked samples and blank samples for evaluation. The State has committed to further developing procedures for evaluating Ra-226 by emanation, Pb-210 analysis, Po-210 analysis, and familiarizing staff with alpha spectroscopy evaluation.

7. Conclusion

Based on the foregoing, the NRC staff concludes that the State of Washington has met the criteria for an amended agreement.

III. Amendment to Agreement Between the United States Nuclear Regulatory Commission and the State of Washington for Discontinuance of Certain Commission Regulatory Authority and Responsibility Within the State Pursuant to Section 274 of the Atomic Energy Act of 1954, as Amended

Whereas, the United States Atomic Energy Commission [4] (hereinafter referred to as the Commission) entered into an Agreement (hereinafter referred to as the Agreement of December 6, 1966 with the State of Washington under section 274 of the Atomic Energy Act of 1954, as amended (hereinafter referred to as the Act), which Agreement became effective on December 31, 1966 and provided for discontinuance of the regulatory authority of the Commission within the State under Chapters 6, 7, and 8, and Section 161 of the Act with respect to byproduct materials as defined in section 11e.(1) of the Act, source materials, and special nuclear materials in quantities not sufficient to form a critical mass; and

Whereas, it is necessary to enter into this amendment in order to implement new requirements of section 274 of the Act which become fully effective on November 8, 1981; and

Whereas, the Commission found on ———— that the program of the State for the regulation of materials covered by this amendment is in accordance with the requirements of section 274o. of the Act and in all other respects compatible with the Commission's program for the regulation of such materials and is adequate to protect the public health and safety; and

Whereas, this amendment is entered into pursuant to the provisions of the Atomic Energy Act of 1954, as amended;

Now, therefore, it is hereby agreed between the Commission and the Governor of the State, acting on behalf of the State, as follows:

Section 1. Article I of the Agreement of December 6, 1966 is amended by adding "as defined in section 11e.(1) of the Act;" after the words "byproduct materials" in paragraph A., by redesignating paragraphs B. and C. as paragraphs C. and D., and by inserting the following new paragraph immediately after paragraph A.:

"B. Byproduct materials as defined in section 11e.(2) of the Act;".

Section 2. Article II of the Agreement of December 6, 1966 is amended by inserting "A." before the words "This Agreement," by redesignating paragraphs A. through D. as subparagraphs 1. through 4., and by adding the following at the end thereof:

"B. Notwithstanding this Agreement, the Commission retains the following authorities pertaining to byproduct materials as defined in section 11e.(2) of the Act:

"1. Prior to the termination of a State license for such byproduct material, or for any activity that results in the production of such material, the Commission shall have made a determination that all applicable standards and requirements pertaining to such material have been met.

"2. The Commission reserves the authority to establish minimum standards governing reclamation, long term surveillance or maintenance, and ownership of such byproduct material. Such reserved authority includes:

"a. The authority to establish terms and conditions as the Commission determines necessary to assure that, prior to termination of any license for such byproduct material, or for any activity that results in the production of such material, the licensee shall comply with decontamination, decommissioning, and reclamation standards prescribed by the Commission; and with ownership requirements for such materials and its disposal site;

"b. The authority to require that prior to termination of any license for such byproduct material or for any activity that results in the production of such material, title to such byproduct material and its disposal site be transferred to the United States or the State at the option of the State (provided such option is exercised prior to termination of the license);

"c. The authority to permit use of surface or subsurface estates, or both, of the land transferred to the United States or the State pursuant to subparagraph B.2.b. of this Article;

"d. The authority to require the Secretary of the Department of Energy, other Federal agency, or State, whichever has custody of such byproduct material and its disposal site, to undertake such monitoring, maintenance, and emergency measures as are necessary to protect the public health and safety, and other actions as the Commission deems necessary; and

"e. The authority to enter into arrangements as may be appropriate to assure Federal long term surveillance or maintenance of such byproduct material and its disposal site on land held in trust by the United States for any Indian tribe or land owned by an Indian tribe and subject to a restriction against alienation imposed by the United States.".

Section 3. Article III of the Agreement of December 6, 1966 is amended by inserting "otherwise licensable by the State under Article I of this Agreement" after the words "special nuclear material."

Section 4. Article VII of the Agreement of December 6, 1966 is amended by inserting "all or part of" after the words "terminate or suspend," by inserting "(1)" after the words "finds that," and by adding at the end before the period the following:

", or (2) the State has not complied with one or more of the requirements of section 274 of the Act. The Commission shall periodically review this Agreement and actions taken by the State under this Agreement to ensure compliance

[4] Under the provisions of the Energy Reorganization Act of 1974, the regulatory functions formerly carried out by the Atomic Energy Commission are now carried out by the Nuclear Regulatory Commission as of January 19, 1975.

with the provisions of section 274 of the Act."

Section 5. Article VIII of the Agreement of December 6, 1966 is amended by redesignating it Article IX and by inserting a new Article VIII as follows:

"In the licensing and regulation of byproduct material as defined in section 11e.(2) of the Act, or of any activity which results in production of such material, the State shall comply with the provisions of section 274o. of the Act. If, in such licensing and regulation, the State requires financial surety arrangements for the reclamation or long term surveillance or maintenance of such material,

"A. The total amount of funds the State collects for such purposes shall be transferred to the United States if custody of such material and its disposal site is transferred to the United States upon termination of the State license for such material or any activity which results in the production of such material. Such funds include, but are not limited to, sums collected for long term surveillance or maintenance. Such funds do not, however, include monies held as surety where no default has occurred and the reclamation or other bonded activity has been performed; and

"B. Such State surety or other financial requirements must be sufficient to ensure compliance with those standards established by the Commission pertaining to bonds, sureties, and financial arrangements to ensure adequate reclamation and long term management of such byproduct material and its disposal site."

This amendment shall becomed effective on ————

Done at Olympia, State of Washington, in triplicate, this day of ————.

For the State of Washington.

John Spellman,

Governor.

Done at Washington, D.C., in triplicate, this day of ————

For the United States Nuclear Regulatory Commission.

Nunzio J. Palladino,

Chairman.

Dated at Bethesda, Maryland, this 11th day of September, 1981.

For the United States Nuclear Regulatory Commission.

G. Wayne Kerr,

Director, Office of State Programs.

[FR Doc. 81-27130 Filed 9-16-81; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF MANAGEMENT AND BUDGET

Agency Forms Under Review

Background

September 23, 1981.

When executive departments and agencies propose public use forms, reporting, or recordkeeping requirements, the office of management and budget (OMB) reviews and acts on those requirements under the Paperwork Reduction Act (44 U.S.C. Chapter 35). Departments and agencies use a number of techniques including public hearings to consult with the public on significant reporting requirements before seeking OMB approval. OMB in carrying out its responsibility under the act also considers comments on the forms and recordkeeping requirements that will affect the public.

List of Forms Under Review

Every Monday and Thursday OMB publishes a list of the agency forms received for review since the last list was published. The list has the entries for one agency together and grouped into new forms, revisions, extensions (burden change), extensions (no change), for reinstatements. The agency clearance officer can tell you the nature of any particular revision you are interested in. Each entry contains the following information:

The name and telephone number of the agency clearance officer (from whom a copy of the form and supporting documents is available).

The office of the agency issuing this form.

The title of the form.

The agency form number, if applicable.

How often the form must be filled out.

Who will be required or asked to report.

The standard industrial classification (SIC) codes, referring to specific respondent groups that are affected.

Whether small businesses or organizations are affected.

A description of the Federal Budget functional category that covers the information collection.

An estimate of the number of responses.

An estimate of the total number of hours needed to fill out the form.

An estimate of the cost to the Federal Government.

An estimate of the cost to the public.

The number of forms in the request for approval.

An indication of whether section 3504(h) of Pub. L. 96-511 applies.

The name and telephone number of the person or office responsible for OMB Review and

An abstract describing the need for and uses of the information collection.

Reporting or recordkeeping requirements that appear to raise no significant issues are approved promptly. Our usual practice is not to take any action on proposed reporting requirements until at least ten working days after notice in the Federal Register but occasionally the public interest requires more rapid action.

Comments and Questions

Copies of the proposed forms and supporting documents may be obtained from the agency clearance officer whose name and telephone number appear under the agency name. The agency clearance officer will send you a copy of the proposed form, the request for clearance (SF83), supporting statement, instructions, transmital letters, and other documents that are submitted to OMB for review. If you experience difficulty in obtaining the information you need in reasonable time, please advise the OMB reviewer to whom the report is assigned. Comments and questions about the items on this list should be directed to the OMB reviewer or office listed at the end of each entry.

If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the reviewer of your intent as early as possible.

The timing and format of this notice have been changed to make the publication of the notice predictable and to give a clearer explanation of this process to the public. If you have comments and suggestions for further improvements to this notice, please send them to Jim J. Tozzi, Deputy Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place, Northwest, Washington, D.C. 20503.

DEPARTMENT OF AGRICULTURE

Agency Clearance Officer—Richard J. Schrimper—202-447-6201

New

- Science and Education Administration
Aquaculture Information Sources Directory
Nonrecurring
State or local governments/businesses or other institutions
Profit, non-prof. assocs., st. and Fed. Gov. enter.
SIC: 823, 892

Small businesses or organizations
Agricultural research and services; 700 responses; 117 hours; $25,000 Federal costs; 1 form; $1,170 public cost; not applicable under 3504 (h)
Charles A. Ellett, 202-395-7340

Implementation of the mandate of the National Agriculture Act of 1980.
Directory designed to avoid creation of new programs which would duplicate existing aquaculture information centers and resources.

• Agricultural Marketing Service
Florida Tomato Committee forms—Marketing Order No. 966
Admin. cttee forms
On occasion, annually
Farms/businesses or other institutions
Tomato handlers in the productions area
SIC: 514, 016
Small businesses or organizations
Agricultural research and services: 407 responses; 20 hours; $516 Federal cost; 6 forms; $106 public cost; not applicable under 3504(h)
Charles A. Ellett; 202-395-7340

The forms are used by the committee to ensure compliance by handlers who wish to be exempted from grade, size, pack or container requirements of the order.

DEPARTMENT OF COMMERCE

Agency Clearance Officer—Edward Michals—202-377-3627

New

• Bureau of the Census
Selected Office Supplies and Accesories (Shipments)
MA-26B
Annually
Businesses or other institutions
Manuf. of selected converted paper and board prod. and blankbks.
SIC: 264, 278
Small businesses or organizations
Other advancement and regulation of commerce: 1,065 responses; 800 hours; $0 Federal cost; 1 form; not applicable under 3504(h)
Off. of Federal Statistical Policy and Standard, 202-673-7974

This survey will provide the only intercensal data available of manufacturers' shipments of converted paper and board office supplies, and blankbooks. The figures are used extensively by Government agencies to monitor procurement, forecasting, and price index calculation. Industry analysts use the data to monitor market share and shifts in product types.

• Bureau of the Census
Paint and Allied Products
MA-28F
Annually
Businesses or other institutions
Manufacturers of paints and allied products
SIC: 285
Small businesses or organizations
Other advancement and regulation of commerce: 700 responses; 350 hours; $35,183 Federal cost; 1 form; not applicable under 3504(h)
Off. of Federal Statistical Policy and Standard, 202-673-7974

Survey results will be used by Government agencies, business firms, and trade associations for market analysis and to monitor and forecast trends in the industry.

• Bureau of the Census
1982 Farm and Ranch Identification Survey
82-A4 and 82-A4-L1
Nonrecurring
Farms
Farmers, ranchers and agricultural related respondents
SIC: multiple
Othe advancement and regulation of commerce: 3,500,000 responses; 317,100 hours; $60 Federal cost; 1 form; not applicable under 3504(h)
Off. of Federal Statistical Policy and Standard, 202-673-7974

This report form will be used to screen nonagricultural related persons and duplicates from the census mailing list. Successors and other "new" operators will be identified and added to the mailing list.

Revisions

• Bureau of the Census
Ingoranic Chemicals (Shipments and Production)
MA-28A
Annually
Business or other institutions
Manufacturers of inorganic chemicals
SIC: 281, 287
Small businesses or organizations
Other advancement and regulation of commerce: 1,000 responses; 1,000 hours; $41,690 Federal cost; 1 form; not applicable under 3504(h)
Off. of Federal Statistical Policy and Standard, 202-673-794

Survey results are used by Government agencies, business firms, and trade associations for market analysis, including analysis of import penetration, and to forecast long-term growth and changes in the industry.

• Bureau of the Census
Inorganic Chemicals (Production and Stocks)
M-28A (formerly M-28A.1)
Monthly
Businesses or other institutions
Manufactuers of inorganic chemicals
SIC: 281
Small businesses or organizations
Other advancement and regulation of commerce: 4,200 responses; 1,400 hours; $59,702 Federal cost; 1 form; not applicable under 3504(h)
Off. of Federal Statistical Policy and Standard, 202-673-7974

This survey provides the only monthly data on production of the specified chemicals. Government and industry analysts use these data to monitor the trends of production for chemicals which have a wide range of industrial and commercial use. Stock data are used to measure the available supply of these products.

• Bureau of the Census
Methods Development Survey Questionnaire
MDS-2F and MDS-2G
Monthly
Individuals or households
Households in four areas
Other advancement and regulation of commerce: 18,000 responses; 2,340 hours; $612,000 Federal cost; 2 forms; not applicable under 3504(h)
Off. of Federal Statistical Policy and Standard, 202-673-7974

This survey instrument provides a means of testing various labor force concepts for the purpose of improving the quality and reliability of the employment and unemployment statistics collected in the current population survey.

• Bureau of the Census
Construction Machinery Shipments
MA-35D
Annually
Businesses or other institutions
Manufacturers of excavators and cranes
SIC: 353
Small businesses or organizations
Other advancement and regulation of commerce: 65 responses; 4 hours; $21,648 Federal cost; 1 form; not applicable under 3504(h)
Off. of Federal Statistical Policy and Standard, 202-673-7974

This survey was begun in 1942 to provide quantity and value of shipments and exports data for construction machinery. Government agencies use data for trade analysis, measurement, and forecasting. Business firms and trade associations use the data for marketing analysis and long-term planning.

• Bureau of the Census
Pulp, Paper, and Board
MA-26C
Annually
Businesses or other institutions

Pulp, paper, and board mills
SIC: 262, 261, 263, 266, 249
Small businesses or organizations
Other advancement and regulation of commerce: 700 responses; 700 hours; $35,183 Federal cost; 1 form; not applicable under 3504(h)
Off. of Federal Statistical Policy and Standard, 202-673-7974

This survey provides detailed statistics on selected wood, pulp, paper, and board products. The data are used extensively by government and industry analysts, and in conjunction with the related monthly survey, provide a benchmark to related surveys conducted by industry associations.

Extensions (Burden Change)

• Bureau of the Census
Paint, Varnish and Lacquer (Shipments)
M-28F
Monthly
Businesses or other institutions
Manufacturers of paints, varnishes and lacquers
SIC: 285
Small businesses or organizations
Other advancement and regulation of commerce: 1,800 responses; 1,050 hours; $33,949 Federal cost; 1 form; not applicable under 3504(h)
Off. of Federal Statistical Policy and Standard, 202-673-7974

Survey results are used by Government agencies, business firms, and trade associations for market analysis and to forecast long-term growth and changes in the industry. The data are also used by the Federal Reserve Board for its index of industrial production.

Extensions (No Change)

• Bureau of the Census
Commercial Steel Forgings
MA-34C
Annually
Businesses or other institutions
Manufacturers of commercial steel forgings
SIC: 346
Small businesses or organizations
Other advancement and regulation of commerce: 240 responses; 160 hours; $25,798 Federal cost; 1 form; not applicable under 3504(h)
Off. of Federal Statistical Policy and Standard, 202-673-7974

This survey provides measures of the quantity and value of shipments for commercial steel forgings. The products have a wide range of industrial uses, and the survey data are widely used by the Government and the private sector.

Reinstatements

• Bureau of the Census
1982 Census of Governments Local Government Directory Survey
G-25, 26, 27, 28, 29, 30, and 31
Nonrecurring
State or local governments
Local government officials
SIC: multiple
Other advancement and regulation of commerce: 71,000 responses; 17,750 hours; $249,000 Federal cost; 7 forms; not applicable under 3504(h)
Off. of Federal Statistical Policy and Standard, 202-673-7974

These forms will be used for interrelated surveys in the "local government directory" phase of the 1982 Census of Governments. The information requested on these forms is similar to that requested in the governmental organization phase of the 1977 Census of Governments.

DEPARTMENT OF EDUCATION

Agency Clearance Officer—Wallace McPherson—202-426-5030

New

• Office of Educational Research and Improvement
Fall Enrollment in Institutions of Higher Education, 1983
Ed (NCES) 2300-2.3B
Biennially
Businesses or other institutions and community colleges
SIC: 822
Research and general education aids: 3,300 responses; 5,940 hours; $206,000 Federal cost; 1 form; $330,000 public cost; not applicable under 3504(h)
Federal Education Data Acquisition Council, 202-426-5030

College enrollment data are needed by the Department of Education, States, educational researchers, planning and budget offices, and individual colleges for use in economic and financial planning and policy formation, deforming funding allocation standards, and assess the manpower flow through college training and development.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency Clearance Officer—Joseph Strnad—202-245-7488

New

• Health Care Financing Administration
To Improve Medicare Assignment Rate Pre-Clearance
81-3-007 demonstration
Nonrecurring
Businesses or other institutions
Physicians
SIC: 999
Small businesses or organizations
Health: $0 Federal cost; 1 Form; not applicable under 3504(h)
Richard Eisinger, 202-395-6880

Testing of various methods to improve the rate of acceptance of assignment under part B of the medicare program. Methods to be tested would not include increases in the amount of monies paid to part B suppliers.

• Human Development Services
Reporting and Recordkeeping Requirements of Pub. L. 97-35 on the Community Services Block Grant Program
Annually
State or local governments
State agen. admin. or superv. the admin. of the com., etc.
SIC: 839
Social services: 57 responses; 110,000 hours; $75,000 federal cost; $1,100,000 public cost; 1 form; not applicable under 3504(h)
Barbara F. Young, 202-395-6880

Under Pub. L. 97-35, to participate in the community services block grant program, A State must submit an application to the Secretary which provides assurances that requirements of statute will be met. Also, a State must submit a plan and a pre-expenditure report.

• Social Security Administration
Low Income Home Energy Assistance
Annually
State or local governments
State agencies designated to operate liheap
SIC: 944
Other income security: 57 responses; 32,490 hours; $0 Federal cost; 1 form; not applicable under 3504(h)
Robert Neal, 202-395-6880

This reporting requirement is to comply with Pub. L. 97-35, Sec. 2610(a) which calls for an annual report to Congress.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Agency Clearance Officer—Robert G. Masarsky—202-755-5184

Revisions

• Housing Programs
Report on Occupancy for Public and Indian Housing
HUD 51234
Annually
State or local governments
Public housing authorities
SIC: 915
Mortgage credit and thrift insurance: 2,800 responses; 2,800 hours; $112,000 Federal cost; 1 form; not applicable under 3504(h)
Richard Sheppard, 202-395-6880

To measure the utilization of public and Indian housing units by low income families. Occupancy information is used on a project and national level to (1) ensure maximum efficiency and effectiveness are achieved with Federal assistance funds, (2) monitor program performance and (3) analyze for planning and budgeting purposes.

Extensions (No Change)

• Housing Programs
Title I—Transfer of Note Report
FH-6 (9-77)
On occasion
Businesses or other institutions
Banks, savings & loans, credit unions, State gov't
SIC: 616, 651
Small businesses or organizations
Mortgage credit and thrift insurance: 2,000 responses; 400 hours; $6,700 Federal cost; 1 form; not applicable under 3504(h)
Richard Sheppard 202-395-6880

Section 7(d), 79 Stat. 670 (42 U.S.C. 3535(d), section 2, 48 Stat. 1246 (12 U.S.C. 1703)), provides that the insured shall not assign or otherwise transfer any loan reported for insurance to a transferee not holding a contract of insurance under title I of the National Housing Act. This form is used to transfer a loan from one insured lender to another.

• Housing Programs
Title I Refinancing Report
FH-5
Other—see SF83
Businesses or other institutions
Banks, savings and loans, credit unions, State government
SIC: 612, 614, 616, 651
Mortgage credit and thrift insurance: 30,000 responses; 6,000 hours; $67,000 Federal cost; 1 form; not applicable under 3504(h)
Richard Sheppard, 202-395-6880

Statute (see item 28 below) provides that new obligations to liquidate loans previously reported for insurance may or may not include an additional amount advanced, and which may include the maximum finance charge permissible, will be covered by insurance if the new obligation meets sec. 201.9 of the CFR. These new obligations are reported to HUD on the FH-5.

Reinstatements

• Housing Programs
Lenders Request for Termination of Home Mortgage Insurance
HUD 2344
On occasion
Businesses or other institutions
Business firms
SIC: 616
Mortgage credit and thrift insurance: 238,000 responses; 59,500 hours; $3,475 Federal cost; 1 form; not applicable under 3504(h)
Richard Sheppard, 202-395-6880

Form necessary to transmit from mortgagees to HUD concerning mortgage transactions

• Housing Programs
Fiscal Data in Support of Claims for Insurance Benefits
FHA-2742
On occasion
Businesses or other institutions
FHA approved mortgagees
SIC: 616
Mortgage credit and thrift insurance: 300 responses; 75 hours; $1,110 Federal cost; 1 form; not applicable under 3504(h)
Richard Sheppard, 202-395-6880

Needed by mortgagee to make a claim for insurance benefits.

• Housing Programs
Insurance information
HUD 5460
On occasion
State or local governments
Public housing agencies
SIC: 953
Disaster relief and insurance: 1 response; 800 hours; $24,000 Federal cost; 1 form; not applicable under 3504 (h)
Richard Sheppard, 202-395-6880

The annual contributions contract requires public housing agencies to maintain certain insurance coverages. This form provides the record of insurance contract in force and is also a tool for us in determining insurance amounts needed and in comparing competitive proposals.

DEPARTMENT OF JUSTICE

Agency Clearance Officer—Larry E. Miesse—202-633-4312

Revisions

• Office of Justice Assistance, Research and Statistics
Request for Advance or Reimbursement (H-3)
OJARS 7160/3
Monthly
State or local governments/businesses or other institutions
Grant
SIC: 941
Criminal justice assistance: 8,400 responses; 4,200 hours; $124,740 Federal cost; $37,191 public cost; 1 form; not applicable under 3504 (h)
Andy Uscher, 202-395-4814

This form is used by grantees to request funds when the letter-of-credit method is not used. The form is prescribed by OMB Circulars A-102 (attachment H) and A-110 (attachment G).

Extensions (Burden Change)

• Legal Activities
Exhibit A to Registration Statement (Foreign Agents)
OBD-7 (CRM)
On Occasion
Individuals or households
Foreign agents
Conduct of foreign affairs: 5 responses; 38 hours; $21,360 Federal cost; $380 public cost; 1 form; not applicable under 3504 (h)
Andy Uscher, 202-395-4814

Form is used to register foreign agent as required by 22 U.S.C. 611, et seq. must be utilized within ten days of date contact is made or when initial activity occurs (whichever is first).

Extensions (No Change)

• Legal Activities
Exhibit B to Registration Statement (Foreign Agents)
OBD-65 (CRM)
On occasion
Individuals or households
Foreign agents
Federal litigative and judicial activities: 75 responses; 25 hours; $21,360 Federal cost; $250 public cost; 1 form; not applicable under 3504 (h)
Andy Uscher, 202-395-4814

Form is used to augment the registration statement of foreign agents as required by the provisions of 22 U.S.C. 611 et seq., within ten days of the date a contact is made or when initial activity occurs, whichever is first.

• Legal Activities
Short Form Registration Statements of Individuals (Foreign Agents) (OBD Criminal)
OBD-66 (CRM)
On occasion
Individuals or households
Foreign agents
Federal litigative and judicial activities: 350 responses; 150 hours; $56,960 Federal cost; $1,500 public cost; 1 form; not applicable under 3504 (h)
Andy Uscher, 202-395-4814

Form is used to register Foreign agents as required by 22 U.S.C. 611 et seq.

• Legal Activities
Dissemination Report (Transmittal of Political Propaganda)
OBD-69 (CRM)
On occasion
Individuals or households
Foreign agents
Federal litigative and judicial activities: 3,600 responses; 1,800 hours; $46,200

Federal cost; $18,000 public cost; 1 form; not applicable under 3504 (h)
Andy Uscher, 202-395-4814

Form used reporting on the dissemination of political propaganda, within 48 hours of initial dissemination of political propaganda under the requirements of 22 U.S.C. 611 et seq.

• Legal Activities
Amendment to Registration or Supplemental Registration Reports (Foreign Agents)
OBD-68 OBD-68 (CRM)
On occasion
Individuals or households
Foreign agents
Federal litigative and judicial activities: 200 responses; 300 hours; $46,280 Federal cost; $3,000 public cost; 1 form; not applicable under 3504 (h)
Andy Uscher, 202-395-4814

Form is used in registration of Foreign agents when changes are required under provisions of 22 U.S.C. 611 et seq.

• Legal Activities
Supplemental Registration Statements of Individuals (Foreign Agents)
OBD-64 (CRM)
Semiannually
Individuals or households
Foreign agents
Conduct of foreign affairs: 2,400 responses; 3,300 hours; $153,080 Federal cost; $33,000 public cost; 1 form; not applicable under 3504 (h)
Andy Uscher, 202-395-4814

Form contains supplemental registration and information used in registering foreign agents under 22 U.S.C. 611.

• Legal Activities
Registration Statements of Individuals (Foreign Agents)
OBD-63 (CRM)
On occasion
Individuals or households
Foreign agents
Conduct of foreign affairs: 100 responses; 150 hours; $10,680 Federal cost; $1,500 public cost; 1 form; not applicable under 3504 (h)
Andy Uscher, 202-395-4814

Form contains registration statement and information used for registering Foreign agents under 22 U.S.C. 66 et seq.

DEPARTMENT OF TRANSPORTATION

Agency Clearance Officer—John Windsor—202-426-1887

New

• Coast Guard
Applications for Formal Admeasurement and Subapplications
On occasion
Individuals or households/state or local governments/businesses or other in institutions
Owners, maritime design consult. firms, builders & shipyards
SIC: 373, 441, 442, 444
Small businesses or organizations
Water transportation: 7,103 responses; 28,412 hours; $1,042,296 Federal cost; $265,019 public cost; 0 form; not applicable under 3504 (h)
Wayne Leiss, 202-395-7340

46 U.S.C. 71(A)(C)(D)(F), 72, 74, 77(F)(1)(3)(G)(1), 83A—All United States commercial merchant vessels over 5 net tons require admeasurement. Shipyards, builders and owners are required to apply for admeasurement. Admeasurement produces the register tonnages and the legal description of these vessels as required by law.

• Coast Guard
State Reports of Marine Sanitation Device Regulations
Violations
Monthly
State or local governments
State gov. entered into voluntary agreement w/Coast Guard
SIC: 922
Water transportation: 600 responses; 600 hours; $25,000 Federal cost; 0 forms; $12,000 public cost not applicable under 3504(h)
Wayne Leiss, 202-395-7340

Under Section 312(k) of the Federal Water Pollution Control Act, the States may, by agreement, participate in the enforcement of the Marine Sanitation Device (MSD) Regulations. However, because the States are preempted from issuing State MSD laws, they are unable to penalize violators they detect. They must forward copies of the violation reports to the Coast Guard for penalty action.

• Coast Guard
Master/Mate Uninspected Vessel Exams
CG 4814
On occasion
Individuals or households
Appl. for original master or mate of uninspected vessel lic.
Water transportation: 1,001 responses; 12,012 hours; $12,947 Federal cost; 1 form; not applicable under 3504(h)
Wayne Leiss, 202-395-7340

This exam is used by the Coast Guard, to assure that applicants possess a minimum level of qualifications when applying for a master or mate of uninspected vessels license.

• Coast Guard
Amendment to Operations Manual
On occasion
Businesses or other institutions
Owner/operators of bulk liquid waterfront facilities
SIC: 291
Small businesses or organizations
Water transportation: 200 responses; 100 hours; $3,800 Federal cost; 0 form; $2,000 public cost; not applicable under 3504(h)
Wayne Leiss, 202-395-7340

Changes to a waterfront facility's operations manual may be required from time to time. The changes may be proposed by the Coast Guard Captain of the Port or the facility owner or operator. This report is the mechanism used to make the amendment.

• Coast Guard
Lifeboatman Examination
Answer sheet CG 4814
On occasion
Individuals or households
Applicants for Lifeboatman endorsement
Water transportation: 1,859 responses; 1,859 hours; $23,742 Federal cost; 1 form; not applicable under 3504

Wayne Leiss; 202-395-7340

These examinations are used by the Coast Guard to assure that lifeboatmen possess a minimum level of qualifications when applying for the lifeboatman endorsement.

• Coast Guard
Signalling Examination for original Deck Officer License
CG 4814
On occasion
Individuals or households
Applicants for original deck officer license
Water transportation: 610 responses; 610 hours; $7,032 Federal cost; 1 form; not applicable under 3504(h)
Wayne Leiss, 202-395-7340

This examination is used by the Coast Guard, in conjunction with the deck officer examination, to assure that applicants for original deck officer license possess a minimum level of qualifications.

• Research and Special Programs Administration
Drum Retester ID Registration
Nonrecurring
Businesses or other institutions
Drum reconditioners
SIC: 341
Other transportation: 50 responses; 25 hours; $1,250 Federal cost; 1 form; not applicable under 3504(h)
Wayne Leiss, 202-395-7340

To verify to the MTB and drum owners that drum retesters have the proper equipment documentation and

reference material necessary to recondition drums.

• Coast Guard
Applications for Optional Simplified Admeasurement for Pleasure Vessels
On occasion
Individuals or households/businesses or other institutions
Yacht owners, small and large businesses
SIC: 441 442 444
Small businesses or organizations
Water transportation: 9,075 responses; 18,150 hours; $134,968 Federal cost; 0 form; not applicable under 3504 (h)
Wayne Leiss; 202-395-7340

46 U.S.C. 71(B), 46 CFR 69.17—Yacht owners of vessels over 5 net tons have the option to license or "enroll and license" as a vessel of the United States. This simplified method greatly reduces the burden on the public and the Federal Government.

• Coast Guard
Establishment of Regulated Navigations Areas
On occasion
Individuals or households/businesses or other institutions
All waterway users
SIC: 444
Small businesses or organizations
Water transportation: 11 responses; 6 hours; $89 Federal cost; $75 public cost; 0 forms; not applicable under 3504 (h)
Wayne Leiss, 202-395-7340

Regulated navigation areas are a water area under the jurisdication of the Coast Guard Captain of the Port for which special regualtions have been promulgated. Any person may request that the Captain of the Port establish a regulated navigation area.

• Coast Guard
Engineer Officers Original Examinations (Chief Engineer, First Assistant, Second Assistant, Third Assistant)
CG 5164
On occasion
Individuals or households
Applicants for original issue engineer officer license
Water transportation: 2,820 responses; 69,090 hours; $148,621 Federal cost; 1 form; not applicable under 3504 (h)
Wayne Leiss, 202-395-7340

These examinations are used by the Coast Guard to assure that engineering officers possess a minimum level of qualifications when applying for an original license.

Extensions (Burden Change)

• Federal Railroad Administration
Locomotive Daily Inspection Record
Quarterly
Businesses or other institutions
Railroads
SIC: 401
Ground transportation: 8,936,220 responses; 148,937 hours; $0 Federal cost; $2,233,980 public cost; 1 form; not applicable under 3504 (h)
Donald Arbuckle, 202-395-7340

The Locomotive Inspection Act 45 U.S.C. section 22-34, requires railroads to inspect, repair and maintain locomotives so they are safe, free of defects and that they can be placed in service without unnecessary peril to life or limb.

Extensions (No Change)

• Office of the Secretary
Contractor's request for Progress Payment
4220.2
On occasion
Businesses or other institutions
Contractors of the transportation industry
SIC: 401, 411, 421
Small businesses or organizations
Other transportation: 2,500 responses; 7,500 hours; $200 Federal cost; 1 form; not applicable under 3504 (h)
Wayne Leiss, 202-395-7340

Provides contractor's opportunity to request financial assistance in the form of progress payment when authorized by their contract with the Department of Transportation. The data are used to support all invoices and determine eligibility of costs and amount to be paid.

• Department of Transportation
Request for Establishment of Additional Wage Rates
4220.10 DOT F4220-10
On occasion
Businesses or other institutions
Contractors of transportation industry
SIC: 401, 411, 421, 442
Small businesses or organizations
Other transportation: 500 responses; 2,500 hours; $200 Federal cost, 1 form; not applicable under 3504 (h)
Donald Arbuckle, 202-395-7340

Contractor is required to provide data to the Secretary of Labor regarding wage rate(s). Data are used to establish work classification(s) and wage rate(s) which are not contained in the contract when reqested by the contractor and determined by the Department of Labor.

DEPARTMENT OF THE TREASURY

Agency Clearance Officer—Ms. Joy Tucker—202-634-5394

New

• Internal Revenue Service
Supplemental Information for Internal Revenue Agent Applications
RL 1-177 (10-80), RL 1-183 (8-81) and RL 1-183-A (8-81), RC-C 1-582 (Rev. 8-81)
On occasion
Individuals or households
Individual applicants for IRS agent positions
Central fiscal operations: 2,150 responses; 258 hours; $3,300 Federal costs; 5 forms; not applicable under 3504(h)
Irene Montie, 202-395-6880

5 U.S.C. 1302 requires that employment of Federal agency personnel be based on examinations for competitive service. These forms help IRS determine and aplicant's qualifications and availability for current and future employment vacancies

• Internal Revenue Service
Request for Authorization From Principal Officers To Receive Transcript of Business Accounts
FL-1916 (Rev 12-80)
On occasion
Farms/businesses or other institutions
Principal officers of corporations requesting transcripts
SIC: All
Small businesses or organizations
Central fiscal operations: 150 responses; 150 hours; $365 Federal cost; 1 form; not applicable under 3504(h)
Irene Montie, 202-395-6880

Corporations send IRS requests for transcripts of accounts. FL-1916 is sent to the corporation requesting the corporation to submit a request signed by a principal officer and attested to by another officer or the corporation secretary authorizing IRS to release the transcript of account. This authorization is required by IRC sec. 6103(E)(1)(D)(II).

• Internal Revenue Service
IRS Tax Protestor Questionnaire
DIR-DET 4-302
On occasion
Individuals or households/businesses or other institutions
Taxpayers who invested in minister tax shelter.
SIC: All
Small businesses or organizations
Central fiscal operations: 750 responses; 563 hours; $31,116 Federal cost; 1 form; not applicable under 3504(h)
Irene Montie, 202-395-6880

The Internal Revenue Service is examining all returns filed by tax protesters or is filing returns for them where not returns have been filed. Without this questionnaire, Internal Revenue Service may overlook pertinent areas of examination and will be unable

to determine the taxpayer's intent for investing in the tax shelters.

• Internal Revenue Service
Underpayment of Estimated Tax 5128
On occasion
Farms/businesses or other institutions
All taxpayers doing business as corporations
SIC: All
Small businesses or organizations
Central fiscal operations: 12,400 responses; 3,100 hours; $10,574 Federal cost; 1 Form; not applicable under 3504(h)
Irene Montie, 202-395-6880

26 U.S.C. 6154(A) requires corporations to make installment payments of estimated tax. Form 5128 is sent to corporations who fail to pay the required installments and notifies them of additional tax due plus penalty and interest. The corporations respond if there is a discrepancy in records.

• Internal Revenue Service
Pre-Employment Availability Statement
ROWR 3062
On occasion
Individuals or households
Individuals—job applicants
Central fiscal operations: 5,000 responses; 2,500 hours; $306 Federal cost; 1 form; not applicable under 3504(h)
Irene Montie 202-395-6880

All job applicants whose name appears on the OPM IRS Jobs Register will be given this form during the pre-employment meeting to help us determine where to place them.

• Internal Revenue Service
Correspondence Examination Pattern Paragraphs
1479(p) through 1501(p)
On occasion
Businesses or other institutions
Charitable and certain other tax exempt organizations
SIC: Multiple
Small businesses or organizations
Central fiscal operations: 5,329 responses; 15,329 hours; $24,975 Federal cost; 23 forms not applicable under 3504(h)
Irene Montie, 202-395-6880

Used for correspondence examinations of small organizations whose returns contain only one or several questionable items. The information is used to determine if the organization's exempt status has been jeopardized or if it may be liable for income or excise taxes on certain activities.

• Internal Revenue Service
Contact Letter for Examination, Where the Taxpayer Cannot Be Reached by Telephone 1398 (do)
On occasion
Businesses or other institutions
Exempt organizations under examination SIC: Multiple
Small Businesses or organizations
Central fiscal operations: 5,000 responses; 5,000 hours; $3,830 Federal cost; 1 form; not applicable under 3504(h)
Irene Montie, 202-395-6880

Under IRC Section 7602, returns of exempt organizations are subject to examination. Letter 1398(d) is needed to schedule examinations where the taxpayer is not reachable by telephone. The types of records needed are listed. IRS uses the information to determine the proper tax status and tax liability of the organizations.

• Internal Revenue Service
Request for Information Needed To Process Return of Exempt Organization—Copy of Exemption Status Not on File
993 (do)
Nonrecurring
Businesses or other institutions
Organizations claiming tax-exempt status SIC: Multiple
Small businesses or organizations
Central fiscal operations: 50,000 responses; 16,667 hours; $61,216 Federal cost; 1 form; not applicable under 3504(h)
Irene Montie, 202-395-6880

Letter 993(DO) requests information regarding an exempt organization return filer's exempt status, name change, or change in accounting period. This information is needed before the filed return can be processed by IRS. Where appropriate, the letter asks for a return to be filed on the proper form for the organization's established accounting period.

• Internal Revenue Service
Letter Advising Organization of the Need for IRC Section 6110 Information
P-6110-11
On occasion
Individuals or households/businesses or other institutions
Exempt organizations and certain persons requesting LTR rule SIC: Multiple
Small businesses or organizations
Central fiscal operations: 470 responses; 117 hours; $1,131 Federal cost; 1 form; not applicable under 3504(h)
Irene Montie, 202-395-6880

As part of letter ruling request procedures, the requester must indicate what information in the request and supporting document should not be subject to public disclosure, under IRC section 6110. P-6110-11 is needed to obtain such information from the requester. IRS uses the information to determine permissible deletions.

• Internal Revenue Service
Letter Requesting Advance Ruling Supporting Information and Letter Requesting Public Support Information
1046(do)
Nonrecurring
Businesses or other institutions
Tax-exempt charitable organizations
SIC: Multiple
Small businesses or organizations
Central fiscal operations: 7,917 responses; 7,919 hours; $29,414 Federal cost; 2 forms; not applicable Under 3504(h)
Irene Montie, 202-395-6880

Under income tax regulation Sections 1.170A-9(e)(5) and 1.509(a)-3(d), an organization may receive an advance ruling that it is to be treated as a publicly supported organization and not as a private foundation during an advance ruling period. Letter 1046(do) for a similar individual prepared letter if an advance ruling is not received) is needed, prior to the end of the advance ruling period, to obtain information IRS uses to make a final determination of the organization.

Revisions

• Internal Revenue Service
Employer's Annual Railroad Retirement Tax Return
CT-1
Annually
• Businesses or other institutions
All railroad employers
SIC: 401
Central fiscal operations: 3,000 responses; 4,271 hours $15,699 Federal cost; 1 form; not applicable under 3504(h)
Irene Montie, 202-395-6880

Railroad employers are required to file an annual return to report employer and employee Railroad Retirement Tax Act (RRTA) taxes. Form CT-1 is used for this purpose. IRS uses the information to insure that the employer has paid the correct tax.

Extensions (Burden Change)

• Bureau of Alcohol, Tobacco and Firearms
Wholesale Liquor Dealers Report of Receipts Wholesale Liquor Dealer's Report of Disposal.
ATF 52A/52B (5170.9)
On occasion
Businesses or other institutions
Wholesale distributors of beer, wine & distilled spirits
SIC: 518
Small businesses or organizations

Federal Law Enforcement Activities: 0 responses; 0 hours; $500 Federal cost; 1 form; not applicable under 3504 (h)
Irene Montie, 202-395-6880.

The law requires that every wholesale dealer in liquors submit a report of distilled spirits received and disposed of by him as the regulations require. The reports are submitted on these forms.

• Bureau of Alcohol, Tobacco and Firearms
Wholesale Dealers Records of Receipt of Alcoholic Beverages, Disposition of Distilled Spirits, Daily Recap Record, and Copies of Commercial Invoices
ATF REC 5170 /2
On occasion
Businesses or other institutions
Wholesale dealers in alcoholic beverages
SIC: 518
Small businesses or organizations
Federal Law Enforcement Activities: 2,675,400 responses; 222,950 hours; $165 Federal cost; 1 form; not applicable under 3504 (h)
Irene Montie, 202-395-6880.

Accounting tools, audit trail. Part of the accounting process shows to whom sold, amount and provides a daily inventory of amounts on premises and sales activities. Protection of the revenue.

• Bureau of Alcohol, Tobacco and Firearms
Wholesale Liquor Dealer's Semi-Annual Report
ATF F 338 (5110.48)
Semiannually
Businesses or other institutions
Wholesale distributors of beer, wine & distilled spirits
SIC: 518
Small businesses or organizations
Federal Law Enforcement Activities: 0 responses; 0 hours; $0 Federal cost; 1 form; not applicable under 3504 (h)
Irene Montie, 202-395-6880.

This report is an accounting of all distilled spirits received and disposed of during the 6-month period. This report is filed only when required by the regional regulatory administrator.

• Internal Revenue Service
Authorization and Consent of Subsidiary Corporation To Be Included in a Consolidated Income Tax Return
1122
Nonrecurring
Businesses or other institutions
Subsidiary corporations
SIC: all
Central fiscal operations: 11,000 responses; 5,386 hours; $6,693 Federal cost; 1 form; not applicable under 3504 (h)
Irene Montie, 202-395-6880.

Form 1122 is filed by each subsidiary corporation and attached to the consolidated return (form 1120) for the first time a consolidated return is filed. This information is used to verify that an affiliated group of corporations may properly file a consolidated return.

• Internal Revenue Service
Split-Interest Trust Information Return
5227
Annually
Individuals or households/businesses or other institutions
Fiduciaries for split-interest trust
SIC: 673
Small businesses or organizations
Central fiscal operations: 18,500 responses; 122,744 hours; $79,092 Federal cost; 1 form; not applicable under 3504 (h)
Irene Montie, 202-395-6880.

The data is used to verify the beneficiaries of a charitable remainder trust include the correct amounts in their tax returns, and that the trust owes no income tax or private foundation taxes.

• Comptroller of the Currency
Reports of Condition and Income (Call Reports—Interagency)
FFIEC 0135, 011, 011J, 013 012, 014 010, 015
Quarterly, semiannually, annually
Businesses or other institution
Nat'l banks
SIC: 999
Other advancement and reguations of commerce: 28,596 responses; 351,948 hours; $1,400,000 Federal cost; 9 forms; $6,730,045 public cost: not applicable under 3504 (h)
Irene Montie, 202-395-6880.

This is the interagency of uniform call reports, or reports of condition and income collected by each of the three Federal Bank Regulatory Agencies. Form and content are established by the Federal financial institutions examination council. These reports and the brief special supplementary report covered in a separate submission present all of the regularly obtained statistical and supervisory data of the OCC.

Extensions (No Change)

• Internal Revenue Service
Corporate Report of Nontaxable Dividends
5452
On occasion
Business or other institutions
Corporations making non taxable distributions
SIC: all
Central fiscal operation: 1,000 responses; 1,000 hours; $8,676 Federal cost; 1 form; not applicable under 3504(h)
Irene Montie, 202-395-6880

Form 5452 is used by corporations to report their nontaxable distributions. The information is used by IRS to check compliance on the part of the shareholders.

• Comptroller of the Currency
Annual Compliance Report
None
On occasion
Businesses or other institutions
National banks
SIC: 602
Small businesses or organizations
Other advancement and regulation of commerce: 4,425 responses; 2,212 hours; $4,250 Federal cost; 1 form; $41,834 public cost; not applicable under 3504(h)
Irene Montie, 202-395-6880

This report certifies compliance with 12 CFR 21.5 concerning records of consultation, reports on security devices, external crime reports and special reports.

CIVIL AERONAUTICS BOARD

Agency Clearance Officer—Clifford M. Rand—202-673-6042

New

• Essential Air Service Survey
Nonrecurring
State or local governments
Municipal chief executives and States Aeronautics Commissions
SIC: Multiple
Air transportation: 1,130 responses; 2,260 hours; $8,000 Federal cost; 0 form; not applicable under 3504(h)
Wayne Leiss, 202-395-7340

The questionnaire will be used to review essential air service determinations for commuters under the guaranteed air service program of section 419 of the Federal Aviation Act. The act directs the board to obtain community and State input in making this determination and this questionnaire meets this statutory requirement.

FEDERAL COMMUNICATIONS COMMISSION

Agency Clearance Officer—Richard D. Goodfriend—202-632-7513

Revisions

• Application for Renewal of Radio Station License in Specified Services
405
Other-see SF83
Businesses or other institutions
Common carriers in domestic public radio services
SIC: 481 482 489
Small businesses or organizations

Other advancement and regulations of commerce: 2,700 responses; 1,134 hours; $148,514 Federal cost; 1 form: not applicable under 3504(h)
William T. Adams, 202-395-4814

Application must be filed by the licensee between 30 and 60 days prior to the expiration date of the license sought to be renewed. The data is used to renew authorization for current licensees.

Extensions (no change)

- Application for Airport Radio Station License

404
On occasion
State or local governments/businesses or other institutions
Anyone who requests a new aircraft radio station license
SIC: 481, 482, 489
Small businesses or organizations
Other advancement and regulation of commerce: 28,000 responses; 14,000 hours; $0 Federal cost; 1 form; not applicable under 3504(h)
William T. Adams, 202-395-4814

Filing is required when applying for a new license, modifying an existing license, or renewing/modifying a license for a aircraft radio station within the aviation services.

- License expiration notice, renewal application short form

405-B
On occaion
Individual or households/State or local Governments/businesses or other institutions
Anyone who holds a ship or aircraft license
SIC: 481, 482, 489
Small businesses or organizations
Other advancement and regulation of commerce: 50,000 responses; 8,000 hours; $92,000 Federal cost; 1 form; not applicable under 3504 (h)
William T. Adams, 202-395-4814

Prepared by FCC when sending out expiration notices to licensees, and returned by applicants to renew ship (voluntarily equipped and title III, part III vessels) and aircraft radio station licenses when there is no change or only minor changes to the existing license.

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Clearance Officer—Panos Konstas—202-389-4481

Extensions (no change)

- Recordkeeping and Confirmation Requirements for Securities Transactions

On occasion
Businesses or other institutions
Insured banks not members of the Federal Reserve System
SIC: 602 603
Small businesses or organizations
Mortgage credit and thrift insurance: 191,700 responses, 94,154 hours; $141,990 Federal cost; 1 form; not applicable under 3504 (h)
Irene Montie, 202-395-6880

Part 344 of the FDIC rules and regulations is to ensure that purchasers of securities in transactions effected by an insured nonmember bank are provided adequate information concerning the transactions. It is also required that insured nonmember banks maintain adequate records and controls with respect to securities transactions they effect.

FEDERAL HOME LOAN BANK BOARD

Agency Clearance Officer—Frank J. Crowne—202-377-6025

New

- Thrice-Monthly Survey of Deposit Balances

By type
Other—see SF83
Businesses or other institutions
FSLIC—insured Savings and Loan Associations
SIC: 612
Mortgage credit and thrift insurance: 8,640 responses; 5,789 hours; $20,752 Federal cost; 1 form; not applicable under 3504 (h)
Irene Montie, 202-395-6880

Only means of monitoring volume and structure of deposit flows at associations between monthly reports. Used for determining and projecting deposit trends that may require changes in FHLBB credit and regulatory policy. Used by FRB for preliminary estimates of the monetary aggregates used in establishing monetary policy.

Revisions

- Registration of Class of Securities Under SEA of 1934

Monthly, quarterly, annually
Businesses or other institution
Savings and loan associations
SIC: all
Mortgage credit and thrift insurance: 1,050 responses; 45,000 hours; $6,070 Federal cost; 1 form not applicable under 3504 (h)
Irene Montie, 202-395-6880

To provide for regulation and control by officers, directors and principal security holders, to perfect the mechanisms of a national market system for securities, a national system of clearance and settlement of securities and to insure the maintenance of fair and honest markets in securities transactions.

- Application for Mutual to Stock Conversion

Monthly, quarterly, annually
Businesses or other institution
Savings and loan associations
SIC: all
Mortgage credit and thrift insurance: 50 responses; 28,000 hours; $41,145 Federal cost; 1 form; not applicable under 3504 (h)
Irene Montie, 202-395-6880

Mutual to stock conversion application is a one time submission by mutual associations who wish to convert to stock form. The disclosure required is for the benefit of the investing public to assure a fair and equitable plan of conversion and adequate disclosure.

Extensions (burden change)

- Application for conversion to a Federal Charter

159-M, 159-S, 602
Nonrecurring
Businesses or other institutions
Savings and loan industry
SIC: 999
Mortgage credit and thrift insurance: 46 responses; 644 hours; $4,285 Federal cost; 3 forms; $4,285 Public cost; not applicable under 3504 (h)
Irene Montie, 202-395-6880

12 CFR 543.8 and 552.-1, and section 5(I) of the Home Owners Loan Act requires that the bank board act on requests by State-chartered Savings and Loan Associations for permission to convert to a Federal charter. The application to convert to a Federal S&L charter is used to evaluate the financial history and condition of the applicant, its future earnings prospects, management and performance in helping to meet community credit needs.

- Application to Organize a Federal Savings and Loan Association (PMD)

138 139 601 6T
7T 10T
Nonrecurring
Businesses of other institutions
Savings and Loan Industry
SIC: 999
Mortgage credit and thrift insurance: 10 responses; 1,100 hours; $4,285 Federal cost; $4,285 public cost; 7 forms; not applicable under 3504(h)
Irene Montie, 202-395-6880

12 CFR 543.2 and section 5(a) of the Home Owners Loan Act requires that the Bank Board Act on requests by organizing groups for permission to establish a new Federal association. The application for a Federal association

charter is used to evaluate whether the applicant group has met the statutory and regulatory criteria, and establishment of the new association would not place an undue risk on the FSLIC.

• Application for Merger
709 710 712 713
714 718 719
Nonrecurring
Businesses of other institutions
Savings and Loan Industry
SIC: 999
Mortgage credit and thrift insurance; 182 responses; 13,650 hours; $4,285 Federal cost; $4,285 public cost; 15 forms; not applicable under 3504(h)
Irene Montie, 202-395-6880

12 CFR 563.22 and 546.2 and section 403(b) of the National Housing Act requires FSLIC-insured associations to obtain Bank Board approval to merge with or acquire the assets of another institution. The merger application is used to evaluate the financial, competitive and legal aspects of the transaction.

• Application for Membership in the FHLB System
450
Nonrecurring
Businesses of other institutions
Savings and Loan Industry
SIC: 999
Mortgage credit and thrift insurance; 20 responses; 40 hours; $4,285 Federal cost; $4,285 public cost; 1 form; not applicable under 3504(h)
Irene Montie, 202-395-6880

12 CFR 523.1 and section 4 of the Federal Home Loan Bank Act require that the Bank Board Act on applications by financial institutions for membership in the Federal Home Loan Bank system. The bank membership application is used to evaluate whether the applicant meets the statutory criteria for membership and its financial condition is adequate to support bank advances.

• Application to Establish Branch Office
700 743
Nonrecurring
Businesses of other institutions
Savings and Loan Industry
SIC: 999
Mortgage credit and thrift insurance; 588 responses; 27,048 hours; $4,285 Federal cost; $4,285 public cost; 2 forms; not applicable under 3504(h)
Irene Montie, 202-395-6880

12 CFR 545.14-16 requires Federal associations to submit applications for a branch or agency office. The purpose of this application is to determine where a branch office can be established without supervisory concern and undue injury to other local thrift institutions. 12 CFR 563E and the community reinvestment act requires the board to consider an association's community service record when it evaluates a branch application.

• Association to Change Office Location
850
Nonrecurring
Businesses of other institutions
Savings and Loan Industry
SIC: 999
Mortgage credit and thrift insurance; 146 responses; 2,336 hours; $4,285 Federal cost; $4,285 public cost; 1 form; not applicable under 3504(h)
Irene Montie, 202-395-6880

12 CFR 545.15 requires Federal associations to submit to the Bank Board applications to change the location of an existing branch office. The purpose of this application is to determine if the branch can be established at the new location without supervisory concern and undue injury to other local thrift institutions.

• Request to Amend Assoc By-Laws
On occasion
Nonrecurring
Businesses of other institutions
Savings and Loan Industry
SIC: 999
Mortgage credit and thrift insurance; 88 responses; 176 hours; $0 Federal cost; 1 form; not applicable under 3504(h)
Irene Montie, 202-395-6880

12 CFR 544.6 requires Federal associations to obtain Bank Board approval of any change in its by-laws, which is not preapproved by regulation. The purpose of the by-law amendment application is to evaluate whether the by-law change is justified and will not negatively impact the association or its members.

• Application for Insurance of Accounts
140, 141, 142, 186
300, 458, 603
Nonrecurring
Businesses or other institutions
Savings and Loan Industry
DIS: 999
Mortgage credit and thrift insurance; 54 responses; 4,752 hours; $4,285 Federal cost; $4,285 public cost; 8 forms; not applicable under 3504(h)
Irene Montie, 202-395-6880

12 CFR 563.1 and section 403(b) of the National Housing Act require the Bank Board to approve requests by State-chartered associations for FSLIC deposit insurance. The insurance of accounts application is used to evaluate the management and financial condition of the applicant to assure that granting of insurance would not pose an undue risk to the FSLIC.

Extensions (No Change)

• Public information on Requests
FHLBB 213
Businesses or other institutions/State or local governments/individuals or households
State & municipal governments, corps. law firms, brokers.
SIC: 999
Small businesses or organizations
Mortgage credit and thrift insurance; 3,000 responses; 150 hours; $0 Federal cost; 1 form; not applicable under 3504 (h)
Irene Montie, 202-395-6880

Section 552 of title 5 of the United States Code, which relates to public information; agency rules, opinions, orders, and proceedings, is referred to as the Freedom of Information Act. The Federal Home Loan Bank Board has adopted Part 505 of the general regulations—availability and character of records—pursuant to section 552 of title 5 of the United States Code. Information services of the office of General Counsel receives, and completes, requests from the public.

• Semiannual Report (of Savings and Loan Associations):
Special Section: L. deposit balances of office
FHLBB 248
Annually
Businesses or other institutions
FSLIC-insured savings and loan associations
SIC: 612
Mortgage credit and thrift insurance; 4,000 responses; 5,000 hours; $28,696 Federal cost; 1 form; not applicable under 3504(h)
Irene Montie, 202-395-6880

Provides only data on deposits at associations by office location. Consequently, it is essential for the analysis of market share of deposits needed for evaluating the competitive impact of merger and branching applications on which FHLBB must act. Used by other agencies (FRB, FDIC, CC, Justice) for similar purposes.

FEDERAL MARITIME COMMISSION

Agency Clearance Officer—Donald D. Murphy—202-523-5326

Extensions (Burden Change)

• Security for the Protection of the Public—46 CFR 540
46 CFR 520
On occasion
Quarterly
Semiannually
Annually
Businesses or other institution
Embark. psgr at U.S. pts.

SIC: 441, 442
Water transportation; 154 responses; 639 hours; $18,300 Federal cost; 1 form; not applicable under 3504(h)
William T. Adams, 202-395-4814

Mandated by sections 2(d) and 3(d) of Public Law 89-777 (46 U.S.C. 817 d and e). The Commission is charged with the responsibility to ascertain that passenger vessel operators are financially responsible to pay personal injury and death claims and refund fares.

Extensions (No Change)

- Application for Certificate of Financial Responsibility (performance/casualty)

Form 131
On occasion
Businesses or other institutions
passgr ves. oper. (FGN & Amer.) embark. passgr at U.S. pts.
SIC: 441, 442
Water transportation; 50 responses; 300 hours; $40,000 Federal cost; 1 form; not applicable under 3504(h)
William T. Adams, 202-395-4814

In order to process and issue a certificate (performance) and/or a certificate (casualty), an application form (Form FMC-131) must be completely filled out by a prospective certificant.

FEDERAL RESERVE SYSTEM

Agency Clearance Officer—Carolyn B. Doying—202-452-2983

Extensions (No Change)

- Senior Loan Officer Opinion Survey on Band Lending Practices

FR 2018
Quarterly
Businesses or other institutions
Sample of large commercial banks
SIC: 602
General government; 240 responses; 60 hours; $7,500 Federal cost; $900 public cost; 1 form; not applicable under 3504(h)
Irene Montie, 202-395-6880

Report collects subjective information from a sample of large member banks on recent changes in bank lending policies with respect to commercial and industrial loans. This information supplements statistical information collected on the FR 2039 and FR 2028A-B reports and is used in analyzing business loan developments and bank responses to monetary policy.

INTERSTATE COMMERCE COMMISSION

Agency Clearance Officer—Carroll Stearns—202-633-0204

Extensions (Burden Change)

- Small Community Service Study

Semiannually
Farms/Businesses or other institutions
Shippers & receivers in small comm. throughout 48 states
SIC: 421
Ground transportation; 3,000 responses; 1,050 hours; $147,321 Federal cost; 1 form; not applicable under 3504(h)
Donald Arbuckle, 202-395-7340

This questionnaire is used to gather information about the adequacy of truck service to small communities and how the motor carrier act of 1980 has impacted that service.

NUCLEAR REGULATORY COMMISSION

Agency Clearance Officer—Stephen Scott—301-492-8585

Extensions (Burden Change)

- Waiver of reduction of fees under the Freedom of Information Act, 10 CFR 9

On occasion
Individuals or households
Those interested in req. info. under the Freed. of Info. Act
Small businesses or organizations
Energy information, policy, and regulation; 10 responses; 30 hours; $1,288 Federal cost; 1 form; not applicable under 3504(h)
Jefferson B. Hill, 202-395-7340

Provides basic data for review in request for waiver or reduction of fees under the Freedom of Information Act.

SECURITIES AND EXCHANGE COMMISSION

Agency Clearance Officer—George G. Kundahl—202-272-2142

New

- Form 18-K, Annual Report for Foreign Governments and Political Subdivisions With Securities Listed on a U.S. Exchange

Sec 1797
Annually
Individuals or Households
Foreign governments w/securities listed on a U.S. exchange other advancement and regulation of commerce; 30 responses; 240 hours; $1,834 Federal cost; $15,600 public cost; 1 form; not applicable under 3504(h)
Robert Veeder, 202-395-4814

Form 18-K elicits material information from foreign governments and political subdivisions with securities listed on a U.S. securities exchange in order that investors may make informed and knowledgeable investment decisions.

- Form 18, Registration for Securities of Foreign Governments and Political Subdivisions with Securities listed on a U.S. Exchange

Sec 1421
On occasion
Individual or households
Foreign governments listing securities on U.S. exchanges other advancement and regulation of commerce; 5 responses; 40 hours; $1,855 Federal cost; $2,600 public cost; 1 form; not applicable under 3504(h)
Robert Veeder, 202-395-4814

Form 18 elicits material information from foreign governments or political subdivisions that list their publicly-held securities exchanges in the United States in order that investors may make informed and knowledgeable investment decisions.

- Report on Income and Expenses, Rule 17A-10

Annually
Businesses or other institutions
Registered securities brokers and dealers
SIC: 621
Small businesses or organizations
Other advancement and regulation of commerce; 7,000 responses; 7,000 hours; $14,000 Federal cost; $70,000 public cost; 1 form; not applicable under 3504(h)
Robert Veeder, 202-395-4814

Rule 17A-10 was adopted in 1968. The rule was designed to obtain economic and statistical data necessary for an ongoing analysis of the securities industry.

- Rule 17A-5 Under Securities Exchange Act of 1934, reports to be made by certain brokers and dealers

Monthly
Quarterly
Annually
Businesses or other institution
Registered securities brokers and dealers
SIC: 621
Small businesses or organizations
Other advancement and regulation of commerce; 53,000 responses; 636,000 hours; $900,000 Federal cost; $9,540,000 public cost; 0 form; not applicable under 3504(h)
Robert Veeder, 202-395-4814

Rule 17A-5 and form X-17A-5 were adopted in 1942. Form X-17A-5 was replaced by the current form X-17A-5 in 1975. The Rule and related form are the basic documents for reporting the financial and operational condition of brokers and dealers.

VETERANS ADMINISTRATION

Agency Clearance Officer—R.C. Whitt—202-389-2146

New

- Application for participation in the Veterans Administration Health Professional scholarship program

10-0003
Nonrecurring
Individuals or households
Students enrolled in an accredited educational institn.
Hospital and medical care for veterans; 6,000 responses; 3,000 hours; $69,120 Federal cost; 1 form; not applicable under 3504(h)
Robert Neal, 202-395-6880

This application would be used to determinate the eligibility and suitability of applicants to be awarded scholarships under the provisions of title II, Pub. L. 96-330 when funds are appropriated.

Arnold Strasser,

Acting, Assistant Administrator For Reports Management.

[FR Doc. 81-28140 Filed 9-30-81; 8:45 am]

BILLING CODE 3110-01-M

PENSION BENEFIT GUARANTY CORPORATION

Privacy Act of 1974; System of Records, Annual Publication

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Annual Privacy Act Notice; notification of new routine uses.

SUMMARY: This document sets forth the annual notice of the systems of records maintained by the Pension Benefit Guaranty Corporation, (PBGC) as required by the Privacy Act of 1974. This document also provides notice of one amended routine use and one new routine use under established systems of records.

EFFECTIVE DATE: The annual notice is effective on October 1, 1981. The amended and new routine uses shall become effective without further notice on November 2, 1981 unless comments are received on or before that date which would result in a contrary determination and a notice is published to that effect.

ADDRESSES: Send comments to the Office of the General Counsel, Pension Benefit Guaranty Corporation, 2020 K Street, N.W., Washington, D.C. 20006. Written comments will be available for public inspection at the PBGC, Suite 7000, at the same address, on weekdays between 9 A.M. and 4 P.M.

FOR FURTHER INFORMATION CONTACT: Ms. Nina R. Hawes, Staff Attorney, Office of the General Counsel, Pension Benefit Guaranty Corporation, 2020 K Street, N.W., Washington, D.C. 20006, (202) 254-3010.

SUPPLEMENTARY INFORMATION: As required by the Privacy Act, 5 U.S.C. 552a(e)(4), this document sets forth the annual notice of the existence and character of the systems of records maintained by the Pension Benefit Guaranty Corporation ("PBGC"). There are changes in several systems to reflect changed procedures within PBGC. The changes are in the PBGC-1, regarding retrievability, safequards and retention and disposal of the record; in the PBGC-4, regarding safequards of the records; in the PBGC-6, regarding the system manager and retention and disposal of the records; in the PBGC-7, regarding the retention and disposal of the records; and in the PBGC-9, regarding the retention and disposal of the records. In addition, notice is given of an amended routine use under the PBGC-6, Plan Participant and Beneficiary Data and a new routine use under the PBGC-7, Equal Employment Opportunity Discrimination Complaints.

Technical Changes

In the PBGC-1, the section entitled Retrievability has been changed to reflect the fact that this system is indexed by name of the correspondent or by the name of the plan. Also in the PBGC-1, the section entitled Safeguards has been changed to reflect the fact that not all records in this system are kept in lockable file cabinets. Some records are kept in areas of restricted access which are locked after office hours. The section entitled Retention and Disposal in the PBGC-1 has been changed to reflect the PBGC's program of records management. That program provides that correspondence with regard to specific cases is transferred to the Federal Records Center one year after the end of the fiscal year in which the correspondence was received or sent, and destroyed when 15 years old. Correspondence with members of Congress is detroyed one year after the end of the fical year in which it is received or sent. Miscellaneous correspondence not related to an active case is destroyed one year after the end of the fiscal year in which it is received or sent.

In the PBGC-4, the section entitled Safeguards has been changed to reflect the fact that records are kept in areas of restricted access, but not necessarily in lockable file cabinets.

In the PBGC-6, the section entitled Retention and Disposal has been changed to reflect PBGC's program of records management. This program provides that records for vested plan particpants are destroyed one year after final payment to, or death of, the last participant and/or beneficiary in the plan. Records for non-vested plan participants are destroyed 7 years after written notification to the particpant. Also in the PBGC-6, the System Manager was changed from the Director, Office of Program Operations and Director, Internal Audit, to the Chief, Division of Benefits Administration, Office of Program Operations.

In the PBGC-7, the section entitled Retention and Disposal has been changed to reflect the fact that an Official Discrimination Complaint file of a complaint which is resolved by EEOC or by the United States Court, as well as those resolved within the PBGC, is destroyed 4 years after the resolution of the case.

In the PBGC-9, the section entitled Retention and Disposal has been changed to reflect the fact that the Internal Revenue Service (IRS) allows PBGC to return records to IRS for disposal or to destroy the records at PBGC.

Routine Uses

The PBGC proposes to amend Routine Use 2 to the PBGC-6, Plan Participant and Beneficiary Data and to add Routine Use 5 to the PBGC-7, Equal Employment Opportunity Discrimination Complaints.

Routine Use 2 to the PBGC-6 currently provides that disclosure of information in this system may be made to an employer maintaining the plan. Several instances have arisen in which an individual who was intended to be able to receive information in this system was not the employer maintaining the plan. In some cases, the individual was an employer who formerly maintained the plan; in other cases, the individual was a member of a controlled group which included the employer maintaining the plan. Accordingly, because the langauage of the routine use did not implement its purpose, the agency wishes to clarify this routine use by making clear, that it applies to the employer who maintained the plan, including any predecessor or successor employer and to any member of a controlled group of which the employer is a part.

The PBGC also proposes to add to a new routine use to the PBGC-7, Equal Employment Opportunity Discrimination Complaints. This routine use would

allow disclosure of information in this system to the United States Attorney's Office for the purpose of preparing a case for litigation or conducting the litigation itself. This new use will assist the PBGC and the United States Attorney's Office in litigation.

Section 552a(e)(11) of the Privacy Act requires that notice of an intended routine use of records be published at least 30 days prior to the implementation of the use and that the public be given an opportunity to comment. The proposed routine uses are set forth below. They will become final on November 2, 1981, unless PBGC publishes a notice to the contrary.

The revised Routine Use 2 to the PBGC-6 will read as follows:

"2. Disclosure, in furtherance of proceedings under Title IV of the Employee Retirement Income Act of 1974 as amended, of plan participant and beneficiary data to an employer who maintained the plan, including any predecessor or successor employers and to any member of a controlled group of which the employer is a part."

The new Routine Use 5 to the PBGC-7 will read as follows:

"5. Disclosed to the United States Attorney's Office for the purpose of preparing for, or conducting litigation."

Interested persons are invited to submit written data, views or comments on the proposed routine uses. The routine uses may be changed in light of the comments received.

(Secs. 4002, 4022 and 4041, Pub. L. 93-406, 88 Stat. 1004, 1016, 1020 (1974), as amended by Secs. 406, 403(c) and 403(d), Pub. L. 96-364, 94 Stat. 1303, 1301, (1980) (29 U.S.C. 1302, 1322, and 1341))

Robert E. Nagle,

Executive Director, Pension Benefit Guaranty Corporation.

Table of Contents

1. Correspondence Between PBGC and Persons Outside PBGC—PBGC.
2. Disbursements—PBGC.
3. Employee Payroll, Leave and Attendance Records—PBGC.
4. Employee Travel Records—PBGC.
5. Personnel Records—PBGC.
6. Plan Participant and Beneficiary Data—PBGC.
7. Equal Employment Opportunity Discrimination Complaints—PBGC.
8. Employee Adverse Action Files—PBGC.
9. Plan Participant and Beneficiary Address Identification File—PBGC.

Prefatory Statement of General Routine Uses

The following routine uses, except for number 3, apply to and are incorporated by reference into each system of records set forth below except PBGC-9. Routine use number 3 applies to and is incorporated by reference into systems 1-5 and 7-8 set forth below. None of the routine uses apply to PBGC-9.

1. Routine Use—Law Enforcement: In the event that a system of records maintained by the PBGC to carry out its functions indicates a violation or potential violation of law, whether criminal civil or regulatory in nature, and whether arising by general statute or particular program pursuant thereto, the relevant records in the system of records may be referred to the appropriate agency, whether federal, state, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statue, or rule, regulation or order issued pursuant thereto.

2. Routine Use—Disclosure When Requesting Information: A record from this system of records may be disclosed as a routine use to a federal, state or local agency maintaining civil, criminal or other relevant enforcement information or other pertient information, if necessary to obtain information relevant to a PBGC decision concerning the hiring or retention of an employee, the issuance of a security clearance, or the letting of a contract.

3. Routine Use—Disclosure of Requested Information: A record from this sytem of records may be disclosed to a federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

4. Routine Use—Disclosure During and in Anticipation of Litigation: A record from this system of records may be disclosed during litigation, including disclosure to all counsel in the course of discovery or settlement negotiations and during the presentation of evidence to a court, magistrate or administrative tribunal, or during proceedings in reasonable anticipation thereof.

5. Routine Use—Disclosure of OMB: A record contained in this system of records will be disclosed to the Office of Management and Budget in connection with the review of private relief legislation as set forth in OMB Circular No. A-19 at any stage of the legislative coordination and clearance process as set forth in that Circular.

6. Routine Use—Congressional Inquiries: Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the Congressional Office made at the request of that individual.

PBGC-1

SYSTEM NAME:

Correspondence Between PBGC and Persons Outside PBGC—PBGC.

SYSTEM LOCATION:

Pension Benefit Guaranty Corporation, 2020 K Street, N.W., Washington, D.C. 20006, and Pension Benefit Guaranty Corporation, Los Angeles Regional Office, Room 4033A, 300 N. Los Angeles Street, Los Angeles, California 90012.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have corresponded with PBGC and with divisions of the PBGC and individuals who have received replies in response to their correspondence with the PBGC.

CATEGORIES OF RECORDS IN THE SYSTEM:

Correspondence containing the name and address of the correspondent and other information regarding various aspects of the PBGC and Title IV of the Employee Retirement Income Security Act of 1974. Correspondence is kept by the Office Director to whom the correspondence was addressed or the Office Director who replied to the correspondent.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

29 U.S.C. 1302.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Used for regulatory purposes including use in evidence in proceedings before the PBGC and the courts.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained manually in file folders.

RETRIEVABILITY:

Indexed by name of correspondent or plan.

SAFEGUARDS:

Records are kept in file cabinets in areas of restricted access which are locked after office hours.

RETENTION AND DISPOSAL:

General requests for information involving no administrative action,

policy decisions or special research are destroyed 3 months after reply.

Correspondence with regard to specific cases is transferred to the Federal Records Center one year after the end of the fiscal year in which the correspondence was received or sent, and destroyed when 15 years old. Correspondence with members of Congress is destroyed one year after the end of the fiscal year in which it is received or sent.

Miscellaneous correspondence not related to an active case is destroyed one year after the end of the fiscal year in which it is received or sent.

SYSTEMS MANAGER(S) AND ADDRESS:

Office of Executive Director, Director of Office of Financial Operations, Director of the Office of Information Management, Director of the Office of Program Operations, and General Counsel, Pension Benefit Guaranty Corporation, 2020 K Street, N.W., Washington, D.C. 20006, and Special Assistant for Field Liaison, Los Angeles Regional Office, Pension Benefit Guaranty Corporation, Room 4033A, 300 N. Los Angeles Street, Los Angeles, California 90012.

NOTIFICATION PROCEDURE:

Procedures are detailed in PBGC regulations: 29 CFR Part 2607.

RECORD ACCESS PROCEDURES:

Same as notification procedure.

CONTESTING RECORD PROCEDURES:

Same as notifiction procedure.

RECORD SOURCE CATEGORIES:

Individuals writing to the PBGC and the PBGC responses.

PBGC-2

SYSTEM NAME:

Disbursements—PBGC.

SYSTEM LOCATION:

Pension Benefit Guaranty Corporation, 2020 K Street, N.W., Washington, D.C. 20006.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Consultants and vendors to PBGC.

CATEGORIES OF RECORDS IN THE SYSTEM:

Payment vouchers, including SF 1081.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

29 U.S.C. 1302.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Transmittal of data to United States Department of the Treasury to effect payments to consultants and vendors.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained manually in file folders.

RETRIEVABILITY:

Indexed by name.

SAFEGUARDS:

Records are kept in lockable file cabinets in areas of restricted access which are locked after office hours.

RETENTION AND DISPOSAL:

Records created after June 30, 1975 are destroyed 6 years and 3 months after date of voucher.

SYSTEMS MANAGER(S) AND ADDRESS:

Controller, Office of Financial Operations, Pension Benefit Guaranty Corporation, 2020 K Street, N.W., Washington, D.C. 20006.

NOTIFICATION PROCEDURE:

Procedures are detailed in PBGC regulations: 29 CFR Part 2607

RECORD ACCESS PROCEDURES:

Same as notification procedures.

CONTESTING RECORDS PROCEDURES:

Same as notification procedures.

RECORD SOURCE CATEGORIES:

Subject consultant or vendor.

PBGC-3

SYSTEM NAME:

Employee Payroll, Leave and Attendance Records—PBGC.

SYSTEM LOCATION:

Pension Benefit Guaranty Corporation, 2020 K Street, N.W., Washington, D.C. 20006, and Los Angeles Regional Office, Pension Benefit Guaranty Corporation, Room 4033A, 300 N. Los Angeles Street, Los Angeles, California 90012.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees of PBGC.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name; address; social security number and employee number, earnings records; leave status and data; jury duty data; military leave data; time and attendance records, including number of regular, overtime, holiday, Sunday and other hours worked, co-owner and/or beneficiary of bonds, marital status and number of dependents; and "Notification of Personnel Action". The individual records listed herein are included only as pertinent or applicable to the individual employee.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

29 U.S.C. 1302.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Transmittal of data to United States Department of Labor to effect issuance of paychecks to employees and distribution of pay according to employee directions for savings bonds, allotments, financial institutions, and other authorized purposes and to effect tax withholdings and other authorized deductions.

2. Pursuant to Title VII of the Civil Service Reform Act, pertinent records from this system may be furnished to a labor organization upon its request when needed by that organization to perform its duties as the recognized collective bargaining representative of PBGC employees in the bargaining unit.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEMS:

STORAGE:

Records are maintained manually in file folders and in machine readable form.

RETRIEVABILITY:

Indexed by name and/or employee or social security number.

SAFEGUARDS:

Records are kept in lockable file cabinets in areas of restricted access which are locked after office hours. Magnetic tapes and computer records are kept under restricted access.

RETENTION AND DISPOSAL:

Payroll Records are transferred to the National Personnel Records Center and destroyed 56 years after date of last entry.

Leave and Attendance Records are destroyed three years after the close of the leave year.

SYSTEM MANAGER(S) AND ADDRESS:

Controller, Office of Financial Operations, Pension Benefit Guaranty Corporation, 2020 K Street, N.W., Washington, D.C. 20006, and Special Assistant for Field Liaison, Los Angeles Regional Office, Pension Benefit Guaranty Corporation, Room 4033A, 300

N. Los Angeles Street, Los Angeles, California 90012.

NOTIFICATION PROCEDURE:

Procedures are detailed in PBGC regulations: 29 CFR Part 2807.

RECORD ACCESS PROCEDURES:

Same as notification procedure.

CONTESTING RECORD PRECEDURES:

Same as notification procedure.

RECORD SOURCE CATEGORIES:

Subject individual and Office of Personnel Management.

PBGC-4

SYSTEM NAME:

Employee Travel Records—PBGC.

SYSTEM LOCATION:

Pension Benefit Guaranty Corporation, 2020 K Street, N.W., Washington D.C. 20006, and Los Angeles Regional Office, Pension Benefit Guaranty Corporation, Room 4033A, 300 N. Los Angeles Street, Los Angeles, California 90012.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees of PBGC who have filed travel vouchers and related documents.

CATEGORIES OF RECORDS IN THE SYSTEM:

Travel vouchers and related documents filed by emplyees of PBGC.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

29 U.S.C. 1302.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Transmittal of data to United States Department of Treasury to effect reimbursement to employees for travel expenses.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETRAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained manually in file folders.

RETRIEVABILITY:

Indexed by name.

SAFEGUARDS:

Records are kept in file cabinets in areas of restricted access which are locked after office hours.

RETENTION AND DISPOSAL:

Retained for 3 years and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Controller, Office of Financial Operations, Pension Benefit Guaranty Corporation, 2020 K Street, N.W., Washington, D.C. 20006, and Special Assistant for Field Liaison, Los Angeles Regional Office, Pension Benefit Guaranty Corporation, Room 4033A, 300 N. Los Angeles Street, Los Angeles, California 90012.

NOTIFICATION PROCEDURE:

Procedures are detailed in PBGC regulations: 29 CFR Part 2607

RECORD ACCESS PROCEDURES:

Same as notification procedure.

CONTESTING RECORD PROCEDURES:

Same as notification procedure.

RECORD SOURCE CATEGORIES:

PBGC employee executing vouchers.

PBGC-5

SYSTEM NAME:

Personnel Records—PBGC.

SYSTEM LOCATION:

Pension Benefit Guaranty Corporation, 2020 K Street, N.W., Washington, D.C. 20006.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees and applicants for employment with PBGC.

CATEGORIES OF RECORDS IN THE SYSTEM;

Personnel records that the PBGC maintains, including applications and related information for attorneys maintained by the Office of the General Counsel. (Records included in the Permanent Official Personnel File are maintained as a system of records by the Office of Personnel Management and are not included in this system of records).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

29 U.S.C 1302.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. These records are used to carry out authorized personnel programs.

2. Pursuant to Title VII of the Civil Service Reform Act records from this system may be furnished to a labor organization upon its request when needed by that organization to perform properly its duties as the collective bargaining representative of PBGC employees in the bargaining unit.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained manually in file folders and in machine readable form.

RETRIEVABILITY:

Indexed by name.

SAFEGUARDS:

Records are kept in areas of restricted access which are locked after office hours. Magnetic tapes and computer records are kept under restricted access.

RETENTION AND DISPOSAL:

Temporary Personnel File records are destroyed when the employee leaves PBGC or one year after the file was established, whichever is sooner. Applications for employment are destroyed after the receipt of Office of Personnel Management inspection report or 2 years after date of application, whichever is sooner. Applications for training are destroyed 5 years after date of application.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Division of Personnel Programs and Services, Office of Management Services, Pension Benefit Guaranty Corporation, 2020 K Street, N.W., Washington, D.C. 20006, and the Management Officer, Office of the General Counsel, Pension Benefit Guaranty Corporation, Suite 7200, 2020 K Street, N.W., Washington, D.C. 20006.

NOTIFICATION PROCEDURE:

Procedures are detailed in PBGC regulations: 29 CFR Part 2607.

RECORD ACCESS PROCEDURES:

Same as notification procedure.

CONTESTING RECORD PROCEDURES:

Same as notification procedure.

RECORD SOURCE CATEGORIES:

Subject individuals, present and past employers, references given by subject individuals and responses to security investigations.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

This system is exempt from access and contest and certain other provisions of the Privacy Act 5 U.S.C. 552a (c)(3), (d), (e)(1), (e)(4) (G), (H) and (I), and (f), to the extent it includes material which would reveal the identity of a source who furnished information to the PBGC under an express promise that the identity of the source would be held in confidence or prior to September 27,

1975, was provided to the PBGC under an implied promise of confidentiality.

PBGC-6

SYSTEM NAME:

Plan Participant and Beneficiary Data—PBGC.

SYSTEM LOCATION:

Pension Benefit Guaranty Corporation, 2020 K Street, N.W., Washingotn, D.C. 20006.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Participants and beneficiaries in terminated pension plans covered by Title IV of the Employee Retirement Income Security Act of 1974.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records contain name, address, telephone number, sex, social security number and other social security data, date of birth, date of hire, salary, martial status, time of plan participation, participant status, pay status, benefit data, health data, and insurance information where plan benefits are guaranteed by private insurers. The individual records listed herein are included only as pertinent or applicable to the individual plan participant or beneficiary.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

29 U.S.C. 1302, 1322 and 1341.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosed to third parties, such as banks, insurance companies and trustees, for the purpose of paying benefits to plan participants and beneficiaries.

2. Disclosure, in furtherance of proceedings under Title IV of the Employee Retirement Income Security Act of 1974, of plan participant and beneficiary data to an employer who maintained the plan, including any predecessor or successor employers and to any member of a controlled group of which the employer is a part.

3. Disclosure may be made to an official of a labor organization which is the duly recognized collective bargaining representative of the individual about whom the request is made.

POLICIES AND PRACTICE FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained manually in file folders and in machine readable form.

RETRIEVABILITY:

Indexed by plan and participant and/or beneficiary name.

SAFEGUARDS:

Manual records are maintained in lockable file cabinets which are locked after office hours, in areas of restricted access. Magnetic tapes and computer records are kept under restricted access.

RETENTION AND DISPOSAL:

Records for vested plan participants are destroyed one year after final payment to, or death of, the last participant and/or beneficiary in the plan. Records for nonvested plan participants are destroyed 7 years after written notification to the participant.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Division of Benefits Administrtion, Office of Program Operations, Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, D.C. 20006.

NOTIFICATION PROCEDURE:

Procedures are detailed in PBGC regulations: 29 CFR Part 2607

RECORDS ACCESS PROCEDURES:

Same as notification procedure.

CONTESTING RECORD PROCEDURES:

Same as notification procedure.

RECORD SOURCE CATEGORIES:

Plan administrators and Social Security Administration.

PBGC-7

SYSTEM NAME:

Equal Employment Opportunity Discrimination Complaints—PBGC.

SYSTEM LOCATION:

Pension Benefit Guaranty Corporation, Equal Employment Opportunity Office, Room 4300-A, 2020 K Street, NW., Washington, D.C. 20006.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

PBGC employee and applicant complainants.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records contain names, work locations, dates, Social Security numbers, and other information as included on affidavits, interviews, informal and formal discrimination complaint reports and investigative files of complaints.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

29 CFR Part 1613.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Purpose—Used by EEO Officer, staff of Equal Employment Opportunity Commission, staff of the Merit System Protection Board, Complaints examiners, Contract EEO investigators, PBGC EEO investigators and PBGC EEO counselors to investigate complaints of alleged discrimination and to evaluate the effectiveness of the EEO program:

Use—

1. Disclosed to complainant's representative.

2. Portions may be disclosed to the alleged discriminating official and his/her representative.

3. Disclosed to Equal Employment Opportunity Commission and Merit System Protection Board to carry out authorized investigations, to adjudicate appeals and of discrimination complaints, and make recommendations regarding discrimination complaints.

4. Disclosed to Contract EEO investigators.

5. Disclosed to the United States Attorney's Office for the purpose of preparing for or conducting litigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained manually in file folders, binders and marked exhibits.

RETRIEVABILITY:

Indexed by complainant's name.

SAFEGUARDS:

Records are kept in lockable file cabinets which are locked after office hours in rooms with restricted access.

RETENTION AND DISPOSAL:

An official Discrimination Complaint case file which is resolved in the agency, by EEOC or by a United States Court is destroyed 4 years after the resolution of the case. The background record is destroyed 2 years after the resolution of the case.

SYSTEM MANAGER(S) AND ADDRESS:

Equal Employment Opportunity Officer, Division of Personnel Programs and Services, Office of Management Services, Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, D.C. 20006.

NOTIFICATION PROCEDURE:

Procedures are detailed in PBGC regulations: 29 CFR Part 2607.

RECORDS ACCESS PROCEDURES:

Same as notification procedure above.

CONTESTING RECORD PROCEDURES:

Same as notification procedure above.

RECORD SOURCE CATEGORIES:

Information is received from the complainants, respondent and from investigations and interviews.

PBGC-8

SYSTEM NAME:

Employee Adverse Action files—PBGC.

SYSTEM LOCATION:

Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, D.C. 20006.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

PBGC employees against whom an adverse action covered by this system has been initiated, or a PBGC employee who has initiated a grievance.

CATEGORIES OF RECORDS IN THE SYSTEM:

Notice to employees of disciplinary actions, performance warning letters, adverse actions, reductions-in-force, employees' replies to notices, employee notice of grievance, employee notice of appeal, records of hearing proceedings, appeal decisions and rebuttals, notice of action, investigative reports and related information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Purpose—

Provide a record keeping system, 1) for grievances and related appeals filed by an employee who alleges his rights regarding compensation, benefits, or other terms and conditions of employment have been adversely affected and, 2) for adverse actions brought against a PBGC employee.

Use—

1. Disclosed to employee's representative.

2. Disclosed to the Office of Personnel Management and Merit Systems Protection Board to carry out their authorized functions.

3. Pursuant to Title VII of the Civil Service Reform Act, records from this system may be furnished to a labor organization upon its request when needed by the organization to perform properly its duties as the collective bargaining representative of PBGC employees in the bargaining unit.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information is retained manually in file folders.

RETRIEVABILITY:

Indexed by employee name.

SAFEGUARDS:

Records are kept in lockable file cabinets which are locked after office hours in areas of restricted access.

RETENTION AND DISPOSAL:

Grievance files are destroyed 3 years after the case is closed. Adverse action files are destroyed 4 years after the case is closed.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Division of Personnel Programs and Services, Pension Benefit Guaranty Corporation, 2020 K Street, N.W., Washington, D.C. 20006.

NOTIFICATION PROCEDURE:

Procedures are detailed in PBGC regulations: 29 CFR Part 2607.

RECORD ACCESS PROCEDURES:

Same as notification procedure above.

CONTESTING RECORD PROCEDURES:

Same as notification procedure above.

RECORD SOURCE CATEGORIES:

Information is received from an employee who initiates a grievance, or against whom an adverse action is initiated, employee's supervisors, and other PBGC employees and from investigations and interviews.

PBGC-9

SYSTEM NAME:

Plan Participant and Beneficiary Address Identification File—PBGC.

SYSTEM LOCATION:

Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, D.C. 20006.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Certain plan participants and beneficiaries in terminated pension plans covered by Title IV of ERISA.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records contain name, social security number, name of pension plan, and address received from the Internal Revenue Service.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

29 U.S.C. sections 1302, 1322 and 1341, 26 U.S.C. section 6103;

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure may be made only to the extent permitted by 26 U.S.C. section 6103 and 26 CFR section 404.6103.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained manually in file folders.

RETRIEVABILITY:

Indexed by participant or beneficiary name and social security number.

SAFEGUARDS:

Records are kept in locked file cabinets in areas of restricted access under procedures that meet Internal Revenue Service safeguarding standards.

RETENTION AND DISPOSAL:

Records for participants in PBGC-trusteed plans for which the address is verified are transferred to PBGC-6 on verification. Records for which IRS has no address, for which the address was not verified, and records for participants in sufficient plans or plans with a third-party trustee will be retained for two years from the date the request was sent to the Internal Revenue Service and then will be sent to Internal Revenue Service for disposal or destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Division of Benefits Administration, Office of Program Operations, Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, D.C. 20006.

NOTIFICATION PROCEDURE:

Procedures are detailed in PBGC regulations: 29 CFR Part 2607

RECORD ACCESS PROCEDURES:

Same as notification procedures above.

CONTESTING RECORD PROCEDURES:

Same as notification procedures above.

RECORD SOURCE CATEGORIES:

Information is received from the Internal Revenue Service.

[FR Doc. 81-22654 Filed 9-30-81; 8:45 am]

BILLING CODE 7708-01-M

POSTAL RATE COMMISSION

[Docket No. MC76-5]

Mail Classification Schedule, 1976; Hearing

September 25, 1981.

Notice is hereby given that pursuant to the "Presiding Officer's Notice Of Conference", dated September 25, 1981, a Conference is scheduled to be held on October 21, 1981, at 9:00 a.m., Hearing Room, Postal Rate Commission, 2000 L Street, N.W., Suite 500, Washington, D.C. 20268, to afford the Commission an opportunity to inquire further of the parties as to the future direction of the study program.

Copies of the Presiding Officer's Notice are available to all interested parties in the Commission's Docket Room at the above-listed address, or by calling the Docket Room at Area Code 202-254-3800.

David F. Harris,

Secretary.

[FR Doc. 81-28540 Filed 9-30-81; 8:45 am]

BILLING CODE 7715-01-M

[Docket No. MC78-3]

Electronic Mail Classification Proposal, 1978 (Remand); Prehearing

September 28, 1981.

Notice is hereby given that pursuant to the "Presiding Officer's Notice Rescheduling Prehearing Conference," dated September 28, 1981, the Second Prehearing Conference scheduled to be held in this proceeding on October 1, 1981, at 9:00 a.m., is rescheduled to be held on October 6, 1981, at 10:00 a.m., Hearing Room, Postal Rate Commission, 2000 L Street, N.W., Suite 500, Washington, D.C. 20268.

David F. Harris,

Secretary.

[FR Doc. 81-28541 Filed 9-30-81; 8:45 am]

BILLING CODE 7715-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 22206; 70-6645]

American Electric Power Co., Inc.; Proposed Indemnification by Holding Company in Connection With Subsidiaries' Surety Bonds

September 25, 1981.

American Electric Power Company, Inc., 180 East Borad Street, Columbus, Ohio 43215 ("AEP"), a registered holding company, has filed a declaration with this Commission pursuant to Section 12(b) of the Public Utility Holding Company Act of 1935 ("Act") and Rule 45 promulgated thereunder.

AEP proposes to enter into an agreement of agreements of indemnity with one or more surety bonding companies providing for indemnification by AEP of liabilities incurred by any such surety bonding company or companies in connection with the issuance of surface mining reclamation surety bonds, self-insurance workmen's compensation surety bonds, and self-insurance pneumoconiosis (black lung) disability bonds that are required by certain AEP system companies operating in Virginia, West Virginia, Ohio, and Utah. The maximum amount of indemnity from AEP at any one time outstanding with respect to each type of bonds will not exceed $45,000,000, $39,000,000, and $5,000,000, respectively.

The declaration and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by October 26, 1981, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the declarant at the address specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the declaration, as filed or as it may be amended, may be permitted to become effective.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 81-28625 Filed 9-30-81; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 11959; 812-4866]

Royal Bank of Canada; Application Exempting Applicant From All Provisions of the Act

Notice is hereby given that the Royal Bank of Canada c/o Lawrence J. Hohlt, Esq., Sage Gray Todd & Sims, Two World Trade Center, New York, New York 10048 ("Applicant") filed an application on April 27, 1981, and an amendment thereto on August 26, 1981, for an order of the Commission pursuant to Section 6(c) of the Investment Company Act of 1940 ("Act") exempting Applicant from all provisions of the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

The application states that Applicant is Canada's largest bank and one of the largest banks in the world. Applicant states that at the close of its fiscal year ended October 31, 1980, it had $53.4 billion in assets, $41.4 billion in total loans and total deposits of $46.2 billion. According to the application, income from loans accounted for approximately 87% of Applicant's total revenue and interest paid on deposits represented 80% of its total expenses. Applicant states that it provides a full range of personal and corporate banking services in Canada, including checking, savings and term deposit accounts, consumer loans and credit card programs, mortgage lending, and business and commercial loan facilities. The application states that Applicant is also engaged in international banking and currently provides extensive corporate and retail banking services to international companies and individuals around the world.

Applicant represents that it is a Canadian chartered bank organized under the provisions of the Bank Act of Canada, which governs in detail Applicant's organization, powers and activities. The application states that the Bank Act of Canada provides for the appointment of an Inspector General of Banks who is charged with examining the affairs of each chartered bank to determine whether the bank is in sound financial condition and in order to protect the interests of bank creditors, depositors and shareholders. Applicant states that an examination of the affairs of each chartered bank is conducted annually by two auditors acting jointly who are members of different chartered accounting firms and are appointed by the bank's shareholders. According to the application, chartered banks are limited in the types of loans they may make and the types of assets in which they may invest in order to ensure satisfactory liquidity and the protection of creditors, depositors and shareholders. In addition, Applicant states that in it is registered as a bank holding company under the Bank Holding Company Act of 1956, which subjects it to regulation by the Board of Governors of the Federal Reserve System and requires it to file annual reports respecting its operations.

According to the application, Applicant proposes to issue and sell prime quality commercial paper notes in

minimum denominations of $100,000 in the United States. Applicant represents that notes will be sold through one or more major registered securities dealers to the types of institutional and other sophisticated investors who normally purchase commercial paper and will not be advertised or otherwise offered to the general public. Applicant presently anticipates that during the first year in which notes are sold the aggregate amount of notes outstanding at any one time is unlikely to exceed $500 million. The application states that the notes will be direct liabilities of Applicant and will rank *pari passu* among themselves and equally with all other unsecured, unsubordinated indebtedness of Applicant, including deposit liabilities other than deposits of the government of Canada and of the Canadian provinces, which have a superior position. The notes will rank prior to any subordinated indebtedness of Applicant and to the rights of shareholders. Applicant plans to sell the notes without registration under the Securities Act of 1933 (the "1933 Act"), in reliance on the written opinion of its legal counsel in the United States to the effect that the notes will qualify for the exemption from the registration requirements of the 1933 Act provided by section 3(a)(3) thereof. Applicant states that it will not offer or sell any of its notes until it has received such opinion letter. Applicant does not request Commission review or approval of such opinion letter and the Commission expresses no opinion as to the availability of any such exemption. Applicant further represents that the notes and any future issue of Applicant's securities (assuming such securities are eligible to receive a rating of the type discussed below) in the United States will have received, prior to issuance, one of the three highest investment grade ratings from at least one of the nationally recognized statistical rating organizations and Applicant's United States counsel will have been notified in writing by Applicant of the receipt of such rating. No such rating will be obtained, however, if, in the opinion of Applicant's legal counsel in the United States, an exemption from registration is available under Section 4(2) of the 1933 Act (after due consideration of the doctrine of "integration").

Applicant undertakes to ensure that each dealer in the United States through which it sells the notes will provide to each offeree, prior to sale, a memorandum which describes Applicant's business and contains a balance sheet and income statement for the most recent fiscal year which is audited in accordance with Canadian accounting principles applicable to chartered banks, and, as publicly available, an unaudited copy of Applicant's financial statements for the most recent fiscal quarter. Applicant states that the memorandum and financial statements will describe any material differences between Canadian accounting principles applicable to chartered banks and United States generally accepted accounting principles applicable to commercial banks, will be at least as comprehensive as those customarily used in commercial paper offerings by bank holding companies in the United States, and will be updated periodically to reflect material changes in Applicant's financial status.

Applicant further represents that any future offering of debt securities by Applicant in the United States will be made only pursuant to a registration statement under the 1933 Act or pursuant to an applicable exemption from registration under such Act, and any such offering will be made on the basis of a disclosure document appropriate and customary for such registration or exemption and in any event as comprehensive as those used in offerings of similar debt securities in the United States by United States issuers. Applicant undertakes to ensure that such a disclosure document will be provided to each offeree who has indicated an interest in such securities prior to any sale of such securities to such offeree, except that in the case of an offering made pursuant to a registration statement under the 1933 Act such a disclosure document will be provided to such persons and in such manner as may be required by the 1933 Act and the pertinent rules and regulations thereunder. Applicant consents to having any order granting the relief requested under Section 6(c) expressly conditioned upon its compliance with the foregoing undertakings regarding disclosure documents.

Applicant represents that it will appoint an agent to accept service of process in any suit, action or proceeding on the notes or with respect to the offer or sale of the notes and any other debt securities it may offer in the United States in the future. Applicant further represents that it will expressly submit to the jurisdiction of any state or federal court located in the city and county of New York in any such suit, action or proceeding. Applicant states that the appointment of its agent to accept service of process and the consent to jurisdiction will be irrevocable until all amounts due and to become due in respect of the notes and any future debt securities have been paid or set aside.

Section 3(a)(3) of the Act defines investment company to mean "any issuer which is engaged or proposes to engage in the business of investing, reinvestment, owning, holding, or trading in securities, and own's or proposes to acquire investment securities having a value exceeding 40 per centum of the value of such issuer's total assets (exclusive of Government securities and cash items) on an unconsolidated basis." Applicant states that there is uncertainty as to whether or not a commercial bank organized and based outside the United States would be considered an investment company as defined under the Act.

Section 6(c) of the Act provides, in pertinent part, that the Commission, by order upon application, may conditionally or unconditionally exempt any person, security or transaction, or any class or classes of persons, securities, or transactions, from any provision or provisions under the Act or any rule or regulation thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicant requests an order pursuant to Section 6(c) of the Act exempting it from all provisions of the Act. Applicant submits that it is not the type of institution intended to be regulated by the Act. Applicant also submits that granting the application pursuant to Section 6(c) of the Act would benefit institutional and other sophisticated investors in the United States by making Applicant's securities more readily available to them. Applicant concludes that granting an order of exemption pursuant to Section 6(c) of the Act would be appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Notice is further given That any interested person may, not later than October 20, 1981, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such

request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 81-28624 Filed 9-30-81; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 11955; 811-3102]

Biotech Capital Corp.; Proposal To Terminate Registration

September 24, 1981.

Notice is hereby given that the Commission proposes, pursuant to Section 8(f) of the Investment Company Act of 1940 ("Act"), to declare by order on its own motion that Biotech Capital Corporation ("Biotech"), 11 Hanover Square, New York, New York 10005, registered under the Act as a closed-end, non-diversified, management investment company, ceased to be an investment company required to be registered under the Act, effective as of the date that Biotech elected to be treated as business development company.

Information contained in the files of the Commission indicates that Biotech was organized under the laws of Delaware on December 19, 1979, and registered under the Act on October 20, 1980. On October 24, 1980, Biotech filed a registration statement pursuant to the Securities Act of 1933 and the 1940 Act. This statement was declared effective on January 22, 1981. On the same date, Biotech filed a Notification of Election to be treated as a business development company pursuant to Section 54 of the Act.

Section 6(f) of the Act provides in part that any closed-end company which elects to be treated as a business development company pursuant to Section 54 of the Act will be exempt from registration pursuant to Section 8 of the Act.

Section 8(f) of the Act provides in part that whenever the Commission on its own motion finds that a registered investment company has ceased to be an investment company it shall so declare by order.

Notice is further given that any interested person may, not later than October 19, 1981, at 5:30 p.m., submit to the Commission in writing a request for a hearing accompanied by a statement as to the nature of his or her interest, the reasons for such request and the issues, if any, of fact or law proposed to be controverted, or he or she may request that he or she be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 81-28518 Filed 9-30-81; 8:45 am]

BILLING CODE 8010-01-M

Cincinnati Stock Exchange; Applications for Unlisted Trading Privileges and of Opportunity for Hearing

September 24, 1981.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following stocks:

Mercantile Texas Corporation Common Stock, $5 Par Value (File No. 7-6055)

Republic of Texas Corporation Common Stock, $5 Par Value (File No. 7-6056)

These securities are listed and registered on one or more other national securities exchanges and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before October 16, 1981 written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegate authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 81-28516 Filed 9-30-81; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 11956; 811-3065, 811-3066]

Fluid Power Pump Corp. and Fluid Capital Corp.; Filing of Application for an Order Declaring That Applicants Have Ceased To Be Investment Companies Required To Be Registered Under the Act.

September 24, 1981.

Notice is hereby given that Fluid Capital Corporation, a New Mexico corporation, and Fluid Power Pump Company, a Delaware corporation ("Applicants"), 200 Lomas Blvd. NW, Suite 527, Albuquerque, New Mexico 87102, registered under the Investment Company Act of 1940 ("Act") as closed-end, non-diversified, management investment companies, filed applications on October 6, 1980 for an order of the Commission pursuant to Section 8(f) of the Act declaring that Applicants have ceased to be investment companies required to be registered under the Act as of the date that each Applicant elected to be treated as a business development company. All interested persons are referred to the applications on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicants represent that they are operated for the purpose of making investments in securities described in Section 55(a) (1) through (3) of the Act

and make available significant managerial assistance with respect to the issuers of such securities. Applicants also represent they are corporations which have a class of equity securities registered under Section 12 of the Securities Exchange Act of 1934. Applicants further represent that on September 30, 1980, their boards of directors resolved that Applicants elect to be subject to the provisions of Sections 55 through 65 of the Act. Finally, on January 5, 1981, Fluid Power Pump Company filed with the Commission a Notification of Election to be treated as a business development company pursuant to Section 54 of the Act. Fluid Capital Corporation filed its Election on March 13, 1981.

Section 6(f) of the Act provides in part that any closed-end company which elects to be treated as a business development company pursuant to Section 54 of the Act will be exempt from registration pursuant to Section 8 of the Act.

Section 8(f) of the Act provides in part that whenever the Commission upon application finds that a registered investment company has ceased to be an investment company it shall so declare by order.

Notice is further given that any interested person may, not later than October 19, 1981, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the application accompanied by a statement as to the nature of his or her interest, the reasons for such request and the issues, if any, of fact or law proposed to be controverted, or he or she may request that he or she be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the rules and regulations promulgated under the Act, an order disposing of the application herein will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 81-28519 Filed 9-30-81; 8:45 am]

BILLING CODE 8010-01-M

Midwest Stock Exchange, Inc.; Applications for Unlisted Trading Privileges and of Opportunity for Hearing

September 24, 1981.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following stocks:

Chicago & North Western Transportation Company: Class A Common, $.28 Par Value (File No. 7-6057).

Flow General Incorporated: Common Stock, $.10 Par Value (File No. 7-6058).

Integrated Resources Incorporated: Common Stock, $.10 Par Value (File No. 7-6059).

Payless Cashways Incorporated: Common Stock, $.50 Par Value (File No. 7-6060).

These securities are listed and registered on one or more other national securities exchanges and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before October 16, 1981 written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 81-28517 Filed 9-30-81; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Application No. 09/09-0300]

Hamco Capital Corp.; Application for a License To Operate as a Small Business Investment Company

Notice is hereby given that an application has been filed with the Small Business Administration pursuant to § 107.102 of the regulations governing small business investment companies (CFR 107.102 (1981)) under the name of Hamco Capital Corporation, 235 Montgomery Street, San Francisco, California 94104, for a license to operate as a small business investment company, under the provisions of the Small Business Investment Act of 1958 as amended (the Act) (15 U.S.C. 661 et *seq.*), and the Rules and Regulations promulgated thereunder.

The proposed officers, directors and stockholders are as follows:

Name and title

William R. Hambrecht, President, Director [100 percent], 235 Montgomery Street, San Francisco, CA 94104

Colleen E. Curry, Vice President, Secretary, Director, 235 Montgomery Street, San Francisco, CA 94104

Sara P. Hambrecht, Vice President, Director, 235 Montgomery Street, San Francisco, CA 94104

The Applicant, which is a California Corporation, proposes to commence operations with private capital of $600,000 and intends to purchase convertible subordinated obligations or other securities of small business concerns located throughout the United States.

Matters involved in SBA's consideration of the application include the general business reputations of the owner and management, and the probability of successful operations of the new company, in accordance with the Act and Regulations.

Notice is further given than any person may, on or before October 16, 1981, submit to SBA, in writing, relevant comments on the proposed licensing of this company. Any such communications should be addressed to: Associate Administrator for Investment, 1441 "L" Street, N.W., Washington, D.C. 20416.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small business Investment Companies)

Peter F. McNeish,

Acting Associate Administrator for Investment.

Dated: September 25, 1981.

[FR Doc. 81-28627 Filed 9-30-81; 8:45 am]

BILLING CODE 8025-01-M

[Application No. 09/09-0290]

San Marino Capital Corp.; Application for a License To Operate as a Small Business Investment Company

Notice is hereby given that an application has been filed with the Small Business Administration pursuant to § 107.102 of the Regulations governing small business investment companies (CFR 107.102 (1981)) under the name of San Marino Capital Corporation, 57 Post St., San Francisco, California 94104, for a license to operate as a small business investment company, under the proisions of the Small Business Investment Act of 1958 as amended (the Act) (15 U.S.C. 661 *et seq.*), and the Rules and Regulations promulgated thereunder.

The proposed officers, directors and stockholders are as follows:

Name and title

Bruce F. Glaspell, President, Director, Treasurer [50 percent] 57 Post Street, Suite 813, San Francisco, CA 94104

Jane E. Barnett, Secretary, Director, 57 Post Street, Suite 813, San Francisco, CA 94104

Lee H. Stein, Vice President, Director [50 percent] 57 Post Street, Suite 813, San Francisco, CA 94104

The Applicant which is a California Corporation, proposes to commence operations with private capital of $500,000 and intends to purchase convertible subordinated obligations or other securities of small business concerns principally in the State of California and other areas within the United States.

Matters involved in SBA's consideration of the application include the general business reputations of the owner and management, and the probability of successful operations of the new company, in accordance with the Act and regulations

Notice is further given than any person may, not later than fifteen (15) days from the date of publication of this Notice, submit to SBA, in writing, relevant comments on the proposed licensing of this company. Any such communications should be addressed to: Associate Administrator for Investment, 1441 "L" Street, NW, Washington, D.C. 20416.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Peter F. McNeish,

Acting Associate Administrator for Investment.

Dated: September 24, 1981.

[FR Doc. 81-28628 Filed 9-30-81; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2011]

Texas; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration, I find that Lavaca County and adjacent counties within the State of Texas constitute a disaster area because of damage resulting from severe storms and flooding beginning on or about August 30, 1981. Eligible persons, firms and organizations may file applications for loans for physical damage until the close of business on November 20, 1981, and for economic injury until close of business on June 21, 1982, at: Small Business Administration, District Office, 727 East Durango, Room A513, Federal Building, San Antonio, Texas 78206, or other locally announced locations. Information on recent regulatory changes (Pub. L. 97-35, approved August 13, 1981) is available at the above mentioned office(s).

Dated: September 28, 1981.

Donald R. Templeman,

Acting Administrator.

[FR Doc. 81-28628 Filed 9-30-81; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD81-073]

Port Access Routes Study

AGENCY: U.S. Coast Guard, DOT.

ACTION: Notice of study results.

The purpose of this notice is to publish results of the Port Access Route study announced on April 16, 1979, in the Federal Register (44 FR 22543) and modified on January 31, 1980 (45 FR 7026). Only the results for study areas 13 to 20 (including the Coast of South Carolina, Georgia and the Florida Peninsula) are published in this notice. Results for the remaining Study Areas (1 to 12 and 21 to 32) will be published in future Federal Registers.

Background

The Ports and Waterways Safety Act (PWSA) (Pub. L. 95-474, 92 Stat. 1473), mandated that the Coast Guard "undertake a study of the potential traffic density and the need for safe access routes." The

Federal Register for April 16, 1979 (44 FR 22543), announced the scope of the study and included a description of each area to be studied. Coast Guard district staff officers were assigned responsibility for executing the study; and it has been conducted under the standards contained in sections 4 and 5 of the PWSA. As a result of the study, appropriate ships' routing measures, such as safety fairways and traffic separation schemes, may be proposed. Where the study indicates that no new routing measures are to be designated in an area, notice of such a conclusion is to be published in the Federal Register. However, areas for which results are published may be studied again in the future as changes in conditions may warrant re-evaluation.

Summary

Based on the Port Access Route Study, conducted in accordance with the PWSA, the establishment of new vessel traffic routing measures is considered unnecessary at the present time for Study Areas 13 to 20, which include the coast of South Carolina, Georgia and the Florida Peninsula. The conclusion not to designate routing measures in these areas is based on contact with the marine industry, state and federal government agencies, and the general public, as well as analysis of available statistics and results of surveys conducted specifically for the study.

Method

The study is an attempt to determine the vessel traffic density in approaches to ports and over the Outer Continental Shelf (OCS) as well as to assess the need for and feasibility of establishing routing measures in approaches to U.S. ports. This has required determining the volume of traffic from merchant shipping, recreational and fishing vessels, military operations, and the extent of OCS exploitation. At the outset of the study of Areas 13 to 20, two premises were developed by the project staff in the Seventh Coast Guard District:

(1) As stated in the PWSA (subsections 2(a) and 4(c)(1)), vessel and navigation safety and protection of the marine environment are of national importance; also, the right of navigation shall be paramount over other uses, while it is reconciled with other reasonable uses as far as practicable, in designated areas.

(2) In order to facilitate development of objectively-based study conclusions, a quantitative survey was desirable.

In accordance with the PWSA requirement that the Coast Guard consider the views of representatives of the maritime community (subsection 5(b)), a wide variety of interested parties was contacted and invited to express opinions relevant to the study. From the 157 parties contacted directly, 70 responses (45%) were received.

In order to obtain specific information on vessel traffic density in a consistent format, several questionnaires were developed. Various groups within the marine community were contacted: Marine industry; state and federal agencies; port authorities; Department of Defense organizations; Coast Guard units and Seventh District staff elements; and the general public through news releases. Contacted parties were requested to provide responses concerning current operations and make projections for the next 10 years (i.e., thru 1990).

For one month from 15 January 1980, Coast Guard Marine Safety Offices in the Seventh Coast Guard District were directed to request masters or mates of all boarded vessels to complete a questionnaire about navigation safety along their routes; a chart on which they were to depict their usual routes was also included. 215 boardings were performed among 1533 vessel arrivals.

In addition to the above sources of information, several previous studies were reviewed. Two studies in particular, *Offshore Vessel Traffic Management Study* (1978)[1] and *Deepwater Port Navigation: Hazards and Risk* (1979)[2] were especially pertinent to study areas in the Seventh District.

General Conclusions

From an evaluation of information accumulated during the study in the Seventh District, several projections were made:

(1) Although the specific rate of growth for the marine industry in the next 10 years is uncertain, the apparent trend is that activity in the marine environment will continue to increase.

(2) Along with increased commercial activity, Naval operations will increase with definite expansions planned for the bases at Mayport and King's Bay.

(3) Outer Continental Shelf activity will continue. Based upon findings from current exploration in the Georgia Embayment (east of Jacksonville), the Georgia Embayment-Blake plateau areas are not expected to develop at a rapid rate. The eastern Gulf will be open for lease bids in 1981. The outcome of exploration in that region is uncertain, but the Bureau of Land Management (BLM) estimates 30 drilling platforms may eventually be erected subsequent to sales # 66 and # 66A.[3] While not necessary now, some vessel routing measures may eventually be necessary in this area.

In parts of these study areas, a natural separation scheme exists as a result of the Florida current. This current, emanating from the Gulf of Mexico, proceeds through the Straits of Florida and northward along the east coast of Florida, eventually flowing into the Gulf Stream. While this current tends to keep traffic separated, with southbound traffic close in to shore and northbound further offshore, several crossing situations do exist. Vessel traffic in those areas, though, does not appear sufficient to establish special routing measures.

Very few respondents in the survey indicated any difficulties with navigation safety in the port approaches. The majority of comments made about congestion were in reference to safety within the ports; several commenters also addressed the problem of operators who fail to adhere to proper navigation procedures. For example, several commenters noted that in Miami harbor recreational boaters often fail to follow the Rules of the Road, while at the same time commercial vessels will transit the ship channel too swiftly. In situations such as these, the establishment of new procedures is of questionable value since some operators already disregard established procedures. In many cases, more vigorous enforcement of established procedure may be more beneficial than new requirements.

Specific Findings: Areas ® 13–20

Area 13. Includes Cape Romain Area.

Enclosed by the coast and a line bearing 156° T from the coast at 78°32.0' W longitude to 32°50.0' N latitude 78° W longitude, thence a line bearing 270° T to the coast.

Charleston, the principal port in this area, is the site of military operations, commercial shipping, and commercial fishing. The Naval presence, which includes surface vessels and submarines, will remain at its current level and possibly increase over the next 10 years. Commercial shipping will continue to grow, but not at a rapid rate. There is no OCS exploration planned within area 13. Contacted parties did not indicate any hazardous situations in the port approaches to Charleston. No routing designations are contemplated in this area.

Area 14. Includes Charleston, South Carolina, and Savannah, Georgia.

From the coast seaward to the 1800 meter curve, from 32° 50.0' N latitude to 31° 30.0' N latitude.

Within area 14, Savannah is the major port. Commercial and fishing interests are the principal marine activities in this port. There is a liquefied natural gas (LNG) facility in Savannah. LNG arrivals are closely monitored by Marine Safety Office Savannah. No navigational hazards have been noted in the port approaches to Savannah and no routing measures for LNG or other vessels are deemed necessary. Some OCS tracts in least #56, scheduled for August 1981, are in area 14. At the present time, no potentially hazardous situations have been identified.

Area 15. Includes Brunswick, Georgia, and Jacksonville, Florida.

From the coast seaward to the 1800 meter curve, from 31° 30.0' N latitude, to 30° 30.0' N latitude.

This was established as an area with high priority due the OCS exploration occurring east of Jacksonville. This area was opened for exploration with Bureau of Land Management lease sale #43.

When this area was opened for exploration, it was anticipated that it would become a major production area; this anticipation has not been borne out. Five sites have been drilled without positive results. The last exploratory rig left the South Atlantic in February 1980. According to the BLM lease schedule, new tracts will be open for leasing in 1981 and in 1984. At the present time, though, a significant increase in the number of drilling platforms is not anticipated.

Jacksonville itself is a major commercial port. Also, the Navy maintains a large base at nearby Mayport. During the next 10 years the Navy projects a 60% expansion in the number of surface vessels homeported at Mayport, increasing from approximately 25 to 40 vessels. At King's Bay, Georgia, approximately 25 miles to the north, the Navy is expanding its submarine support facility. The Navy has indicated this will

[1] *Offshore Vessel Traffic Management Study.* U.S. Department of Transportation, Research and Special Programs Administration, Transportation Systems Center, Cambridge, MA. August 1978.

[2] *Deepwater Ports Navigation: Hazards and Risk.* Planning Research Corporation, Systems Service Company, McLean, VA. February 1979.

[3] *Environmental Impact Assessment: OCS Oil and Gas proposed 1981 Sales A66 and 66.* New Orleans Outer Continental Shelf Office, New Orleans, LA. July 1980.

be one of the largest facilities on the east coast.

Because of the variety and extent of marine activities in area 15, item by item analysis was given to responses to the boarding (multiple choice) questionnaires completed in January 1980. During that month, 65% of the commercial arrivals in Jacksonville carried either hazardous materials or bulk petroleum/chemical products. In response to a question addressing those factors which influenced masters in choosing navigation routess, only two out of 25 respondents (8%) stated that traffic density affected route choices. In response to a question concerned with problems that impair navigation, only one respondent (4%) stated that fixed structures presented a problem. In spite of the high amount of activity within area 15, traffic density does not appear to be a problem. Routing schemes are not necessary in this area at the present time. It should be mentioned that due to the Florida current, flowing north from the Gulf of Nexico, a natural separation scheme has developed off the Florida east coast. Southbound vessels remain close in to shore in order to avoid the current; northbound traffic sails further out to take full advantage of the current.

Area 16. Includes Cape Canaveral Area.

From the coast seaward to the 1800 meter curve or the limit of Bahamian jurisdiction, from 30° N latitude to 27° N latitude.

Within this area, military operations are the principal activities. The Naval Ordnance Test Unit, a test facility for submarine-based missile launches, is located at Port Canaveral. The Air Force and the National Aeronautics and Space Administration (NASA) operate missile and space launch facilities at Cape Canaveral. Most of area 16 serves as an impact zone for recoverable stages and jettisoned equipment from DOD and NASA launches. (This impact zone extends into area 15.) When NASA commences launches with the Space Shuttle program on a regular basis, the impact zone for these launches will be in area 16. The Air Force is tasked with safety coordination for launches; this includes broadcasting notices to mariners to advise of impact areas during a launch. This has been an effective method without any reported incidents involving shipping. Commenters did not report any hazardous problems within this area. No routing measures are proposed for this area.

Area 17. Includes Port Everglades and Miami, Florida. From the coast seaward to the limit of Bahamian jurisdiction, from 27° N latitude to 25° 20.0′ N latitude.

Port Everglades, Palm Beach, and Miami are the major ports in this area. Vessel traffic is steady with a wide variety of cargoes handled. Congestion does occur, but only within the ports. Respondents indicated that the port approaches are hazard-free.

As stated above, the Florida current provides a natural separation scheme for vessels transiting this region. In a previous Seventh District study (1976) two crossing areas were identified within area 17—one 13 miles south southeast of Miami and the other 13 miles south southeast of West Palm Beach. These crossing situations are created by the confluence of traffic southbound/northbound from the Straits of Florida, and westbound from the Bahamas. It has been estimated that within areas 17 and 18, in excess of 32,000 recreational boat operations occur on a daily basis. During a 30-day period in January/February 1980, there was an average of eight commercial arrivals per day in Miami and six arrivals per day in Port Everglades. Assuming that these figures are representative of daily averages, it can be concluded that despite the vast number of recreation operations and the existence of two crossing junctions, the commercial traffic is insufficient for special routing procedures at the junctions.

Area 18. Includes the Florida Keys and southwest Florida coast. From the coast to the 1800 meter curve or the limit of the Bahamian jurisdiction or the limit of Cuban jurisdiction, from 25°20.0′ N latitude on the eastern side of Florida, around the Florida Keys, to 27° N latitude on the western side of Florida.

Area 18 includes the Straits of Florida. Estimates of the number of vessels transiting the Straits per day vary from 38 to 100 (District Study, 1976). Although this is considered an environmentally sensitive area, the volume of traffic does not warrant routing measures. Respondents in the present study indicated the region can be navigated without undue hazards. The Florida current provides separation of traffic in this area, with westbound traffic sailing close to the shore. A crossing situation has been identified 14 miles south of Dry Tortugas (1976 study); however, considering the estimates of the number of vessels transiting the Straits, this crossing junction does not appear hazardous.

In August 1979, BLM announced that tracts within area 18 would be open for bids on OCS leases. In July and October 1981, lease sales #66 and #A66 will occur. The tracts open for bids lie approximately 60 miles offshore west of Fort Myers and extend approximately 50 miles in a north-south direction. BLM estimates that 30 platforms may eventually be placed in the area of leases 66 and A66. (It should be noted that these leases will also cover parts of the western Gulf so that all platforms probably would not be located off the Florida coast.) Some form of routing may be necessary in the future, dependent upon the outcome of exploratory drilling. Although it is premature at this time to recommend any particular form of routing, a fairway system may be appropriate in the future. There is currently a safety fairway extending southwesterly from Charlotte Harbor (33 CFR 209.135). The proposed OCS tracts do not lie in the path of the fairway. The Corps of Engineers regulations in 33 CFR 209.135 which establish this fairway are unaffected by this report and the regulations remain in full effect. There will be a separate but related ongoing action directed toward the repromulgation of these regulations by the Coast Guard.

Area 18a. Includes Puerto Rico and U.S. Virgin Islands. Enclosed by a line drawn from 21°00′ N latitude, 67°00′ W longitudinal to 15°30′ N latitude, 68°30′ W longitude to 17°45′ N latitude, 64°05′ W longitude; thence northwesterly along the international boundary between the U.S. and the United Kingdom to 18°27′ N latitude, 64°53′ W longitude, thence along a line drawn to 21°00′ N latitude, 65°50′ W longitude; thence continuing to the origin (21°00′ N, 67°00′ W).

This area includes Puerto Rico and was added to the study in January 1980 (45 FR 7026). The study did not identify any congestion or navigation problems in the region. No mineral exploration is projected for the next 10 years. In a previous Coast Guard study, Guayanilla Bay, Puerto Rico, was identified as a high risk area for vessel groundings. In a five-year period (FY72–FY77), 29% (16 out of 55) groundings in that study's data base occurred in Guayanilla Bay. The Seventh District subsequently (1979) completed a study on this Bay; as a result, several changes to the ranges within the Bay were made in order to facilitate navigation. In the present study, no hazards in the port approaches were noted. Also, in the past year, vessel traffic into Guayanilla Bay has fallen from a 1977 average of 10 petro-chemical carriers per day to the present level of about three petro-chemical carriers per day. Sources contacted during this study do not see an increase in this level of shipping in the foreseeable future.

Area 19. Includes the entrance to Tampa Bay. From the coast to a line bearing 019° T passing through the point 27° N latitude, 85° W longitude, from 27° N latitude to 28° N latitude.

According to the new BLM lease schedule, area 19 will be part of OCS lease areas #66 and #A66. A small number of tracts for OCS exploration will be open for bids in 1981. The number of tracts available are so few that navigational problems are not expected. A safety fairway now extends from Tampa Bay (33 CFR 209.135), but the BLM lease tracts do not lie in the fairway. The Corps of Engineers regulations in 33 CFR 209.135 which establish this fairway are unaffected by this report and the regulations remain in full effect.

Tampa is an active port; however, no respondents indicated any hazards for navigation safety in the port approaches. Although Tampa is the site of two major marine casualties during 1980, no special routing procedures are recommended under this study, as these incidents were within the port, and not in the port approaches. However, the Coast Guard is conducting a study into the Navigation Safety aspects of Tampa Bay, and this may result in new proposals.

Area 20. Includes the Cedar Keys Area.

Enclosed by the coast and a line bearing 199° T from the coast at 83°50.0' W longitude to 28° N latitude; thence a line bearing 090° T to the coast.

This area encompasses no major shipping or port activities. A small area of OCS tracts will be available for leasing in 1981 as part of sales #66 and #A66. These tracts lie approximately 40 miles southwest of Crystal River. The traffic density in this area does not warrant routing measures.

Conclusion

1. Findings for study areas 13 to 20 indicate that the establishment of new routing measures within the study areas is unnecessary at the present time.

2. Traffic patterns and traffic density in these areas will continue to be monitored, and a reassessment of the need for vessel routing measures will be made when relevant trends or circumstances are detected.

3. Particular attention will be given to activity in the Straits of Florida from Dry Tortugas east to the West Palm Beach area; to the DOD/NASA missile launch impact zone; and to regions of OCS development.

FOR FURTHER INFORMATION CONTACT: Mr. Christopher Young, Office of Marine Environment and Systems (G-WWM-2), Room 1608, U.S. Coast Guard Headquarters, 2100 Second Street, S.W., Washington, D.C. 20593, (202) 426-4958 between 7:30 a.m. and 4:30 p.m. Monday through Thursday, except holidays.

Dated: September 24, 1981.

W. E. Caldwell,

Chief, Office of Marine Environment and Systems.

[FR Doc. 81-28830 Filed 9-30-81; 8:45 am]

BILLING CODE 4910-14-M

Federal Aviation Administration

Airports District Office, Detroit, Michigan; Change of Address

Notice is hereby given that on or about October 15, 1981, the Airports District Office, Building 358, Detroit Metropolitan Airport, Detroit (Romulus), Michigan 48242, will be relocated to 8800 Beck Road, East Willow Run Airport, Belleville, Michigan 48111. Services to the aviation public formerly provided by this office will continue to be provided at their new location.

Issued in Des Plaines, Illinois, on Sept. 21, 1981.

F. Issac,

Chief Airports Division, Great Lakes Region.

[FR Doc. 81-28440 Filed 9-30-81; 8:45 am]

BILLING CODE 4910-13-M

Federal Railroad Administration

[FRA Waiver Petition Docket HS-81-15]

Central New York Railroad Co.; Petition for Exemption from the Hours of Service Act

In accordance with 49 CFR 211.41 and 211.9, notice is hereby given that the Central New York Railroad (CNYR) has petitioned the Federal Railroad Administration (FRA) for an exemption from the Hours of Service Act (83 Stat. 464, Pub. L. 91-169, 45 U.S.C. 64(e)). That petition request that the CNYR be granted authority to permit certain employees to continuously remain on duty for in excess of twelve hours.

The Hours of Service Act currently makes it unlawful for a railroad to require or permit specified employees to continuously on duty for a period in excess of twelve hours. However, the Hours of Service Act contains a provisions that permits a railroad, which employs no more than fifteen employees who are subject to the statute, to seek an exemption from this twelve hour limitation.

The CNYR seeks this exemption so that it can permit certain employees to remain continuously on duty for periods not to exceed sixteen hours. The petitioner indicates that granting this exemption is in the public interest and will not adversely affect safety. Additionally, the petitioner asserts that it employs no more than fifteen employees and has demonstrated good cause for granting this exemption.

Interested persons are invited to participate in this proceeding by submitting written views or comments. FRA has not scheduled an opportunity for a oral comment since the facts do not appear to warrant it. Communications concerning this proceeding should identify the Docket Number, Docket Number HS-81-15, and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street, SW, Washington, D.C. 20590. Communications received before October 30, 1981, will be considered by the FRA before final action is taken. Comments received after the date will be considered as far as practicable. All comments received will be available for examination both before and after the closing date for comments, during regular business hours in Room 8211, Nassif Building, 400 Seventh Street, S.W., Washington, D.C. 20590.

(Sec. 5 of the Hours of Service Act of 1969 (45 U.S.C. 64a), 1.49(d) of the regulations of the Office of the Secretary, 49 CFR 1.49(d).)

Issued in Washington, D.C. on September 24, 1981.

Joseph W. Walsh,

Chairman, Railroad Safety Board.

[FR Doc. 81-28123 Filed 9-30-81; 8:45 am]

BILLING CODE 4910-06-M

[FRA Waiver Petition Docket HS-81-13]

Cooperstown and Charlotte Valley Railroad Co.; Petition for Exemption from the Hours of Service Act

In accordance with 49 CFR 211.41 and 211.9, notice is hereby given that the Cooperstown and Charlotte Valley Railroad (C & CV) has petitioned the Federal Railroad Administration (FRA) for an exemption from the Hours of Service Act (83 Stat. 464, Pub. L. 91-169, 45 U.S.C. 64a(e)). That petition requests that the C & CV be granted authority to permit certain employees to continuously remain on duty for in excess of twelve hours.

The Hours of Service Act currently makes it unlawful for a railroad to require or permit specified employees to continuously remain on duty for a period in excess of twelve hours. However, the Hours of Service Act contains a provision that permits a railroad, which employs no more than fifteen employees who are subject to the

statute, to seek an exemption from this twelve hour limitation.

The C & CV seeks this exemption so that it can permit certain employees to remain continuously on duty for periods not to exceed sixteen hours. The petitioner indicates that granting this exemption is in the public interest and will not adversely affect safety. Additionally, the petitioner asserts that it employs no more than fifteen employees and has demonstrated good cause for granting this exemption.

Interested persons are invited to participate in this proceeding by submitting written views or comments. FRA has not scheduled an opportunity for oral comment since the facts do not appear to warrant it. Communications concerning this proceeding should identify the Docket Number, Docket Number HS-81-13, and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street, SW., Washington, D.C. 20590. Communications received before October 30, 1981, will be considered by the FRA before final action is taken. Comments received after that date will be considered as far as practicable. All comments received will be available for examination both before and after the closing date for comments, during regular business hours in Room 8211, Nassif Building, 400 Seventh Street, SW., Washington, D.C. 20590.

(Sec. 5 of the Hours of Service Act of 1969 (45 U.S.C. 64a), 1.49(d) of the regulations of the Office of the Secretary, 49 CFR 1.49(d)).

Issued in Washington, D.C. on September 24, 1981.

Joseph W. Walsh,

Chairman, Railroad Safety Board.

[FR Doc. 81-28185 Filed 9-30-81; 8:45 am]

BILLING CODE 4910-06-M

[FRA Waiver Petition Docket HS-81-14]

Fonda, Johnstoron & Gloversville Railroad Co.; Petition for Exemption From the Hours of Service Act

In accordance with 49 CFR 211.41 and 211.9, notice is hereby given that Fonda, Johnstoron & Gloversville Railroad (FJ&G) has petitioned the Federal Railroad Administration (FRA) for an exemption from the Hours of Service Act (83 Stat. 464, Pub. L. 91-169, 45 U.S.C. 64a(e)). That petition requests that the FJ&G be granted authority to permit certain employees to continuously remain on duty for in excess of twelve hours.

The Hours of Service Act currently makes it unlawful for a railroad to require or permit specified employees to continuously remain on duty for a period in excess of twelve hours. However, the Hours of Service Act contains a provision that permits a railroad, which employs no more than fifteen employees who are subject to the statute, to seek an exemption from this twelve hour limitation.

The FJ&G seeks this exemption so that it can permit certain employees to remain continuously on duty for periods not to exceed sixteen hours. The petitioner indicates that granting this exemption is in the public interest and will not adversely affect safety. Additionally, the petitioner asserts that it employs no more than fifteen employees and has demonstrated good cause for granting this exemption.

Interested persons are invited to participate in this proceeding by submitting written views of comments. FRA has not scheduled an opportunity for oral comment since the facts do not appear to warrant it. Communications concerning this proceeding should identify the Docket Number, Docket Number HS-81-14, and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street, SW., Washington, D.C. 20590. Communications received before October 30, 1981, will be considered by the FRA before final action is taken. Comments received after that date will be considered as far as practicable. All comments received will be available for examination both before and after the closing date for comments, during regular business hours in Room 8211, Nassif Building, 400 Seventh Street, SW., Washington, D.C. 20590.

(Sec. 5 of the Hours of Service Act of 1969 (45 U.S.C. 64a), 1.49(d) of the regulations of the Office of the Secretary, 49 CFR 1.49(d))

Issued in Washington, D.C. on September 24, 1981.

Joseph W. Walsh,

Chairman, Railroad Safety Board.

[FR Doc. 81-28187 Filed 9-30-81; 8:45 am]

BILLING CODE 4910-06-M

[FRA Waiver Petition Docket HS-81-16]

Lackawaxen and Stourbridge Railroad Co.; Petition for Exemption From the Hours of Service Act

In accordance with 49 CFR 211.41 and 211.9, notice is hereby given that the Lackawaxen and Stourbridge (L&S) has petitioned the Federal Railroad Administration (FRA) for an exemption from the Hours of Service Act (83 Stat. 464, Pub. L. 91-169, 45 U.S.C. 64a(e)). That petition requests that the L&S be granted authority to permit certain employees to continuously remain on duty for in excess of twelve hours.

The Hours of Service Act currently makes it unlawful for a railroad to require or permit specified employees to continuously remain on duty for a period in excess of twelve hours. However, the Hours of Service Act contains a provision that permits a railroad, which employs no more than fifteen employees who are subject to the statute, to seek an exemption from this twelve hour limitation.

The L&S seeks this exemption so that it can permit certain employees to remain continuously on duty for periods not to exceed sixteen hours. The petitioner indicates that granting this exemption is in the public interest and will not adversely affect safety. Additionally, the petitioner asserts that it employs no more than fifteen employees and has demonstrated good cause for granting this exemption.

Interested persons are invited to participate in this proceeding by submitting written views or comments. FRA has not scheduled an opportunity for oral comment since the facts do not appear to warrant it. Communications concerning this proceeding should identify the Docket Number, Docket Number HS-81-16, and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street, SW., Washington, D.C. 20590. Communications received before October 30, 1981, will be considered by the FRA before final action is taken. Comments received after that date will be considered as far as practicable. All comments recieved will be available for examination both before and after the closing date for comments, during regular business hours in Room 8211, Nassif Building, 400 Seventh Street, SW., Washington, D.C. 20590.

(Sec. 5 of the Hours of Service Act of 1969 (45 U.S.C. 64a), 1.49(d) of the regulations of the Office of the Secretary, 49 CFR 1.49(d).

Issued in Washington, D.C. on September 24, 1981.

Joseph W. Walsh,

Chairman, Railroad Safety Board.

[FR Doc. 81-28189 Filed 9-30-81; 8:45 am]

BILLING CODE 4910-06-M

[FRA Waiver Petition Docket HS-81-17]

New York, Susquehana and Western Railroad Co.; Petition for Exemption from the Hours of Service Act

In accordance with 49 CFR 211.41 and 211.9, notice is hereby given that the New York, Susquehana and Western Railroad (NYSW) has petitioned the Federal Railroad Administration (FRA) for an exemption from the Hours of Service Act (83 Stat. 464, Pub. L. 91-169, 45 U.S.C. 64a(e)). That petition requests that the NYSW be granted authority to permit certain employees to continuously remain on duty for in excess of twelve hours.

The Hours of Service Act currently makes it unlawful for a railroad to require or permit specified employees to continuously remain on duty for a period in excess of twelve hours. However, the Hours of Service Act contains a provision that permits a railroad, which employs no more than fifteen employees who are subject to the statute, to seek an exemption from this twelve hour limitation.

The NYSW seeks this exemption so that it can permit certain employees to remain continuously on duty for periods not to exceed sixteen hours. The petitioner indicates that granting this exemption is in the public interest and will not adversely affect safety. Additionally, the petitioner asserts that it employs no more than fifteen employees and has demonstrated good cause for granting this exemption.

Interested persons are invited to participate in this proceeding by submitting written views or comments. FRA has not scheduled an opportunity for oral comment since the facts do not appear to warrant it. Communications concerning this proceeding should identify the Docket Number, Docket Number HS-81-17, and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street, SW., Washington, D.C. 20590. Communications received before October 30, 1981, will be considered by the FRA before final action is taken. Comments received after that date will be considered as far as practicable. All comments received will be available for examination both before and after the closing date for comments, during regular business hours in Room 8211, Nassif Building, 400 Seventh Street, SW., Washington, D.C. 20590.

(Sec. 5 of the Hours of Service Act of 1969 (45 U.S.C. 64a), 1.49(d) of the regulations of the Office of the Secretary, 49 CFR 1.49(d).

Issued in Washington, D.C. on September 24, 1981.

Joseph W. Walsh,

Chairman, Railroad Safety Board.

[FR Doc. 81-28100 Filed 9-30-81; 8:45 am]

BILLING CODE 4910-06-M

[FRA Waiver Petition Docket HS-81-12]

Wolfeboro Railroad Co.; Petition for Exemption from the Hours of Service Act

In accordance with 49 CFR 211.41 and § 211.9, notice is hereby given that the Wolfeboro Railroad Company (Wolfeboro) has petitioned the Federal Railroad Administration (FRA) for an exemption from the Hours of Service Act (83 Stat. 464, Pub. L. 91-169, 45 U.S.C. 64a(e)). That petition requests that the Wolfeboro be granted authority to permit certain employees to continuously remain on duty for in excess of twelve hours.

The Hours of Service Act currently makes it unlawful for a railroad to require or permit specified employees to continuously remain on duty for a period in excess of twelve hours. However, the Hours of Service Act contains a provision that permits a railroad, which employs no more than fifteen employees who are subject to the statute, to seek an exemption from this twelve hour limitation.

The Wolfeboro seeks this exemption so that it can permit certain employees to remain continuously on duty for periods not to exceed sixteen hours. The petitioner indicates that granting this exemption is in the public interest and will not adversely affect safety. Additionally, the petitioner asserts that it employs no more than fifteen employees and has demonstrated good cause for granting this exemption.

Interested persons are invited to participate in this proceeding by submitting written views of comments. FRA has not scheduled an opportunity for oral comment since the facts do not appear to warrant it. Communications concerning this proceeding should identify the Docket Number, Docket Number HS-81-12, and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street, SW., Washington, D.C. 20590. Communications received before October 30, 1981, will be considered by the FRA before final action is taken. Comments received after that date will be considered as far as practicable. All comments received will be available for examination both before and after the closing date for comments, during regular business hours in Room 8211, Nassif Building, 400 Seventh Street, SW., Washington, D.C. 20590.

(Sec. 5 of the Hours of Service Act of 1969 (45 U.S.C. 64a), 1.49(d) of the regulations of the Office of the Secretary, 49 CFR 1.49(d).)

Issued in Washington, D.C. on September 24, 1981.

Joseph W. Walsh,

Chairman, Railroad Safety Board.

[FR Doc. 81-28106 Filed 9-30-81; 8:45 am]

BILLING CODE 4910-06-M

National Highway Traffic Safety Administration

[Docket No. IP81-4; Notice 2]

Suzuki Motor Co., Ltd.; Grant of Petition for Determination of Inconsequential Noncompliance

This notice grants the petition by Suzuki Motor Co., Ltd. of Santa Fe Springs, California, to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) for an apparent noncompliance with 49 CFR Part 567 (a safety-related defect) and 49 CFR 571.120, Motor Vehicle Safety Standard No. 120, *Tire Selection and Rims for Vehicles Other Than Passenger Cars.* The basis of the petition is that the noncompliance and defect are inconsequential as they relate to motor vehicle safety.

Notice of the petition was published on February 19, 1981, and an opportunity afforded for comment (46 FR 13060).

The petition involves both a safety-related defect and a noncompliance with a Federal Motor Vehicle Safety Standard. The defect exists from failure to meet the certification regulations, 49 CFR Part 567. Section 567.4(g) (3) and (4) requires that the maximum load rating marked on the rear tire of a motorcycle be not less than the Rear Gross Axle Weight Rating ("RGAWR") of the machine.

From January through September 1980 Suzuki produced 6,675 1980 model and 1,500 1981 model GS1000 G model motorcycles with incorrectly marked certification labels. The RGAWR marked on the motorcycles is 668 pounds. The correct value is 640 pounds, 28 pounds less. The GVWR marked on the motorcycles is 1112 pounds. The correct value is 1084 pounds, 28 pounds less. The maximum load rating marked on the 4.50 V17-4PR rear tire is 640 pounds at 40 psi cold. The tire, however, is rated at 670 pounds up to 130 mph regardless of the 640 pounds marked on the sidewall. With respect to future production, Suzuki could have resolved

the noncompliances either by marking future tires with a 670 pound maximum load rating, or by marking future certification labels with a 640 pound RGAWR (1084 pounds GVWR). It has decided to change future certification labels.

The company argued that the noncompliances were inconsequential because the tire will not be overloaded even if the operator puts 668 pounds on it; and that its customers to date are not confused by the incorrect information. In addition, there should be no safety problem with replacement tires; the maximum load rating of the tire meets or exceeds RGAWR and all are rated up to 130 mph, identical to the tires in question.

No comments were received on the petition.

The actual rating of the tire is 670 pounds at 130 mph. Since the motorcycle is designed not be exceed this speed, the actual load capacity of the tire exceeds the erroneous RGAWR marked on the motorcycles (668 pounds) by a 2-pound margin. Thus no safety hazard has been created by Suzuki's error. Accordingly, petitioner has met its burden of persuasion and it is hereby determined that the noncompliances herein described are inconsequential as they relate to motor vehicle safety, and the petition by Suzuki Motor Co., Ltd. is here granted.

(Sec. 102, Pub. L. 93-492, 88 Stat. 1470 (15 U.S.C. 1417); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on September 22, 1981.

Michael M. Finkelstein,

Associate Administrator for Rulemaking.

[FR Doc. 81-28191 Filed 9-30-81; 8:45 am]

BILLING CODE 4910-59-M

[Docket No. EX81-2; Notice 2]

Vintage Reproductions, Inc., Petition for Temporary Exemption From Federal Motor Vehicle Safety Standards

This notice grants the petition by Vintage Reproductions, Inc. of Fort Lauderdale, Florida, for temporary exemption for its 1900 Series Horseless Carriages from certain safety standards on grounds of substantial economic hardship.

Notice of receipt of the petition was published on March 23, 1981, and an opportunity afforded for comment (46 FR 18138).

The company produces replicas of turn-of-the-century vehicles. It appears to manufacture about 100 such each year. Petitioner's 1900 series Horseless Carriages have received NHTSA exemptions twice previously (EX74-6, EX78-1). While its latest exemptions, which expired March 1, 1981, were in effect, it states that it has achieved conformance with Safety Standards Nos. 101, 102, 105, 106, 109, 110, 124, 207, 210, 212 and 301. The company now requests exemption from the following standards for the reasons indicated:

Standard No. 103, *Windshield Defrosting/Defogging Systems.*

Standard No. 104, *Windshield Wiping and Washing Systems.*

The vehicles are open, and not likely to be used in adverse weather. An electric wiping system is nonetheless supplied.

Standard No. 114, *Theft Protection.*

Standard No. 115, *Vehicle Identification Number.*

Due to its unique configuration, this vehicle would be readily identifiable if stolen. It has a VIN attached to the dash and number stamped into the frame.

Standard No. 201, *Occupant Protection in Interior Impact.*

Standard No. 203, *Impact Protection for the Driver From the Steering Control System.*

Standard No. 204, *Steering Control Rearward Displacement.*

The steering column is mounted vertically from the floor rather than having "the conventional wheel which is aimed directly at driver's chest."

Standard No. 202, *Head Restraints.*

The vehicle's maximum speed of 35 m.p.h. and use "for non-conventional purposes (parades, sales/marketing)" make it unlikely to be involved in accidents. Further, head restraints "would absolutely destroy the reproduction value."

Standard No. 208, *Occupant Crash Protection.*

Petitioner's basis for its request is unclear; however, under its previous exemption it was required to provide a Type 1 seat belt assembly at each designated seating position, though relieved of compliance with the remainder of the standard.

Standard No. 302, *Flammability of Interior Materials.*

The vehicle is open and occupants can easily jump free of it in the event of an accident.

A 3-year exemption is requested from each of the above standards.

In support of its petition the company argued that it is not likely that its replica vehicles will present a significant hazard to traffic safety. It believes the overall concept is such that the vehicles' appeal primarily is for occasional, limited use (*e.g.*, auto shows, resort use) rather than extensive daily use on the public roads. The company has over 25 full-time employees. In a recent 6-year period (May 1, 1974-April 30, 1980) it had a cumulative net loss of about $80,000. Therefore, compliance with any of the standards for which it requests exemption would cause it substantial economic hardship.

One comment was received on the petition, which opposed it, principally on the basis that petitioner was not sufficiently convincing in its arguments.

The agency notes with approval petitioner's representation that it now complies with 11 standards from which it was previously exempted. Also noted is that compliance was met during a time of economic loss for the petitioner. The ten that are the subject of the petition are those that appear to afford a continuing problem to a vehicle replicating a design 80 years old. Even if the petitioner was not confronted with the design and marketing constraints implicit in producing a replica, it would be subject to the substantial developmental production and test costs involved in achieving and demonstrating compliance. NHTSA's past grants of temporary exemption from these standards have not contributed to or resulted in, so far as is known, any accidents or injuries involving these vehicles, and supports petitioner's arguments that these machines are for limited use and do not present a significant threat to traffic safety. The Administrator has determined and now finds that immediate compliance with the standards discussed herein would cause the petitioner substantial economic hardship, and that an exemption is in the public interest and consistent with the objectives of the National Traffic and Motor Vehicle Safety Act, with one exception: the manufacturer has not shown that providing lap belts would create a hardship, and it thus is not exempted from that requirement of Standard No. 208.

For the reasons expressed above, Vintage Reproductions, Inc. is hereby granted NHTSA Exemption No. 81-2, expiring July 1, 1984, from the following Federal motor vehicle safety standards: 103, 104, 111, 115, 201, 202, 203, 204, 208 (except for that portion of § 4.1.2.3.2 that requires a Type 1 seat belt assembly at each designated seating position), and 302.

(Sec. 3, Pub. L. 92-548, 86 Stat. 1159 (15 U.S.C. 1410); delegation of authority at 49 CFR 1.50)

Issued on September 23, 1981.

Raymond A. Peck, Jr.,

Administrator.

[FR Doc. 81-28092 Filed 9-30-81; 8:45 am]

BILLING CODE 4910-59-M

[Docket No. IP81-7; Notice 2]

Firestone Tire & Rubber Co.; Grant of Petition for Determination of Inconsequential Noncompliance

This notice grants the petition by the Firestone Tire & Rubber Co. of Akron, Ohio, to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) for a noncompliance with 49 CFR 571.109, Motor Vehicle Safety Standard No. 109, *New Pneumatic Tires—Passenger Cars.* The basis of the petition was that the noncompliance is inconsequential as it relates to motor vehicle safety.

Notice of the petition was published on March 12, 1981, and an opportunity afforded for comment (46 FR 18493).

Paragraphs S4.3 (b) and (c) of Standard No. 109 require that the sidewalls of each passenger car tire be labelled with the maximum permissible inflation pressure and maximum load rating. Firestone manufactured an unknown number of P195/75R14 Deluxe Champion Radial polyester fiberglass tires incorrectly marked on the serial, or blackwall side, as "MAX. LOAD 635 kg (1400 lbs.) AT 240 kPa (35 P.S.I.) MAX. LOAD." However, the white sidewall side was correctly marked with the words "MAX. LOAD 635 kg (1400 lbs.) AT 240 kPa (35 P.S.I.) MAX. PRESS." Firestone argued that the noncompliance was inconsequential because the white sidewall side is usually the side mounted outboard to the vehicle, the letters P.S.I. clearly refer to inflation pressure precluding confusion, and the sequencing of the words in the label virtually eliminates the possibility of misinterpreting the stamping.

No comments were received on the petition.

The National Highway Traffic Safety Administration concurs with petitioner's argument that the noncompliance herein described is not likely to cause confusion. In the rare instance in which a blackwall side might be mounted outwards, the P.S.I. marking after the figure "35" would clearly indicate pressure rather than load. Accordingly, petitioner has met its burden of persuasion and it is hereby found that the noncompliance with Motor Vehicle Safety Standard No. 109 herein described is inconsequential as it relates to motor vehicle safety.

The engineer and attorney primarily responsible for this notice are Art Neill and Taylor Vinson, respectively.

(Sec. 102, Pub. L. 93-492, 89 Stat. 1470 (15 U.S.C. 1417); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on September 24, 1981.

Michael M. Finkelstein,

Associate Administrator for Rulemaking.

[FR Doc. 81-28359 Filed 9-30-81; 8:45 am]

BILLING CODE 4910-59-M

Automotive Fuel Economy; Denial of Petition

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Denial of petition.

SUMMARY: This notice announces the denial of a petition from the Center for Auto Safety. That petition requested that the agency continue rulemaking on post-1985 average fuel economy improvements for passenger automobiles and light trucks. The agency previously announced the termination of that rulemaking. See 46 FR 22243, April 16, 1981. The petitioner's main argument for reconsidering this decision is that the agency should not rely on market forces alone to guarantee improvements in fuel efficiency, particularly in view of limited improvements achieved prior to the establishment of a fuel economy standards program. However, the current market situation is considerably different from that of the early 1970's, in light of major gasoline price increases and threats to continued gasoline supply occurring over the past 3 years. The agency continues to find that, given the strong consumer demand for fuel efficient vehicles and the manufacturers' product plans to achieve major fuel economy improvements through 1985, there is no need to pursue rulemaking at this time. However, the agency will continue to monitor the efforts of the vehicle manufacturers to achieve fuel economy improvements consistent with national energy needs.

FOR FURTHER INFORMATION CONTACT: Mr. Stanley Scheiner, Office of Automotive Fuel Economy Standards (NRM-22), National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590 (202-472-5906).

(Sec. 9, Pub. L. 89-670, 80 Stat. 931 (49 U.S.C. 1657); Sec. 301, Pub. L. 94-163, 89 Stat. 901 (15 U.S.C. 2002); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on September 25, 1981.

Michael M. Finkelstein,

Associate Administrator for Rulemaking.

[FR Doc. 81-28320 Filed 9-30-81; 8:45 am]

BILLING CODE 4910-59-M

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 August 1981. 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		
2709-X	DOT-E 2709	U.S. Department of Defense, Washington, DC.	49 CFR 173.52, 177.834(l)(1)	To authorize the shipment of a Class A liquid explosive in non-DOT specification specially designed drums and containers. (Mode 1.)
3569-X	DOT-E 3569	NL McCullough/NL Industries, Incorporated, Houston, TX.	49 CFR 173.246, 172.101 column 4, 175.3.	To authorize use of non-DOT specification cylinder for shipment of a liquid oxidizer. (Modes 1, 2, 3, and 4.)
3600-X	DOT-E 3600	U.S. Department of Defense, Washington, DC.	49 CFR 172.101, 172.300, 173.87	To authorize shipment of Lance rocket engines in specific configurations which contain class B and Class C explosives. (Modes 1, and 2.)
4459-X	DOT-E 4459	Lif-O-Gen American Life Support Corporation, Cambridge, MD.	49 CFR 173.302(a)(1), 173.304(a)(1), 173.328(a)(2), 173.353(a)(3), 175.3, 178.37.	To authorize the use of a non-DOT specification cylinder for shipment of flammable gases, nonflammable gases, Class A poisons, Class B poisons and mixtures thereof. (Modes 1, 2, and 4.)
5022-X	DOT-E 5022	U.S. Department of Defense, Washington, DC.	49 CFR 174.101(i), 174.104(d), 174.112(a), 174.86, 177.834(l)(1).	To authorize the shipment of certain Class A and Class B explosives in temperature controlled equipment. (Modes 1, and 2.)

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
5179-X	DOT-E 5179	Union Carbide Corporation, Tarrytown, NY.	49 CFR 173.302, 173.304, 178.45-17	To authorize use of cylinders not marked to DOT specification for shipment of certain flammable and nonflammable compressed gases. (Modes 1 and 3.)
5248-X	DOT-E 5248	Lawrence Livermore Laboratory, Livermore, CA.	49 CFR 173.389(g) 175.3	To authorize the shipment of a certain quantity of polonium-210 in any DOT Specification approved outer Type A packaging. (Modes 1, 2, 4, and 5.)
5746-X	DOT-E 5746	U.S. Department of Defense, Washington, DC.	49 CFR 172.101, 173.145, 173.268, 175.3, 176.83(b).	To authorize shipment of contaminated missile components or detanking pumps containing a certain flammable liquid and a corrosive liquid packaged in wooden boxes or metal drums. (Modes 1, 2, 3 and 4.)
5777-X	DOT-E 5777	U.S. Department of Defense, Washington, DC.	49 CFR 172.101, 173.93(c)	To authorize shipment of certain propelling charges with primer or igniter, or both; class B explosives packaged in specific cylindrical type metal containers. (Modes 1 and 2.)
5876-X	DOT-E 5876	FMC Corporation, Philadelphia, PA	49 CFR 107 App B, 173.365, 178.241	To authorize several alternative packaging methods to those prescribed in the regulations for a Class B poslon. (Modes 1, 2 and 3.)
5945-X	DOT-E 5945	Chemetron Corporation, Countryside, IL	49 CFR 173.315, 178.245	To authorize the use of a small capacity DOT Specification 51 portable tank for shipment of a nonflammable compressed gas. (Mode 1.)
6232-X	DOT-E 6232	U.S. Department of Defense, Washington, DC.	49 CFR 172.101, 173.102, 173.108, 173.176, 173.87, 175.3.	To authorize shipment of a nonflammable gas, Class C explosive, and a flammable solid to be packed in the same outside package. (Modes 1, 3 and 4.)
6267-X	DOT-E 6267	Alden Leeds, Inc., South Kearny, NJ	49 CFR 173.217(a)	To authorize the transportation of certain oxidizers in Non-DOT specification double-faced fiberboard boxes. (Modes 1, 2 and 3.)
6530-P	DOT-E 6530	MG Burdett Gas Products Company, Conshohocken, PA.	49 CFR 173.302(c)	To become a party to Exemption 6530. (Modes 1 and 2.)
6658-X	DOT-E 6658	U.S. Department of Energy, Washington, DC..	49 CFR 173.21(b), 173.64(a)	To authorize use of a non-DOT specification specially designed steel drum for a certain Class A explosive. (Mode 1.)
6694-P	DOT-E 6694	Compagnie des Containers Reservoirs, Paris France.	49 CFR 173.315	To become a party to Exemption 6694. (Modes 1, 2, and 3.)
6702-X	DOT-E 6702	Dow Chemical Company, Midland, MI	49 CFR 173.242(a), 173.25, 173.266(c), 175.3.	To authorize use of glass or plastic bottles overpacked in a DOT Specification 12A fiberboard box for certain corrosive liquids. (Modes 1, 2, 3 and 4.)
6755-X	DOT-E 6755	Lincoln Welding Supply Company, Lincoln, NB.	49 CFR 173.315(a)(1)	To authorize shipment of liquid argon, nitrogen, and oxygen in non-DOT specification cargo tanks. (Mode 1.)
6759-X	DOT-E 6759	Austin Powder Company, Cleveland, OH	49 CFR 173.87, 177.835(g)(2)	To authorize shipment of Class A or B exposives in an IME 22 container or compartment on the same vehicle with non-mass detonating blasting caps. (Mode 1.)
6759-X	DOT-E 6759	Hercules, Incorporated, Wilmington, DE	49 CFR 173.87, 177.835(g)(2)	To authorize shipment of Class A or B explosives in an IME 22 container or compartment on the same vehicle with non-mass detonating blasting caps. (Mode 1.)
6810-X	DOT-E 6810	U.S. Department of the Interior, Amarillo, TX.	49 CFR 173.302(a)(1)	To authorize shipment of a nonliquefied, nonflammable compressed gas in seamless steel tanks(tubes) made in compliance with DOT 107A except they are not mounted on a rail car. (Mode 1.)
			Renewal and Party to Exemptions	
7285-P	DOT-E 7285	Compagnie des Containers Reservoirs, Paris, France.	49 CFR 173.315(a)	To become a party to Exemption 7285. (Modes 1, 2 and 3.)
7466-X	DOT-E 7466	Firmenich Incorporated, Princeton, NJ	49 CFR 173.119(a)(7), 175.3	To authorize use of an aluminum can overpacked in a fiberboard box for shipment of certain flammable liquid mixtures. (Modes 1, 2, 3, 4.)
7476-X	DOT-E 7476	Thompson Tank & Manufacturing Co., Inc., Long beach, CA.	49 CFR 173.119(a), 173.119(m), 173.245(a), 173.346(a) 178.340-7, 178.342-5, 178.343-5.	To authorize the manufacture, marking, and sale of certain non-DOT specification cargo tanks for use in the transportation of certain flammable liquids and corrosive liquids. (Mode 1.)
7685-X	DOT-E 7685	Cordova Chemical Company Sacramento, CA.	49 CFR 173.65(b)	To authorize use of DOT Specification 21C fiber drum with two 4 mil inner polyethylene film bags as packaging for a certain Class A explosive. (Mode 1.)
7730-X	DOT-E 7730	Western Company of North America, Fort Worth, TX.	49 CFR 178.343-5(b)(2)	To authorize use of a DOT Specification MC-312 cargo tank for transportation of certain corrosive materials. (Mode 1.)
7755-X	DOT-E 7755	Vanan Associates, Inc., Palo Alto, CA	49 CFR Parts 100-199	To authorize small quantities of liquid hazardous materials in prescribed packagings essentially without regulation. (Modes 1, 2, 3, 4 and 5.)
7891-P	DOT-E 7891	Sigma Chemical Company, St. Louis, MO	49 CFR 172.400, 172.402(a)(2), 172.402(a)(3) 172.504(a), 172.504, Table 1, 173.25(a)..	To become a party to exemption7891. modes 1 and 2.)
7891-P	DOT-E 7891	Aldrich Chemical Company, Milwaukee, WI.	49 CFR 172.400, 172.402(a)(2), 172.402(a)(3), 172.504(a), 172.504, Table 1, 173.25(a)..	To become a party to Exemption 7891. (Modes 1 and 2.)
7911-X	DOT-E 7911	Richmond Lox Equipment Company, Livermore, CA.	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.)
7943-X	DOT-E 7943	Hill Brothers Chemical Company, Orange, CA.	49 CFR 173.263(a)(15), 173.272(c), 173.272(i)(12), 173.277(a)(1).	To authorize shipment of corrosive liquids in fiberboard boxes complying with DOT Specification 12B except for handholes in top flaps. (Mode 1.)
8000-X	DOT-E 8000	Fauvet-Girel, Paris, France	49 CFR Part 173 Subpart D, F and H	To authorize shipment of certain flammable and poison B liquids in non-DOT specification ISO portable tanks. (Modes 1, 2 and 3.)
8012-X	DOT-E 8012	Compagnie des Containers Reservoirs, Paris, France.	49 CFR 173.266	To authorize the transportation of an oxidizer in non-DOT specification portable tanks. (Modes 1, 2 and 3.)
8012-X	DOT-E 8012	Bignier Schmid-Laurent, Paris, France	49 CFR 173.266	To authorize the transportation of an oxidizer in non-DOT specification portable tanks. (Modes 1, 2 and 3.)
8012-X	DOT-E 8012	United Tank Container, Incorporated, New York, NY.	49 CFR 173.266	To authorize the transportation of an oxidizer in non-DOT specification portable tanks. (Modes 1, 2 and 3.)
8015-X	DOT-E 8015	Degussa, Frankfurt, West Germany	49 CFR 173.166, 173.263, 173.352	To authorize the use of non-DOT specification portable tanks for the transportation of various hazardous materials. (Modes 1, 2 and 3.)
8046-X	DOT-E 8046	Degussa, Frankfurt, West Germany	49 CFR 173.247	To authorize the use of non-DOT specification portable tanks for the transportation of certain corrosive liquids. (Modes 1, 2 and 3.)
8055-X	DOT-E 8055	American Cyanamid Company, Wayne, NJ.	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 and 3.)
8131-X	DOT-E 8131	National Aeronautics and Space Administration, Washington, DC.	49 CFR 173.301(d), 173.302(a), 173.34(d), 175.3.	To authorize the use of a non-DOT specification portable tank made of inconel 718 metal for shipment of a nonflammable gas. (Modes 1, 2 and 4.)

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
8171-X	DOT-E 8171	Sea Containers, Inc., London, England	49 CFR 173.119, 173.125, 173.128, 173.129, 173.131, 173.132 173.144, 173.245, 173.346, 46 CFR 90.05-35.	To authorize shipment of various liquid hazardous materials in non-DOT specification IMCO type II portable tanks. (Modes 1, 2 and 3.)
8175-X	DOT-E 8175	Norac Company, Incorporated, Azusa, CA.	49 CFR 173.157(a)(4), 178.224	To authorize shipment of benzoyl peroxide, wet, in a plastic lined DOT Specification 21C fiber drum, without an inside polyethylene container. (Mode 1.)
		Renewal and Party to Exemptions		
8177-X	DOT-E 8177	A. O. Smith-Inland, Inc. Little Rock, AK	49 CFR 173.245(a)(12), 175.3	To authorize the shipment of a material corrosive to the skin, but not to metal, in a non-DOT specification metal can, overpacked with a nonhazardous material in a DOT Specification 12B fiberboard box (Modes 1, 2, 3 and 4.)
8178-X	DOT-E 8178	National Aeronautics and Space Administration, Washington, DC.	49 CFR 173.302(a), 173.34(d), 175.3	To authorize the use of a non-DOT specification composite cylinder for a compressed nonliquefied gas. (Modes 1 and 4.)
8182-X	DOT-E 8182	Societe Parlefer, Paris, France	49 CFR 173.348	To authorize the use of non-DOT specification intermodal portable tanks for the transportation of a Poison B solution. (Modes 1, 2 and 3.)
8182-X	DOT-E 8182	Fauvet-Girel, Paris, France	49 CFR 173.348	To authorize the use of non-DOT specification intermodal portable tanks for the transportation of a Poison B solution. (Modes 1, 2, and 3.)
8179-X	DOT-E 8197	Container Corporation of America, Wilmington, DE.	49 CFR Part 173, Subparts D, E, F	To authorize the use of a non-DOT specification 35-gallon polyethylene container for shipment of certain corrosive, flammable and Poison B liquids and liquid organic peroxides. (Modes 1, 2 and 3.)
8212-X	DOT-E 8212	Embassy of Switzerland, Washington DC	49 CFR 172.101, 173.87, 175.3	To authorize the transportation of Class A and Class B rocket ammunition by cargo-only aircraft. (Mode 4.)
8213-X	DOT-E 8213	Trailmaster Tanks, Incorporated, Fort Worth, TX.	49 CFR 173.119(a)(17), 173.245(a)(30), (31), 178.342-5, 178.343-5.	To manufacture, mark and sell non-DOT specification cargo tanks complying generally with DOT Specification MC-307/312 except for bottom outlet valve variations for shipment of flammable or corrosive waste liquids or semi-solids. (Mode 1.)
8217-X	DOT-E 8217	Compagnie des Containers Reservoirs, Paris, France.	49 CFR Part 173 Subpart D, F, H, J & K	To authorize shipment of flammable, combustible, corrosive, and poison liquids, and ORM-A materials in non-DOT specification ISO portable tanks. (Modes 1, 2 and 3.)
8222-X	DOT-E 8222	Compagnie des Containers Reservoirs, Paris, France.	49 CFR 173.245a	To authorize the use of a non-DOT specification portable tank for the transportation of a corrosive material. (Modes 1 and 3.)
8228-X	DOT-E 8228	Bureau of Alcohol, Tobacco and Firearms, Washington, DC.	49 CFR 173.100(bb), 173.113(a)(1), 173.86.	To authorize the transportation of packages containing not in excess of 35 grams of one type of explosive material or one explosive device, not exceeding 35 grams, in any one package. (Mode 1.)
8232-X	DOT-E 8232	ANF Industries, Paris, France	49 CFR 173.315(a)	To authorize use of a non-DOT specification portable tank for the transportation of certain compressed gases. (Modes 1, 2 and 3.)
8232-X	DOT-E 8232	Societe Auxiliarie de Transports et d'Industries Paris, France.	49 CFR 173.315(a)	To authorize use of a non-DOT specification portable tank for the transportation of certain compressed gases. (Modes 1, 2 and 3.)
8253-X	DOT-E 8253	Allied Drum Service, Incorporated, Louisville, KY.	49 CFR 173.28(o), 178.118-10(a)	To provide for the conversion of a non-DOT specification 55-gallon steel drum to an open-head, DOT Specification 17H drum. (Modes 1, 2 and 3.)
8254-X	DOT-E 8254	Applied Environments Corporation, Van Nuys, CA.	49 CFR 173.302(a), 175.3	To authorize the use of a non-DOT specification sphere for shipment of certain nonflammable gases. (Modes 1, 2 and 4.)
8255-X	DOT-E 8255	Applied Environments Corporation, Van Nuys, CA.	49 CFR 173.302	To authorize the use of a non-DOT specification cylinder for shipment of certain nonflammable gases. (Modes 1, 2 and 4.)
8260-X	DOT-E 8260	Boyonne Barrel and Drum Company, Newark, NJ.	49 CFR 173.28(o), 178.118-10(a)	To provide for the conversion of a non-DOT specification 55-gallon steel drum to an open-head, DOT Specification 17H drum. (Modes 1, 2 and 3.)
8264-X	DOT-E 8264	Hercules, Incorporated, Wilmington, DE	49 CFR 173.93	To authorize shipment of certain solid propellant explosives (Class B) and smokeless powders for small arms (flammable solids) in non-DOT specification fiber cans or tubes packed in fiberboard boxes. (Modes 1 and 2.)
8265-X	DOT-E 8265	Hercules, Incorporated, Wilmington, DE	49 CFR 173.197a, 173.93, 177.838(g)	To authorize transportation of solid propellant explosives and smokeless powder for small arms in non-DOT specification fiber tubes and 21C fiber drums packed in fiberboard boxes. (Modes 1 and 2.)
8285-P	DOT-E 8285	U.S. Environmental Protection Agency, Washington, DC.	49 CFR Parts 100-199	To become a party to Exemption 8285. (Modes 1, 2, 3, 4 and 5.)
		Renewal and Party to Exemptions		
8332-P	DOT-E 8332	Calgon Corporation, Pittsburgh, PA	49 CFR 173.245, 173.276	To become a party to Exemption 8332. (Modes 1 and 2.)
8441-P	DOT-E 8441	Eagle-Picher Industries, Inc., Joplin, MO	49 CFR 172.101	To become a party to Exemption 8441. (Mode 1.)
8544-P	DOT-E 8544	Compagnies des Containers Reservoirs, Paris, France.	49 CFR 173.118a, 173.119, 173.125, 173.245, 173.346.	To become a party to Exemption 8544. (Modes 1, 2 and 3.)
		New Exemptions		
8511-N	DOT-E 8511	Oxychem Company, New York, NY	49 CFR 173.266(f)	To authorize shipment of 70% hydrogen peroxide solution in water in DOT Specification MC-310 or MC-312 cargo tanks and 103GW or 111A60W7 tank cars constructed of stainless steel. (Modes 1 and 2.)
8544-N	DOT-E 8544	Hugonnet, S.A., Paris, France	49 CFR 173.118a, 173.119, 173.125, 173.245, 173.346.	To authorize shipment of various flammable, corrosive, combustible, poison B liquids and ORM-A materials, in non-DOT specification IMCO Type 1 portable tanks. (Modes 1, 2 and 3.)
8579-N	DOT-E 8579	E. I. du Pont de Nemours, & Company, Inc., Wilmington, DE.	49 CFR 176.410(d)	To authorize shipment of ammonium nitrate fertilizer in strapped or stretch wrapped palletized loaded bags aboard cargo vessel exempt from spacing criteria for bags and location. (Mode 3.)
8620-N	DOT-E 860	Polar Manufacturing Company, St. Cloud, MN.	49 CFR 173.119(a), 173.119(m), 173.245(a), 173.346(a), 178.340-7, 178.342-5, 178.343-5.	To manufacture, mark and sell non-DOT specification cargo tanks complying generally with DOT Specification MC-307/312 except for bottom outlet valve variations for transportation of flammable or corrosive waste liquids or semi-solids. (Mode 1.)
8621-N	DOT-E 8621	Sealand Terminal Corporation, Gulfport, MS.	49 CFR 176.415(c)(2)	To authorize loading of ammonium nitrate mixtures containing more than 60% ammonium nitrate with no organic coating contained in combustible packagings on a break-bulk basis at a non-isolated facility. (Mode 3.)
8624-N	DOT-E 8624	General American Transportation Corporation, Masury, OH.	49 CFR 173.190	To manufacture, mark and sell DOT Specification 51 portable tanks for shipment of yellow phosphorus, in water. (Modes 1, 2 and 3.)

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
8624-N	DOT-E 8626	Fiber Industries, Inc., Charlotte, NC	49 CFR 173.245(a)	To authorize shipment of orthochlorophenol, classed as a corrosive liquid, n.o.s. in non-DOT specification stainless steel portable tanks. (Mode 1.)
8632-N	DOT-E 8632	Lorentz Barrel & Drum Company, Inc., San Jose, CA.	49 CFR 173.28(m)(3), 175.3, 178.118-10(a).	To authorize conversion of non-DOT specification tight head 18 gauge steel 55 gallon drums to DOT specification 17H except for marking location for shipment of all commodities authorized in a DOT Specification 17H drum. (Modes 1, 2, 3 and 4.)
8637-N	DOT-E 7708	HTL Industries, Inc., Duarte, CA	49 CFR 173.302(a), 175.3, 178.44	To manufacture, mark and sell non-DOT specification girth welded stainless steel cylinders otherwise similar to DOT Specification 3HT for shipment of compressed air, classed as a nonflammable gas. (Modes 1, 2, 4 and 5.)
8649-N	DOT-E 8649	Burris Chemical, Inc., Charleston, SC	49 CFR 173.245	To authorize shipment of acetic acid, glacial and acetic acid (aqueous solutions) in stainless steel DOT Specification 57 portable tanks. (Mode 1.)
		Renewal and Party to Exemptions		
8650-N	DOT-E 8650	Ethyl Corporation, Baton Rouge, La	49 CFR 173.354	To authorize Shipment of motor fuel antiknock compound, poison B liquid, in portable tanks complying with DOT Specification 51 except for grain of steel and without the ASME Code stamp. (Modes 1, 2 and 3.)
8651-N	DOT-E 8651	Rockwell International Corporation, Canoga Park, CA.	49 CFR 173.119, 173,302(a), 173.328(a), 173.336(a).	To authorize the transportation of nitrogen tetroxide and monomethylhydrazine in separate tanks mounted on a motor vehicle chassis. (Mode 1.)
8654-N	DOT-E 8654	Isomedix, Inc., Whippany, NJ	49 CFR 173.394(b)(1)(5)(6)	To authorize shipment of special form radioactive materials in DOT Specification 55 containers build after March 1975. (Modes 1 and 2.)
8655-N	DOT-E 8655	Western Electric Company, Greensboro, NC.	49 CFR 173.352(a)(1)	To authorize shipment of a cyanide solution, n.o.s., classed as a poison B, in DOT Specification 6D steel overpack with inside Specification 2S or 2SL polyethylene container. (Mode 1.)
8657-N	DOT-E 8657	Celanese Chemical, Company, Inc., Dallas, TX.	49 CFR 173.289(a)(2)	To authorize shipment of 95% formic acid in lined aluminum DOD Specification 111A60ALW tank cars. (Mode 2.)
8661-N	DOT-E 8661	Ethyl Corporation, Baton Rouge, LA	49 CFR 173.119(m)	To authorize shipment of a flammable liquid, n.o.s., which is also a poison B liquid in DOT Specification 51 portable tanks. (Modes 1, 2 and 3.)
8662-N	DOT-E 7891	Sigma-Aldrich Corporation, St. Louis, MO	49 CFR 172.400, 172.402(a)(2), 172.402(a)(3), 172.504(a), 172.504, Table 1, 173.25(a).	To authorize shipment of certain small quantities of Class B poisonous liquids, flammable liquids, flammable solids, oxidizers and corrosive materials in specially designed packagings exempt from labeling and flammable solids from placarding requirements. (Modes 1 and 2.)
		Emergency Exemptions		
EE 8697-N	DOT-E 8697	ERA Helicopters, Inc., Anchorage, AK	49 CFR 172.101, 175.30(a)(1)	To authorize the transportation of propane in DOT Specification 4B240, 4BA240, 4BW240 cylinders via helicopter utilizing sling loads. (Mode 4.)
EE 8704-N	DOT-E 8704	Thiokol Corporation, Elkton, MD	49 CFR 172.101 column 6(b)	To authorize the shipment of two rocket motors having excess gross weight. (Mode 4.)
EE 8708-N	DOT-E 8708	Great Lakes Chemical Corporation, West Lafayette, IN.	49 CFR 173.357(b)	To authorize the use of non-DOT specification steel drums for the shipment of a poison B. (Mode 1.)

WITHDRAWALS

Application No.	Applicant	Regulations(s) affected	Nature of exemption thereof
4497-X	Red Ball Supply, Inc., Oklahoma City, OK	49 CFR 172.101, 173.315(a)	To authorize use of non-DOT specification cargo tanks for shipment of certain nonflammable gases. (Mode 1.)
6861-P	GOEX, Inc., Cleburne, TX	49 CFR 173.65(a)	To become a party to Exemption 6861. (Mode 1.)
8670-N	Oriole Chemical Carriers,Inc., Baltimore, MD	49 CFR 172.101, 172.203(a), 172.328(a)(e), 172.334(b)(d).	To authorize the transportation of sodium hydroxide and potassium hydroxide in MC-312 cargo tanks which dispaly only one identification number for materials which require identical emergency response treatment. (Mode 1.)

8600-N	Request by CanOcean Resources Ltd., New Westminster, Canada to manufacture, mark and sell non-DOT specification fusion welded tank car tanks built in accordance with proposed Specification 220A500W for shipment of chlorine denied August 10, 1981.
8622-N	Request by Department of Defense, Washington, DC to de-regulate or classify other than an explosive, Triaminotrinitrobenzene (TATB) and munitions containing TATB denied August 18, 1981.
8634-N	Request by International Minerals & Chemical Corporation, Allentown, PA to authorize shipment of pentaerythrite tetranitrate containing at least 25% water, by weight packed in bags overpacked in a non-DOT specification fiberboard box complying with IMCO requirements denied August 26, 1981.
8677-N	Request by International Mineral & Chemical Corporation, Allentown, PA to authorize shipment of a high explosive, Class A in non-DOT specification 5 gallon capacity polyethylene pails denied August 18, 1981.

Issued in Washington, DC, on September 17, 1981.

J. R. Grothe,

Chief, Exemptions Branch, Office of Hazardous Materials Regulation, Materials Transportation Bureau.

[FR Doc. 81-27792 Filed 9-30-81; 8:45 am]

BILLING CODE 4910-60-M

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 July 1981. 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	
1479-P	DOT-E 1479	Jet Propulsion Laboratory, Pasadena, CA	49 CFR 173.315(a)(1)	To become a party to Exemption 1479. (Mode 1.)
2709-X	DOT-E 2709	Hercules, Inc. Wilmington, DE	49 CFR 173.52, 177.834(f)(1)	To authorize the shipment of a Class A liquid explosive in non-DOT specification containers. (Mode 1.)
2805-X	DOT-E 2805	Allied Corp., Petersburg, VA	49 CFR 172.101, 173.315(a)(1)	To authorize shipment of liquefied ethylene in non-DOT specification insulated cargo tanks. (Mode 1.)
3121-X	DOT-E 3121	U.S. Department of Defense, Washington, DC.	49 CFR 173.336(a), 177.841(b)	To authorize the use of non-DOT specification cargo tanks for the transportation of a certain Class A poisonous liquid. (Mode 1.)
3134-X	DOT-E 3134	Hooker Chemical Co., Houston, TX	49 CFR 173.249(a)(5), 179.200-4(a)	To authorize the use of a DOT Specification 103W or 111A100W1 tank car having an insulated jacket constructed or reinforced polyester resin for shipment of a corrosive liquid. (Mode 2.)
3367-X	DOT-E 3367	Air Products and Chemicals, Inc., Allentown, PA.	49 CFR 173.315(a), 173.316	To authorize non-DOT specification vacuum insulated cargo tanks for shipment of liquefied hydrogen. (Mode 1.)
4262-X	DOT-E 4262	Schlumberger Well Services; Houston, TX	49 CFR 172.101, 173.53(u), 173.80	To authorize shipment of charged oil well jet perforating guns with initiators attached. (Mode 1.)
4400-X	DOT-E 4400	AIRCO Industrial Gases, Murray Hill, NJ	49 CFR 172.101, 173.315(a)	To authorize the shipment of liquefied hydrogen and pressurized liquid helium in non-DOT specification insulated cargo tanks. (Modes 1, and 3.)
4719-X	DOT-E 4719	Dow Chemical Co., Freeport, TX	49 CFR 173.314(c), 173.315(a)(1)	To authorize the shipment of certain compressed gases not listed in 49 CFR 173.314 and 173.315, in DOT. Specification cargo tanks and tank cars. (Modes 1 and 2.)
4719-X	DOT-E 4719	Allied Corp., Morristown, NJ	49 CFR 173.314(c), 173.315(a)(1)	To authorize the shipment of certain compressed gases not listed in 49 CFR 173.314 and 173.315, in DOT. Specification cargo tanks and tank cars. (Modes 1 and 2.)
5022-X	DOT-E 5022	United Technologies Corp., Sunnyvale, CA.	49 CFR 174.101(i), 174.104(d), 174.112(a), 174.86, 177.834(f)(1).	To authorize the shipment of certain Class A and Class B explosives in temperature controlled equipment. (Modes 1 and 2.)
5022-X	DOT-E 5022	The Boeing Co., Seattle, WA	49 CFR 174.101(i), 174.104(d), 174.112(a), 174.86, 177.834(f)(1).	To authorize the shipment of certain Class A and Class B explosives in temperature controlled equipment. (Modes 1 and 2.)
5062-X	DOT-E 5062	Dow Chemical Co., Midland, MI	49 CFR 172.101, 173.315(a)	To authorize the transportation of liquefied hydrogen chloride in DOT Specification MC-330 or MC-331 cargo tanks. (Mode 1.)
5248-X	DOT-E 5248	3M Co., St. Paul, MN	49 CFR 173.389(g), 175.3	To authorize the shipment of a certain quantity of polonium-210 in any DOT specification approved outer Type A packaging. (Modes 1, 2, 4, and 5.)
			Renewal and Party to Exemptions	
5248-X	DOT-E 5248	The Boeing Co., Seattle, WA	49 CFR 173.389(g), 175.3	To authorize the shipment of a certain quantity of polonium-210 in any DOT specification approved outer Type A packaging. (Modes 1, 2, 4, and 5.)
5520-P	DOT-E 5520	Oxy Metal Industries Corp., Morenci, MI	49 CFR 173.245(a), 173.256(a)	To become a party to Exemption 5520. (Modes 1, 2, and 3.)
5600-X	DOT-E 5600	Ozark-Mahoning Co., Tulsa, OK	49 CFR 175.3, Part 173	To authorize the shipment of certain flammable or nonflammable compressed gases, flammable or corrosive liquids in a cylinder made to DOT 3A specifications except monel metal may be used rather than steel. (Modes 1, 2, and 4.)
5662-X	DOT-E 5662	Dow Chemical Co., Midland, MI	49 CFR 173.353(a), 173.353a	To authorize the use of a DOT Specification 51 portable tank for shipment of certain class B poisonous liquids. (Modes 1, 2, and 3.)
5662-X	DOT-E 5662	Great Lakes Chemical Corp., El Dorado, AR.	49 CFR 173.353(a), 173.353a	To authorize the use of a DOT Specification 51 portable tank for shipment of certain class B poisonous liquids. (Modes 1, 2, and 3.)
5923-X	DOT-E 5923	Union Carbide Corp., Tarrytown, NY	49 CFR 173.148(a)(4), 173.314	To authorize transportation of certain gases in DOT Specification 106A500X and 110A500W multi-unit tank cars, for shipment of certain flammable and nonflammable gases. (Modes 1, 2, and 3.)
5945-X	DOT-E 5945	Air Products and Chemicals, Inc., Allentown, PA.	49 CFR 173.315, 178.245	To authorize the use of a small capacity DOT Specification 51 portable tank for shipment of a nonflammable compressed gas. (Mode 1.)
6016-X	DOT-E 6016	Livingston Medical Products Co., Modesto, CA.	49 CFR 173.315(a)	To authorize shipment of liquid oxygen, nitrogen, and argon in non-DOT specification portable tanks. (Mode 1.)
6092-X	DOT-E 6092	Fisher Scientific Co., Fair Lawn, NJ	49 CFR 173.25(b)	To authorize certain concentrations of nitric acid or perchloric acid to be transported in glass bottles overpacked in DOT Specification 33A polystyrene cases. (Modes 1 and 2.)
6126-X	DOT-E 6126	Dow Chemical Co., Midland, MI	49 CFR 173.253(a)	To authorize shipment of chloroacetyl chloride in DOT specification 6D/2S or 2SL composite packaging. (Modes 1, and 3.)
6128-X	DOT-E 6128	Hapag-Lloyd, Hamburg, Germany	49 CFR 173.119, 173.125(a), 173.245(a), 173.346(a).	To authorize use of non-DOT specification intermodal portable tanks for shipment of certain hazardous materials. (Modes 1, 2, and 3.)
6228-X	DOT-E 6228	Air Products and Chemicals, Inc., Allentown, PA.	49 CFR 173.301(d)(4)	To authorize the use of DOT Specification 8 or DOT Specification 8 AL cylinders which are manifolded for shipment of a flammable compressed gas. (Mode 1.)
6267-X	DOT-E 6267	Georgia-Pacific Corp., Montebello, CA	49 CFR 173.217(a)	To authorize the transportation of certain oxidizers in non-DOT specification double-faced fiberboard boxes. (Modes 1, 2, and 3.)
6416-X	DOT-E 6416	Allied Corp., Morristown, NJ	49 CFR 179.101-1(a)	To authorize shipment of monochloro-difluoromethane in DOT Specification 105A200W tanks. (Mode 2.)
6477-X	DOT-E 6477	E.I. du Pont de Nemours & Co., Inc., Wilmington, DE.	49 CFR 173.66(c)	To authorize the shipment of a Class A explosive in non-DOT specification packaging. (Modes 1 and 2.)

—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
			Renewal and Party to Exemptions	
6543-X	DOT-E 6543	M & T Chemicals, Inc., South San Francisco, CA.	49 CFR 173.135(a)(6), 173.136(a)(5), 173.247, 173.304, 175.3.	To authorize the shipment of certain corrosive and flammable liquids or gases in non-DOT specification 16 gauge, 304 stainless steel cylinders and/or 14 gauge 316 stainless steel cylinders.(Modes 1, 2, and 4.)
6657-X	DOT-E 6657	Liquid Air Corp., San Francisco, CA	49 CFR 173.34(e)(15)(i), 175.3	To authorize the use of specified cylinders having an age over 35 years for shipment of certain nonliquefied compressed gases. (Modes 1, 2, 3, 4, and 5.)
6657-X	DOT-E 6657	Kelsey Welding Supply Corp., New Berlin, WI.	49 CFR 173.34(e)(15)(i), 175.3	To authorize the use of specified cylinders having an age over 35 years for shipment of certain nonliquefied compressed gases. (Modes 1, 2, 3, 4, and 5.)
6657-P	DOT-E 6657	Gases & Arc Supply Co., Pueblo, CO	49 CFR 173.34(e)(15)(i), 175.3	To become a party to Exemption 6657. (Modes 1, 2, 3, 4, and 5.)
6712-X	DOT-E 6712	Air Products and Chemicals, Inc., Allentown, PA.	49 CFR 173.34(e)(15)(i)	To authorize the shipment of certain flammable and nonflammable gases in DOT Specification 3A or 3AA cylinders or ICC 3A or 3AA cylinders. (Modes 1, 2, 3, 4, and 5.)
6738-X	DOT-E 6738	Texas Eastman Co., Longview, TX	49 CFR 172.101, 173.315(a)	To authorize shipment of liquefied ethylene in non-DOT specification cargo tanks. (Mode 1.)
6738-X	DOT-E 6738	E. I. du Pont de Nemours & Co., Inc., Wilmington, DE.	49 CFR 172.101, 173.315(a)	To authorize shipment of liquefied ethylene in non-DOT specification cargo tanks. (Mode 1.)
6759-X	DOT-E 6759	E. I. du Pont de Nemours & Co., Inc., Wilmington, DE.	49 CFR 173.87, 177.835(g)(2)	To authorize shipment of Class A or B explosives in an IME 22 container or compartment on the same vehicle with non-mass detonating blasting caps. (Mode 1.)
6763-P	DOT-E 6763	Pool Water Products, Garden Grove, CA	49 CFR 173.217(a)(8)	To become a party to Exemption 6763. (Modes 1, 2, 3.)
6766-X	DOT-E 6766	DuBois Chemical Co., Cincinnati, OH	49 CFR 173.256	To authorize the use of DOT Specification MC-311 and MC-312 cargo tanks for shipment of a corrosive liquid. (Mode 1.)
6769-X	DOT-E 6769	E. I. du Pont de Nemours & Co., Inc., Wilmington, DE.	49 CFR 173.314, 173.315	To authorize transport of trifluoromethane in DOT Specification tank cars and cargo tanks. (Modes 1, and 2.)
6798-X	DOT-E 6798	Allied Chemical, Morristown, NJ	49 CFR 173.164(a), 173.164(a)	To authorize a DOT Specification 56 portable tank and a modified DOT Specification 56 portable tank for the transportation of an oxidizing material. (Modes 1, and 2.)
6806-P	DOT-E 6806	Department of Health and Human Services; Morgantown, WV.	49 CFR 173.302(a), 175.3	To become a party to Exemption 6806. (Mode 5.)
6824-X	DOT-E 6824	Georgia-Pacific Corp., Montebello, CA	49 CFR 173.217(a)	To authorize packagings not provided for in the Hazardous Materials Regulations for certain oxidizing materials. (Modes 1, 2, and 3.)
6932-P	DOT-E 6932	Compagnie des Containers Reservons, Paris, France.	49 CFR 173.264(b)(4)	To become a party to Exemtion 6932 (Modes 1, and 3.)
			Renewal and Party to Exemptions	
6984-X	DOT-E 6984	Explo-Midwest Inc., Joplin, MO	49 CFR 173.103(a), 173.66(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.)
7005-X	DOT-E 7005	Sea Containers Pacific Ltd., Central, Hong Kong.	49 CFR 173.119, 173.141(a)(10), 173.221, 173.245(a)(30), 173.346, 173.620, 173.630, 46 CFR 90.05-35.	To authorize the use of non-DOT specification intermodal portable tanks for the shipment of certain flammable, corrosive, class B poisons, and combustible liquids and ORM-A materials. (Modes 1, 2, 3, 4, and 5.)
7051-X	DOT-E 7051	Ozark-Mahoning Co., Tulsa, OK	49 CFR 173.246(a), 175.3	To authorize use of non-DOT specification Teflon bottles overpacked with either a DOT specification 12A or 12B fiberboard box for transportation of a corrosive liquid. (Modes 1 and 4.)
7052-P	DOT-E 7052	Data/Ware Development, Inc., San Diego, CA.	49 CFR 172.101, 175.3	To become a party to Exemption 7052. (Modes 1, 2, 3, and 4.)
7052-P	DOT-E 7052	Airco Temescal, Berkeley, CA	49 CFR 172.101, 175.3	To become a party to Exemption 7052. (Modes 1, 2, 3, and 4.)
7052-P	DOT-E 7052	Salt Corporation of America, Valdosta, GA.	49 CFR 172.101, 175.3	To become a party to Exemption 7052. (Modes 1, 2, 3, and 4.)
7192-X	DOT-E 7192	Air Products and Chemicals, Inc., Allentown, PA.	49 CFR 173.315(a), 173.316(a)	To authorize the use of non-DOT specification cargo tanks for the shipment of a flammable gas. (Mode 1.)
7259-P	DOT-E 7259	Hooker Chemical Co., Houston, TX	49 CFR 176.76(g)(5)	To become a party to Exemption 7259. (Mode 3.)
7259-P	DOT-E 7259	FMC Corp., Philadelphia, PA	49 CFR 176.76(g)(5)	To become a party to Exemption 7259. (Mode 3.)
7282-X	DOT-E 7282	M-R Plastics & Coatings, Inc., Maryland Heights, MO.	49 CFR 173.315(a)(1)	To authorize the use of non-DOT specification portable tanks for the shipment of certain mixtures of nonpoisonous, nonflammable compressed gases. (Mode 1.)
7413-X	DOT-E 7413	Chilton Metal Products Division Western Industries, Inc., Chilton, WI.	49 CFR 173.302(a), 173.304(a)(1), 175.3, 178.42.	To authorize the transportation of carbon dioxide or nitrogen in a non-DOT specification brazed steel cylinder. (Modes 1, 2, 4.)
7418-P	DOT-E 7418	Interpool Ltd., New York, NY	49 CFR 173.119, 173.125, 173.245	To become a party to Exemption 7418. (Modes 1, 2, 3.)
7526-X	DOT-E 7526	Schering, A. C., Berlin, Germany	49 CFR 173.134	To authorize the shipment of a pyrophoric liquid in non-DOT specification portable tanks. (Modes 1, 3.)
7555-X	DOT-E 7555	Provost Cartage, Inc., Ville d'Anjou, Quebec.	49 CFR 172.101, 173.245, 173.263(a)(10), 173.265(b)(4).	To authorize the use of a cargo tank made from non-metallic materials for transportation of certain hazardous materials. (Mode 1.)
7590-X	DOT-E 7590	Gordons Transports, Inc., Memphis, TN	49 CFR 177.841(e)	To authorize packages containing class B poisons to be placed in a specially designed reusable overpack and transported in the same vehicle with foodstuff, feed or any other edible material. (Mode 1.)
			Renewal and Party to Exemptions	
7590-X	DOT-E 7590	Commercial Lovelace Motor Freight, Inc., Columbus, OH.	49 CFR 177.841(e)	To authorize packages containing class B poisons to be placed in a specially designed reusable overpack and transported in the same vehicle with foodstuff, feed or any other edible material. (Mode 1.)
7590-X	DOT-E 7590	Smith's Transfer Corp., Staunton, VA	49 CFR 177.841(e)	To authorize packages containing class B poisons to be placed in a specially designed reusable overpack and transported in the same vehicle with foodstuff, feed or any other edible material. (Mode 1.)
7590-X	DOT-E 7590	Ryder Truck Lines, Inc. Jacksonville, FL	49 CFR 177.841(e)	To authorize packages containing class B poisons to be placed in a specially designed reusable overpack and transported in the same vehicle with foodstuff, feed or any other edible material. (Mode 1.)
7590-X	DOT-E 7590	Transcon Lines, Los Angeles, CA	49 CFR 177.841(e)	To authorize packages containing class B poisons to be placed in a specially designed reusable overpack and transported in the same vehicle with foodstuff, feed or any other edible material. (Mode 1.)
7590-X	DOT-E 7590	Central Freight Lines, Inc., Waco, TX	49 CFR 177.841(e)	To authorize packages containing class B poisons to be placed in a specially designed reusable overpack and transported in the same vehicle with foodstuff, feed or any other edible material. (Mode 1.)

—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
7590-X	DOT-E 7590	Pacific Intermountain Express Co., Oakland, CA.	49 CFR 177.841(o)	To authorize packages containing class B poisons to be placed in a specially designed reusable overpack and transported in the same vehicle with foodstuff, feed or any other edible material. (Mode 1.)
7603-X	DOT-E 7603	Air Products & Chemicals, Inc., Allentown, PA.	49 CFR 172.101, 173.315, 178.76(b)	To authorize the use of non-DOT specification cargo tanks for the shipment of certain nonflammable gases. (Mode 3.)
7725-X	DOT-E 7725	Economics Laboratory, Inc., St. Paul, MN.	49 CFR 172.201(a)(3)	To authorize the use of coded shipping papers. (Modes 1, 2, 3.)
7731-X	DOT-E 7731	Minnesota Valley Engineering, New Prague, MN.	49 CFR 172.101, 173.315(a)(1)	To manufacture, mark, and sell non-DOT specification super-insulated portable tanks for shipment of pressured liquid helium. (Modes 1, 3.)
7772-P	DOT-E 7772	Compagnie des Containers Reservoirs, Paris, France.	49 CFR 173, Subpart D	To become a party to Exemption 7772.
7846-X	DOT-E 7846	Air Products & Chemicals, Inc., Allentown, PA.	49 CFR 173.314(c)	To authorize frame mounting and manifolding of DOT Specification seamless steel tank car tanks for shipment of certain nonflammable gases. (Modes 1, 3.)
7886-X	DOT-E 7886	W. M. Barr & Co., Memphis, TN	49 CFR 173.245, 178.210	To authorize the shipment of a corrosive liquid in non-DOT specification metal can/fiberboard box packaging. (Modes 1, 3.)
			Renewal and Party to Exemptions	
7943-P	DOT-E 7943	FMC Corp., Philadelphia, PA	49 CFR 173.263(a)(15), 173.272(c), 173.272(i)(12), 173.277(a)(1).	To become a party to Exemption 7943. (Mode 1.)
8116-P	DOT-E 8116	Illinois Environmental Protection Agency, Springfield, IL.	49 CFR Parts 100-199	To become a party to Exemption 8116. (Modes 1, 2, 3, 4, 5.)
8116-P	DOT-E 8116	Illinois Environmental Resources Associates, South Chicago Heights, IL.	49 CFR Parts 100-199	To become a party to Exemption 8116. (Modes 1, 2, 3, 4, 5.)
8123-X	DOT-E 8123	Texas Instruments, Inc., Dallas, TX	49 CFR 173.119(a)(7), 173.119(b)(4), 173.125(a)(1), 173.245(a)(12), 173.263(a)(15), 173.264(a)(4), 173.266(c)(8), 173.272, 173.299(a)(1), 173.299(b), 178.210-10.	To authorize the shipment of various hazardous materials in a non-DOT specification plastic overpack containing multiple DOT Specification 2E polyethylene bottles of one gallon capacity or metal cans. (Mode 1.)
8134-X	DOT-E 8134	J.T. Baker Chemical Co., Phillipsburg, NJ	49 CFR 173.268(g)(1), 173.269(d)(2)	To authorize the shipment of nitric acid or perchloric acid in DOT Specification 12R boxes having inside glass bottles closed with liner-less polypropylene caps. (Modes 1, 2, 3.)
8145-X	DOT-E 8145	American Box Co., Fernwood, MS	49 CFR 173.366	To manufacture, mark, and sell non-DOT specification wirebound wood/corrugated fiberboard/polyethylene film pallet boxes for shipment of a certain Class B poisonous solid. (Modes 1, 2.)
8192-X	DOT-E 8192	Greif Brothers Corp., Springfield, NJ	49 CFR 173.272(g), 173.346, 173.348	To authorize the shipment of Class B poisonous liquids and sulfuric acid in a DOT Specification 34 polyethylene container. (Modes 1, 2, 3.)
8215-X	DOT-E 8215	Olin Cor., 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.)
8235-X	DOT-E 8235	Mobay Chemical Corp., Pittsburgh, PA	49 CFR 173.346	To authorize the use of a non-DOT specification portable tank for shipment of certain Poison B liquids. (Modes 1, 2, 3.)
8239-X	DOT-E 8239	Westinghouse Electric Corp., Horseheads, NY.	49 CFR 173.302	To authorize the use of non-DOT specification containers for the shipment of nonflammable gases. (Modes 1, 2, 3, 4, 5.)
8354-X	DOT-E 8354	VTG Hamburg, Germany	49 CFR 173.123, 173.315	To become a party to Exemption 8354. (Modes 1, 2, 3.)
8441-P	DOT-E 8441	Magnavox Electronics Systems Co., Fort Wayne, IN.	49 CFR 172.101	To become a party to Exemption 8441. (Mode 1.)
8445-P	DOT-E 8445	Tennessee Eastman Co., Kingsport, TN	49 CFR Part 173, Subpart D, E, F, H	To become a party to Exemption 8445. (Mode 1.)
8445-P	DOT-E 8445	Advanced Environmental Technology Corp., Morris Plains, NJ.	49 CFR Part 173, Subpart D, E, F, H	To become a party to Exemption 8445. (Mode 1.)
			Renewal and Party to Exemptions	
8465-P	DOT-E 8465	Allied Flexible Products, Inc., Helena, AL	49 CFR 173.182	To become a party to Exemption 8465. (Modes 1, 2).
8526-P	DOT-E 8526	Red Star Express Lines, Auburn, NY	49 CFR 177.834(i)(2)(i)	To become a party to Exemption 8526. (Mode 1).
8526-P	DOT-E 8526	National Starch & Chemical Corp., Bridgewater, NJ.	49 CFR 177.834(i)(2)(i)	To become a party to Exemption 8526. (Mode 1).
8554-X	DOT-E 8554	E. I. du Pont de Nemours & Co., Inc., Wilmington, DE.	49 CFR 173.114a, 173.93	To authorize the shipment of propellant explosives and blasting agents in DOT Specification MC-306, MC-307, and MC-312 cargo tanks. (Mode 1).
8556-P	DOT-E 8556	Liquid Air Corp., San Francisco, CA	49 CFR 172.101, 173.315(a)	To become a party to Exemption 8556. (Modes 1, 3).
8564-P	DOT-E 8564	Bunke Ramo Corp., Westlake Village, CA	49 CFR 173.206, 173.247	To become a party to Exemption 8564. (Mode 1).
8572-P	DOT-E 8572	AMEX, Inc., Hayden Lake, ID	49 CFR 172.101, 172.406, 172.504, 173.114a.	To become a party to Exemption 8572. (Mode 1).
8613-P	DOT-E 8613	Steere Tank Lines, Inc., Dallas, TX	49 CFR 173.131(a)(2)	To become a party to Exemption 8613. (Mode 1).
8613-P	DOT-E 8613	Mission Petroleum Carriers, Houston, Tx	49 CFR 173.131(a)(2)	To become a party to Exemption 8613. (Mode 1).

NEW EXEMPTIONS

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
8343-N	DOT-E 8343	Westerwalder Eisenwerk, Weitefeld, W. Germany.	49 CFR 173.119	To authorize the shipment of certain hazardous materials in non-DOT specification IMCO type II portable tanks. (Modes 1, 2, 3, 4.)
8566-N	DOT-E 8566	Alpha Chemical Co., Lake Charles, LA.	49 CFR 173.119, 173.125, 173.245, 173.263, 173.289, 46 CFR 64.9.	To authorize the shipment of flammable, corrosive and combustible liquids in DOT Specification marine portable tanks. (Modes 1, 3.)
8592-N	DOT-E 8592	Beech Aircraft Corp., Boulder, CO.	49 CFR 173.315	To authorize shipment of a flammable gas in non-DOT specification cargo tanks. (Mode 1.)
8602-N	DOT-E 8602	Minnesota Valley Engineering, New Prague, MN.	49 CFR 172.101, 173.315	To manufacture, mark and sell non-DOT specification vacuum insulated portable tanks for shipment of liquefied argon, nitrogen or oxygen. (Mode 3.)

NEW EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
8628-N	DOT-E 8628	E. I. du Pont de Nemours & Co., Inc., Wilmington, DE.	49 CFR 173.314(c)	To authorize the shipment of a compressed gas mixture in DOT Specification 105A300W, 112T340W, 112T400W, 112A340W, and DOT 112A400W tank cars. (Mode 2.)

EMERGENCY EXEMPTIONS

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
EE 7603-X	DOT-E 7603	Air Products & Chemicals, Inc., Allentown, PA.	49 CFR 172.101, 173.315, 176.76(b)	To authorize the use of non-DOT specification cargo tanks for the shipment of certain nonflammable gases. (Mode 3.)
EE 8673-N	DOT-E 8673	Alaska International Airline, Anchorage, AK.	49 CFR 172.101, 175.30	To authorize two shipments of inhibited hydrochloric acid solution in a DOT Specification 60 rubber lined portable tank. (Mode 4.)
EE 8675-N	DOT-E 8675	Behring Shipping Co., New York, NY.	49 CFR 172.101(6)(b), 175.30	To authorize the transportation of military ammunition packed, marked and labeled in accordance with Department of Defense requirements. (Mode 4.)
EE 8675-N	DOT-E 8675	Flying Tiger Line, Los Angeles, CA.	49 CFR 172.101(6)(b), 175.30	To authorize the transportation of military ammunition packed, marked and labeled in accordance with Department of Defense requirements. (Mode 4.)
EE 8679-N	DOT-E 8679	MicroD International, Corona, CA.	49 CFR 172.101, 172.400, 173.286, 175.3, 175.30.	To authorize the shipment of a water reactive material via air when packaged in the same outside packaging with separately packaged small quantities of a flammable liquid, a corrosive liquid, a corrosive solid, and non-hazardous materials in non-DOT specification corrugated fiberboard boxes. (Modes 1, 4, 5.)
EE 8681-N	DOT-E 8681	M-Chem, Inc., Westwege, LA.	49 CFR 173.119	To authorize the use of a DOT Specification 57 portable tank for shipment of flammable and combustible liquids by water. (Mode 3.)

Denials

7052-X Request by Duracell International, Inc., Elmsford, NY to authorize the shipment of batteries containing lithium and other materials, classed as flammable solids denied July 31, 1981.

8584-N Request by Safety-Kleen Corporation, Elgin, IL to authorize shipment of a compound, cleaning, liquid, classed as a corrosive liquid, n.o.s. in non-DOT specification reusable 16 gallon removable head steel drums similar to a DOT Specification 37A denied July 31, 1981.

Issued in Washington, DC, on September 17, 1981.

J. R. Grothe,

Chief, Exemptions Branch, Office of Hazardous Materials Regulation, Materials Transportation Bureau.

[FR Doc. 81-27793 Filed 9-30-81; 8:45 am]

BILLING CODE 4910-60-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Trade Policy Staff Committee; Solicitation of Public Views on the Extension, Reduction, or Termination of Import Relief for High-Carbon Ferrochromium

On November 15, 1978, the President issued Proclamation 4608 implementing import relief in the form of a temporary duty increase on the importation of high-carbon ferrochromium described in item number 923.18 of the Tariff Schedules of the United States. That action was taken pursuant to Section 203(a) of the Trade Act of 1974, 19 U.S.C. 2253, in response to a finding by the USITC that the domestic industry producing like or indirectly competitive products was suffering from serious injury or the threat thereof substantially caused by increased imports of such products.

The import relief will expire on November 15, 1981 unless extended by the President. Pursuant to section 203(h)(3) and (4) of the Trade Act, the President may extend, reduce, or terminate the import relief after receiving advice from the USITC and taking into account the considerations in 202(c) of the Trade Act.

On September 16, 1979 the USITC reported to the President its advice under 203 (1)(2) and (1)(5) of the Trade Act as to the probable economic effects of such expiration, which was summarized as follows: "On the basis of the information before the Commission in this investigation, it is our judgment that termination of import relief with respect to high-carbon ferrochromium would have a significant adverse economic effect on the domestic industry. We therefore advise that relief be extended in modified form for an additional 3-year period to provide the domestic industry with more time in which to complete the process of adjusting to import competition. Because we believe the present relief is ineffective, we have discussed in this statement several alternative forms of extended relief for the President's consideration. It is also our view that the present relief, although no longer very effective, would be better than no relief after November 15, 1981, in view of information indicating a large buildup of inventories of imported high-carbon ferrochromium which could cause a significant decline in prices." (See USITC Report Number TA-203-8 of September 1981 for further details.)

The Office of the United States Trade Representative chairs the interagency Trade Policy Committee Structure that makes recommendations to the President as to what action, if any, he should take with respect to any action on an extension, reduction or termination of relief. In order to assist the Trade Policy Staff Committee in developing recommendations to the President, interested persons are invited to submit written briefs to the Trade Policy Staff Committee on the probable effects of any extension, reduction or termination or present import restrictions now in effect with respect to high-carbon ferrochromium, specifically with respect to the following factors:

(1) The probable effectiveness of the extension, reduction, or termination of the import relief as a means to promote adjustment, the efforts being made or to be implemented by the industry concerned to adjust to import competition, and other considerations relevant to the position of the industry in the nation's economy;

(2) The effect of the extension, reduction or termination of import relief on consumers and on competition in the domestic markets for such articles;

(3) The effect of the extension, reduction or termination of import relief on the international economic interest of the United States;

(4) The impact on United States industries and firms as a consequence of any possible modification of duties or other import restrictions which may result from international obligations with respect to compensation;

(5) The geographic concentration of imported products marketed in the United States;

(6) The extent to which the United States market is a focal point for exports of such article by reason of restraints on exports of such article to, or on imports of such article into, third country markets; and

(7) The economic and social costs which would be incurred by taxpayers, communities and workers if import relief were or were not extended, terminated or reduced.

In addition, views on the President's legal authority to extend relief with modification such as an increased breakpoint price, will be considered.

Briefs should be submitted in twenty (20) copies to the Secretary, Trade Policy Staff Committee, Room 413, 600 17th Street, N.W., The Winder Building, Washington, D.C. 20506.

To be considered by the Trade Policy Staff Committee, submissions should be received by the Secretary no later than the close of business Friday, October 9, 1981.

For further information, contact Catherine Curtiss, Room 322A (202-395-7203). Legal questions should be directed to Mike Hathaway, Room 221, (202-395-3432).

Frederick L. Montgomery,

Chairman, Trade Policy Staff Committee.

[FR Doc. 81-28504 Filed 9-30-81; 8:45 am]

BILLING CODE 3190-01-M

Determination Regarding the Application of Certain International Agreements

This notice [1] modifies the determination published in the Federal Register of January 4, 1980 (45 FR 1181), as amended by determinations published at 45 FR 18547, 45 FR 36569, 45 FR 63402, 45 FR 85239, 46 FR 24059, 46 FR 40624 and 46 FR 46263.

Under section 1-103(b) of Executive Order 12188 of January 2, 1980, the functions of the President under section 2(b) of the Trade Agreements Act of 1979 (the Act) and section 701(b) of the Tariff Act of 1930 as amended, are delegated to the United States Trade Representative (the Trade Representative), who shall exercise such authority with the advice of the Trade Policy Committee.

Now, therefore, I, William E. Brock, United States Trade Representative, in conformance with the provisions of section 2(b) of the Act, section 701(b) of the Tariff Act of 1930 as amended, and section 1-103(b) of Executive Order 12188, do hereby determine, effective on the date of signature of this Notice, that:

With respect to the Agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreement on Tariffs and Trade (the Subsidies Code), India has accepted the obligations of the agreement with respect to the United States and should not otherwise be denied the benefits of the Agreement.

In accordance with section 701(b) of the Tariff Act of 1930, as amended (19 U.S.C. 1671(b)), as of September 25, 1981, India is a "country under the Agreement."

William E. Brock,

United States Trade Representative.

[FR Doc. 81-28533 Filed 9-30-81; 8:45 am]

BILLING CODE 3190-01-M

[1] Inquiries concerning this notice should be addressed to Kathryn Flynn, Office of GATT Affairs, Office of the U.S. Trade Representative, Washington, D.C. 20500, (202) 395-3063.

Sunshine Act Meetings

Federal Register
Vol. 46, No. 190
Thursday, October 1, 1981

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

	Items
Civil Aeronautics Board	1
Commodity Futures Trading Commission	2
Federal Crop Insurance Corporation	3
Federal Deposit Insurance Corporation	4-6
Federal Election Commission	7
Federal Energy Regulatory Commission	8
Federal Maritime Commission	9
Federal Mine Safety and Health Review Commission	10
International Trade Commission	11
Parole Commission	12
Securities and Exchange Commission	13

1

CIVIL AERONAUTICS BOARD.

[M-333, September 24, 1981]

TIME AND DATE: 9:30 a.m., October 1, 1981.

PLACE: Room 1027 (open), room 1012 (closed), 1825 Connecticut Avenue, N.W., Washington, D.C. 20428.

SUBJECT:

1. Ratification of items adopted by notation.
2. Rules of Government Travel Fares: Draft order to show cause why tariffs containing the "YCA" fare designator by carriers which do not have government contracts should not be cancelled. (Memo 791, BCCP, BDA, OGC)
3. Docket 39788, Acquisition of Control by Air Florida System, Inc. Western Air Lines, Inc., Western's motion to dissolve Air Florida's voting trust. (BCCP)
4. Docket 36858, Air New England, Inc., Violations of Part 250. (Memo 603-A, BCCP)
5. Commuter carrier fitness determination of Pennsylvania Aviation, Inc. d.b.a. Wings Airways. (Memo 790, BDA)
6. Commuter carrier fitness determination of Pompano Air Taxi, Inc. d.b.a. Pompano Airways. (Memo 786, BDA)
7. Dockets EAS-391 through 402; Appeal of Essential Air Service Determinations of the 12 eligible points in Illinois. (Memo 792, BDA, OCCR, OGC)
8. Docket EAS-754, Appeal of Rome, Georgia of its determination of eligibility for essential air service under section 419(b). (OGC, OCCR, BDA)
9. Dockets EAS-416, 417, 418, 419, 420, 421, 422, 423, 424, 425, and 426, Appeal of Essential Air Transportation Determinations at Dodge City, Garden City, Goodland, Great Bend, Hays, Hutchinson, Parsons/Independence/Coffeyville, Liberal/Guymon, Okla., Manhattan/Junction City/Ft. Riley, Salina and Topeka, Kansas. (Memo 204-A, BDA, OGC, OCCR)
10. Docket EAS-612, Amendment of Essential Air Service definition at Elkins, West Virginia to permit one stop service in the Elkins-Pittsburgh market. (Memo 585-C, BDA)
11. Dockets 35908 and 36204, Essential Air Transportation at Clearfield/Philipsburg, Pennsylvania. (BDA, OCCR)
12. Docket EAS-487; Essential Air Service Determination for West Yellowstone, Montana. (Memo 735, OGC, BDA, OCCR)
13. Docket 39902—American Airlines' exemption application to postpone resumption of service at Palm Springs, California. (BDA, OCCR)
14. Orange County Additional Points Show-Cause Proceeding. (BDA)
15. Docket 39899; Application of Jet Fleet Corporation, Inc. for transfer and reissuance of its certificates of public convenience and necessity to engage in charter air transportation. (Memo 788, BDA)
16. Docket 37236, Essential Air Service at Danville, Virginia. (BDA, OCCR, OC)
17. Docket 35489, Petition of Hughes Air Corp., d.b.a. Hughes Airwest for compensation pursuant to section 419(a) (7) (B) of the Federal Aviation Act of 1958, as amended. (BDA)
18. Dockets 38300, 38323—Petitions by the American Institute for Foreign Study and the United States Tour Operators Association for rulemakings to raise the 10 percent limit on charter price increases. (Memo 330-C, OGC)
19. Dockets 37531, 37532, 22771—Accident liability insurance coverage for U.S. and foreign air carriers. (OGC)
20. Docket 38905—Civil penalty for violation of CAB rules of conduct. (Memo 765, OGC, BCCP)
21. Docket 38534, *Spanish Main International Airlines Fitness Investigation*, Docket 34128, *Application of Spanish Main International Airlines* for a certificate of public convenience and necessity. (Memo 780, OGC,)
22. Dockets 38965, 39158—*Application of Wings International Airways, Inc., Wings International Airways Fitness Investigation.* (OGC)
23. Docket 30356. *Transcontinental Low-Fare Route Proceeding* (Remanded); Opinion and Order on Discretionary Review. (OGC)
24. Docket 35634, IATA agreements proposing new and amending approved cargo rate structures applicable in various world markets during the October, 1981-September, 1982, period. (BIA)
25. Docket 39718, complaint of DHL against Braniff baggage rules. (Memo 787, BIA, BCCP)
26. NPRM to eliminate the airport notice and approved service plan requirements and the operational restrictions in 14 CFR 213.4 (a) and (b). (Memo 783, BIA, OGC, BDA)
27. Docket 39325—Application of World Airways for scheduled combination authority between San Francisco/Oakland, Los Angeles, and Honolulu, on the one hand, and Manila, Republic of the Philippines, on the other hand. (Memo 626-A, BIA, OGC, BALJ)
28. Docket 39417, Application of Air Florida, Inc., to add Miami-Prestwick, Scotland on Route 197-F. (BIA, OGC, BALJ)
29. Consultations with the United Kingdom scheduled to begin October 5, 1981 in London regarding British Airports authority user charges. (BIA)

STATUS: 28—(Open); 29—(Closed).

PERSON TO CONTACT: Phyllis T. Kaylor, the Secretary (202) 673-5068.

[S-1493-81 Filed 9-29-81; 3:45 pm]

BILLING CODE 6320-01-M

2

COMMODITY FUTURES TRADING COMMISSION.

TIME AND DATE: 11 a.m., Friday, October 9, 1981.

PLACE: 2033 K Street, NW., Washington, D.C., Eighth floor conference room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Briefing.

CONTACT PERSON FOR MORE INFORMATION: Jane Stuckey, 254-6314.

[S-1485-81 Filed 9-29-81; 11:10 am]

BILLING CODE 6351-01-M

3

FEDERAL CROP INSURANCE CORPORATION.

[NOM-81-1]

TIME AND DATE: 9:45 a.m., Monday, October 5-6, 1981.

PLACE: Room 201-W, Administration Building, USDA, 14th and Independence Avenue, SW., Washington, D.C. 20250.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Bylaws.
2. Recision of previous resolution.
3. Ratification of previous actions.
4. Good Faith Reliance on Misrepresentation item.
5. Debt Management Policy.
6. Annual Report.
7. Organization.
8. Investigations.

9. Board management philosophy.
10. Docket systems.
11. Prevented Planting Docket.

CONTACT PERSON FOR MORE INFORMATION: Peter F. Cole, Secretary, 202-447-3325.

Dated: September 29, 1981.

[S-1495-81 Filed 9-29-81; 3:47 pm]
BILLING CODE 3410-08-M

4

FEDERAL DEPOSIT INSURANCE CORPORATION.

Notice of Changes in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its closed meeting held at 2:30 p.m. on Monday, September 28, 1981, the Corporation's Board of Directors determined, on motion of Chairman William M. Isaac, seconded by Director Charles E. Lord (Acting Comptroller of the Currency), that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matters:

Application of Heritage Bank-North, Monroe Township (P.O. Jamesburg), New Jersey, for consent to purchase the assets of and assume the liability to pay deposits made in State Bank of Raritan Valley, Raritan, New Jersey, and to establish the three offices of State Bank of Raritan Valley as branches of Heritage Bank-North.

Recommendation regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 44,929-SR—American Bank & Trust Company, New York, New York

The Board further determined, by the same majority vote, that no earlier notice of the changes in the subject matter of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10)).

Dated: September 28, 1981.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[S-1488-81 Filed 9-29-81; 12:18 pm]
BILLING CODE 6714-01-M

5

FEDERAL DEPOSIT INSURANCE CORPORATION.

Notice of Changes in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its open meeting held at 2:00 p.m. on Monday, September 28, 1981, the Corporation's Board of Directors determined, on motion of Chairman William M. Isaac, seconded by Director Charles E. Lord (Acting Comptroller of the Currency), that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matters:

Application of First City Bank—Addison, a proposed new bank, to be located at 14800 Quorum Drive, Addison, Texas, for Federal deposit insurance, and for consent to establish a detached drive-in facility at 14780 Landmark Boulevard, Addison, Texas.

Application of Sun Bank of Jacksonville, Jacksonville, Florida, for consent to merge, under its charter and title, with Beach Guaranty Bank, Jacksonville Beach, Florida, and to establish the sole office of Beach Guaranty Bank as a branch of the resultant bank.

Recommendations regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 44,923-L—Northern Ohio Bank, Cleveland, Ohio

Memorandum and Resolution re: Gateway National Bank of Chicago, Chicago, Illinois; Guaranty Bank & Trust Company, Chicago, Illinois

The Board further determined, by the same majority vote, that no earlier notice of the changes in the subject matter of the meeting was practicable.

Dated: September 28, 1981.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[S-1487-81 Filed 9-29-81; 12:18 pm]
BILLING CODE 6714-01-M

6

FEDERAL DEPOSIT INSURANCE CORPORATION.

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" >(5 U.S.C. 552b), notice is hereby given that at 9:30 a.m. on Monday, September 28, 1981, the Board of Directors met in closed session, by telephone conference call, to consider the following matters:

(1) Authorization of funds for the payment of insured deposits in Southwestern Bank, Tucson, Arizona, which was closed by the Superintendent of Banks of the State of Arizona on September 25, 1981, and appointment of a liquidator for the assets of the closed bank;

(2) Application of Dai-Ichi Kangyo Bank, Ltd., Tokyo, Japan, a foreign bank, for Federal deposit insurance of depostis received at and recorded for the account of its proposed branch to be located at 111 South Wabash Avenue, Chicago, Illinois; and

(3) Memorandum re: Spouse Travel Policy.

In calling the meeting, the Board determined, on motion of Chairman William M. Isaac, seconded by Director Irvine H. Sprague (Appointive), concurred in by Director Charles E. Lord (Acting Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" >(5 U.S.C. 552(b)(c)(2), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: September 28, 1981.

Federal Deposit Insurance Corporation.

Alan J. Kaplan,

Assistant Executive Secretary.

[S-1496-81 Filed 9-29-81; 12:18 pm]
BILLING CODE 6714-01-M

7

FEDERAL ELECTION COMMISSION.

DATE AND TIME: Thursday, October 8, 1981 at 10 a.m.

PLACE: 1325 K Street, NW., Washington, D.C. (fifth floor).

STATUS: Portions of this meeting will be open to the public and protions will be closed.

MATTERS TO BE CONSIDERED: Portions open to the public:

Setting of dates for future meetings
Correction and approval of minutes
Advisory opinions:
- Draft AO 1981-34 Philip J. Barter, national Association of Retired Federal Employees
- Draft AO 1981-38: Christopher J. Daly, CAMPAC Publications
- Draft AO 1981-42: Vernon F. Ravenscroft, Consulting Associates, Inc.

Pending Legislation
Appropriations and budget
Classification actions
Routine administrative matters

Portions closed to the public:

Compliance. Litigation. Audits. Personnel.

* * * * *

DATE AND TIME: Monday, October 26, 1981 at 10 a.m.

PLACE: 1325 K Street, NW., Washington, D.C. (fifth floor).

STATUS: Public hearing.

MATTER TO BE CONSIDERED: Notice of proposed rulemaking for 11 CFR 114.3 and 114.4: Communications by Corporations and Labor Organizations.

* * * * *

DATE AND TIME: Wednesday, October 28, 1981 at 10 a.m.

PLACE: 1325 K Street, NW., Washington, D.C. (fifth floor).

STATUS: Public hearing.

MATTER TO BE CONSIDERED: Continued from October 26, 1981, if necessary.

* * * * *

DATE AND TIME: Friday, October 30, 1981 at 10 a.m.

PLACE: 1325 K Street, NW., Washington, D.C. (fifth floor).

STATUS: Public hearing.

MATTERS TO BE CONSIDERED: Continued from October 28, 1981, if necessary.

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Public Information Officer; Telephone: 202-523-4065.

Marjorie W. Emmons,

Secretary of the Commission.

[S-1492-81 Filed 9-29-81; 3:44 pm]

BILLING CODE 6715-01-M

8

FEDERAL ENERGY REGULATORY COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 46 FR 47698, September 29, 1981.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10 a.m., September 30, 1981.

CHANGE IN THE MEETING: The meeting time has been changed to 9:00 a.m. and the following items have been added:

Item No., Docket No., and Company

ER-8. ID-1424, Edwin I. Hatch

M-6. RA80-96, Guam Oil & Refining Company, Inc.

RP-3. G-11980, *et al.*, RP67-23, *et al.*, and RP73-113, *et al.*, Tennessee Gas Pipeline Company

CP-2. CP78-532, Ozark Gas Transmission System

CP-3. CP81-388-000, CP81-388-001 and CP81-388-002, Northwest Canadian Gas Sales Company CP78-123, *et al.*, Northwest Alaskan Pipeline Company

Kenneth F. Plumb,

Secretary.

[S-1491-81 Filed 9-29-81; 3:43 pm]

BILLING CODE 6450-85-M

9

FEDERAL MARITIME COMMISSION.

TIME AND DATE: 9 a.m., October 7, 1981.

PLACE: Hearing Room One, 1100 L Street NW., Washington, D.C. 20573.

STATUS: Parts of the meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Portions open to the public:

1. Proposed Amendment of Commission Order No. 1 (Revised), section 7.08 to Delegate to the Managing Director Authority to Determine Applicability of Section 15 Shipping Act to certain Terminal Agreements.
2. Docket No. 81-47: Lease Agreement No. T-3753 Between Maryland Port Administration and Atlantic and Gulf Stevedores, Inc.—Consideration of the record; Petition of Sea-Land Service, Inc. to Intervene.

Portion closed to the public:

1. Docket No. 81-11—"50 Miles Container Rules" Implementation by Common Carriers by Water Serving the Atlantic and Gulf Coast Ports of the United States—Possible Violations of the Shipping Act, 1916, and of the Intercoastal Shipping Act, 1933—Motions to Dismiss; Request for Oral Argument; Request For Procedural Schedule; Possible Consideration of the Record.

CONTACT PERSON FOR MORE INFORMATION: Joseph C. Polking, Assistant Secretary (202) 523-5725.

[S-1496-81 Filed 9-29-81; 3:56 pm]

BILLING CODE 6730-01-M

10

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION.

September 23, 1981.

TIME AND DATE: 10 a.m., Wednesday, September 30, 1981.

PLACE: Room 600, 1730 K Street, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. Kaiser Steel Corporation, DENV 75-163-P, IBMA 77-3. (Issues include whether violation of 30 CFR § 75.509 occurred).
2. V & R Coal Company, HOPE 76-275-P, IBMA 77-21. (Issues include whether violation of 30 CFR § 70.246 occurred).
3. Florence Mining Company, Helen Mining Company, Oneida Mining Company, North American Coal Corp., PITT 77-15, etc., IBMA 77-32. (Issues include whether 30 CFR § 75.1405 is applicable to rubber-rail equipment).
4. Joseph W. Herman v. Imco Services, WEST 81-109-DM. (Issues include whether judge erred in dismissing discrimination complaint for failure to respond to show cause order).
5. Amax Coal Company, LAKE 81-37 (Petition for Discretionary Review; issues include whether violation of 30 CFR § 77.500 occurred.)

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen 202-653-5632.

[S-1484-81 Filed 9-29-81; 10:33 am]

BILLING CODE 6820-12-M

11

INTERNATIONAL TRADE COMMISSION.

[USITC SE-81-30]

TIME AND DATE: 2 p.m., Thursday, October 15, 1981.

PLACE: Room 117, 701 E Street, N.W., Washington, D.C. 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda.
2. Minutes.
3. Ratifications.
4. Petitions and complaints:
   a. Coded radio pages (Docket No. 759).
   b. Vacuum bottles (Docket No. 760).
5. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202) 523-0161.

[S-1490-81 Filed 9-29-81; 2:32 pm]

BILLING CODE 7020-02-M

12

PAROLE COMMISSION.

TIME AND DATE:

Tuesday, October 6, 1981, 3:30 p.m., 5:30 p.m.
Wednesday, October 7, 1981, 9:00 a.m., 5:30 p.m.

PLACE: Room 420-F, One North Park Building; 5550 Friendship Blvd.; Bethedsa, Maryland 20015.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of minutes of prior meetings.
2. Reports from Acting Chairman and Commissioners.
3. Community alternatives to incarceration— Mr. Jerome Miller, Guest Speaker.
4. Severity rating of large scale marijuana cases without managerial or proprietary interests.
5. Disciplinary infractions—Unit Disciplinary Committee findings and reports.
6. Severity in probation revocation cases.
7. Severity rating for multiple separate offenses.
8. Wording on Notices of Action.
9. Non-appealable Parole Commission actions.
10. Superior Program Achievement—possible modification of program.
11. District of Columbia Parole violators.
12. Inmates released on bond.
13. Youth Corrections Act cases in the District of Colorado—related population

changes in institutions at Englewood, Colorado, Otisville, New York, and Morgantown, West Virginia.

14. Campbell, John A.—Need to apply for an exemption under 29 U.S.C. 504.

CONSENT AGENDA: The following Consent Agenda items only if previously requested to be opened for discussion at the meeting.

15. Adoption of modification of rule at 28 CFR 2.47 concerning dispositional revocations.

16. Procedures Manual modification concerning representation.

17. Procedures Manual modification concerning designation of hearing officials other than examiners.

18. Procedures Manual modification concerning the inmate's background statement.

19. Procedures Manual modification establishing criteria for use of summons in lieu of warrants.

20. Policy and Procedure Memoranda issued since last meeting:

a. 81/7 Authority for Grants of Parole on the Record in Selected Cases: Experimental Procedure (6/23/81).

b. 81/8 Use of Parolees as Informants—Procedures Manual, Appendix 9 (6/23/81).

c. 81/9 Sanctioning of Parole Violators—Procedures Manual Section 211 (6/23/81).

d. 81/10 Preference for CTC Placement as a Sanction for Administrative Violations—Procedures Manual Section 121 (6/23/81).

e. 81/11 Votes Required to Terminate Supervision of Original Jurisdiction Cases—Procedures Manual Section 119 (6/23/81).

f. 81/12 Modifications of Panel Recommendations and Appeals—Procedures Manual Sections 111, 112, 113, (Effective September 1, 1981) (7/9/81).

g. 81/13 Revision of 2.28(c)—Procedures Manual—Section 108 (Effective August 31, 1981) (7/9/81).

h. 81/14 Salient Factor Score/Severity Change (Effective August 31, 1981) (7/10/81).

i. 81/15 Modification of 2.47—Dispositional Review and Revocation (Effective August 31, 1981) (7/10/81).

j. 81/16 Termination of Supervision for Military Parolees—Procedures Manual, Section 119 (Effective upon receipt) (8/6/81).

k. 81/17 Corrections of Policy and Procedures Memoranda 81/15 and 81/14 (8/28/81).

21. Research Reports Nos. 27, 28, 29, and 30 prepared by the Commission's Research Staff.

CONTACT PERSON FOR MORE INFORMATION: Ms. Billie L. Richards; Acting Chairman's Office; (301) 492-5990.

[S-1494-81 Filed 9-29-81; 3:45 pm]

BILLING CODE 4410-01-M

13

SECURITIES AND EXCHANGE COMMISSION.

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meetings during the week of October 6, 1981, in Room 825, 500 North Capitol Street, Washington, D.C.

Closed meetings will be held on Tuesday, October 6, 1981, at 10 a.m. and on Wednesday, October 7, 1981, following the 10 a.m. open meeting.

The Commissioners, their legal assistants, the Secretary of the Commission, and recording secretaries will attend the closed meetings. Certan staff members who are responsible for the calendared matters may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, the items to be considered at the closed meetings may be considered pursuant to one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a) (4), (8), (9)(i) and (10).

Chairman Shad and Commissioners Loomis, Evans, Thomas and Longstreth voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting scheduled for Tuesday, October 6, 1981, at 10 a.m., will be:

Access to investigative files by Federal, State, or self-regulatory authorieles.
Freedom of Information Act appeals.
Consideration of *amicus* participation.
Formal orders of investigation.
Subpoena enforcement action.
Institution of administrative proceedings of an enforcement nature.
Institution of injunctive actions.
Regulatory matter bearing enforcement implications.

The subject matter of the closed meeting scheduled for Wednesday, October 7, 1981, following the 10 a.m. open meeting, will be:

Opinion.
Proposed orders in administrative proceeding of an enforcement nature.

The subject matter of the open meeting scheduled for Wednesday, October 7, 1981, at 10 a.m., will be:

1. Consideration of whether to issue an order which would subject the Boston Stock Exchange, Inc., Cincinnati Stock Exchange, Inc., Midwest Stock Exchange, Inc., Pacific Stock Exchange, Inc., and Philadelphia Stock Exchange, Inc., to the provisions of Securities Exchange Act Rule 11b-1, relating to the regulation of specialists, with respect to any security which is listed on any such exchange and which is not listed on either the American Stock Exchange, Inc., or the New York Stock Exchange, Inc. For further information, please contact Michael A. Cline at (202) 272-2402.

2. Consideration of whether to issue a release announcing the rescission of the interpretative guidance previously provided in Accounting Series Release No. 261. Such an action would permit oil and gas producers to rely on existing generally accepted accounting principles in changing to or from the full cost or successful efforts methods of accounting. For further information, please contact James D. Hall at (202) 272-2133.

3. Consideration of whether to grant the request of Morgan, Lewis & Bockius for a waiver of imputed disqualification pursuant to Rule 8(d) of the Commission's Conduct Regulation, 17 CFR 200.735-8(d). For further information, please contact Myrna Siegel at (202) 272-2430.

4. Consideration of whether to grant the request of Debevoise & Plimpton for a waiver of imputed disqualification pursuant to Rule 8(d) of the Commission's Conduct Regulation, 17 CFR 200.735-8(d). For further information, please contact Myrna Siegel at (202) 272-2430.

5. Consideration of whether to publish a release proposing: (1) revision of Guide 60 for Preparation of Registration Statements Relating to Interests in Real Estate Limited Partnerships; (2) amendment of the financial statement requirements of Item 3-14 of Regulation S-X, "Special Instructions for Real Estate Operations to be Acquired;" and (3) conforming amendments to Guide 60 and to Form 8-K for current reports. The proposals would streamline track record disclosure by sponsors of real estate limited partnerships. In addition, the proposals represent a significant cooperative effort between the Commission staff and a subcommittee of the North American Securities Administrators Association. For further information, please contact William L. Larsen at (202) 272-2604.

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: Bruce Mendelsohn at (202) 272-2091.

September 28, 1981.

[S-1469-81 Filed 9-29-81; 2:11 pm]

BILLING CODE 8010-01-M

Reader Aids

Federal Register
Vol. 46, No. 190
Thursday, October 1, 1981

INFORMATION AND ASSISTANCE

PUBLICATIONS

Code of Federal Regulations	
CFR Unit	202-523-3419
	523-3517
General information, index, and finding aids	523-5227
Incorporation by reference	523-4534
Printing schedules and pricing information	523-3419
Federal Register	
Corrections	523-5237
Daily Issue Unit	523-5237
General information, index, and finding aids	523-5227
Library and Public Inspection Desk	633-6930
Scheduling of Documents	523-3187
Laws	
Indexes	523-5282
Law numbers and dates	523-5282
	523-5266
Slip law orders (GPO)	275-3030
Presidential Documents	
Executive orders and proclamations	523-5233
Public Papers of the President	523-5235
Weekly Compilation of Presidential Documents	523-5235
Privacy Act Compilation	523-3517
United States Government Manual	523-5230

SERVICES

Agency services	523-3408
Automation	523-3408
Dial-a-Reg	
Chicago, Ill.	312-663-0884
Los Angeles, Calif.	213-688-6694
Washington, D.C.	202-523-5022
Magnetic tapes of FR issues and CFR volumes (GPO)	275-2867
Public briefings: "The Federal Register—What It Is and How To Use It"	523-5235
Public Inspection Desk	633-6930
Regulations Writing Seminar	523-5240
Special Projects	523-4534
Subscription orders (GPO)	783-3238
Subscription problems (GPO)	275-3054
TTY for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, OCTOBER

48097-48616.....1

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/FSIS**		DOT/FAA	USDA/FSIS**
DOT/FHWA	USDA/FSQS**		DOT/FHWA	USDA/FSQS**
DOT/FRA	USDA/REA		DOT/FRA	USDA/REA
DOT/MA*	MSPB/OPM		DOT/MA*	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: The Maritime Administration will begin Mon./Thurs. publication as of Oct. 1, 1981.
**Note: As of September 14, 1981, documents received from Food Safety and Inspection Service (formerly Food Safety and Quality Service) will no longer be assigned to the Tues./Fri. publication schedule.

TABLE OF EFFECTIVE DATES AND TIME PERIODS—OCTOBER, 1981

This table is for determining dates in documents which give advance notice of compliance, impose time limits on public response, or announce meetings.

Agencies using this table in planning publication of their documents must allow sufficient time for printing production.

In computing these dates, the day after publication is counted as the first day. When a date falls on a weekend or a holiday, the next Federal business day is used (see 1 CFR 18.17).

A new table will be published in the first issue of each month.

All January dates are in 1982.

Dates of FR publication	15 days after publication	30 days after publication	45 days after publication	60 days after publication	90 days after publication
October 1	October 16	November 2	November 16	November 30	December 30
October 2	October 19	November 2	November 16	December 1	December 31
October 5	October 20	November 4	November 19	December 4	January 4
October 6	October 21	November 5	November 20	December 7	January 4
October 7	October 22	November 6	November 23	December 7	January 5
October 8	October 23	November 9	November 23	December 7	January 6
October 9	October 26	November 9	November 23	December 8	January 7
October 13	October 28	November 12	November 27	December 14	January 11
October 14	October 29	November 13	November 30	December 14	January 12
October 15	October 30	November 16	November 30	December 14	January 13
October 16	November 2	November 16	November 30	December 15	January 14
October 19	November 3	November 18	December 3	December 18	January 18
October 20	November 4	November 19	December 4	December 21	January 18
October 21	November 5	November 20	December 7	December 21	January 19
October 22	November 6	November 23	December 7	December 21	January 20
October 23	November 9	November 23	December 7	December 22	January 21
October 26	November 10	November 25	December 10	December 28	January 25
October 27	November 12	November 27	December 11	December 28	January 25
October 28	November 12	November 27	December 14	December 28	January 26
October 29	November 13	November 30	December 14	December 28	January 27
October 30	November 16	November 30	December 14	December 29	January 28

CFR CHECKLIST; 1980/81 ISSUANCES

This checklist, prepared by the Office of the Federal Register, is published in the first issue of each month. It is arranged in the order of CFR titles, and shows the revision date and price of the volumes of the Code of Federal Regulations issued to date for 1980/81. New units issued during the month are announced on the back cover of the daily **Federal Register** as they become available.

For a checklist of current CFR volumes comprising a complete CFR set, see the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

The annual rate for subscription service to all revised volumes is $525 domestic, $131.25 additional for foreign mailing.

Order from Superintendent of Documents, Government Printing Office, Washington, D.C. 20402.

CFR Unit (Rev. as of Jan. 1, 1981):

Title	Price
1-2	$4.50
3	6.50
4	6.50
5	9.00
6	3.50
7 Parts:	
0-52	7.50
53-209	6.50
210-299	7.00
300-399	6.00
400-699	6.50
700-899	7.00
900-944	7.00
945-980	5.50
981-999	5.50
1000-1059	6.50
1060-1119	6.50
1120-1199	6.00
1200-1499	7.50
1500-1899	6.00
1900-2799	10.00
2800-2851	7.00
2853-end	6.00
8	5.50
9 Parts:	
1-199	7.50
200-end	6.50
10 Parts:	
0-199	7.50
200-399	7.50
400-499	7.00
500-end	7.50
11	5.50
12 Parts:	
1-199	6.00
200-299	8.00
300-499	6.00
500-end	8.00
13	7.00
14 Parts:	
1-59	7.50
60-199	8.50
200-1199	7.50
1200-end	6.00
15 Parts:	
0-299	5.50
300-end	8.50
16 Parts:	
0-149	6.50
150-999	6.50
1000-end	7.00
CFR Index	8.50

CFR Unit (Rev. as of Apr. 1, 1981):

Title	Price
17 Parts:	
1-239	7.50
240-end	7.00
18 Parts:	
1-149	7.00
20 Parts:	
01-399	6.00
400-499	7.50
500-end	8.00
21 Parts:	
1-99	6.00
100-169	6.50
170-199	6.50
200-299	4.75
300-499	8.00
500-599	7.50
600-799	5.50
800-1299	6.00
1300-end	4.75
23	7.50
24 Parts:	
0-199	6.00
500-799	6.50
800-1699	7.00
27 Parts:	
1-199	7.50
200-end	7.00

CFR Unit (Rev. as of July 1, 1981):

Title	Price
40 Parts:	
0-51	7.50
53-80	8.00
100-149	6.50
150-189	6.50
190-399	7.00
400-424	7.00
425-end	7.00

CFR Unit (Rev. as of Oct. 1, 1980):

Title	Price
42 Parts:	
1-399	9.50
400-end	8.50
43 Parts:	
1-199	6.50
1000-end	11.00
44	7.00
45 Parts:	
1-99	6.50
100-149	7.50
150-199	7.50
200-499	5.50
500-1199	7.50
1200-end	7.50
46 Parts:	
1-29	5.00
30-40	4.75
41-69	6.50
70-89	5.50
90-109	5.50
140-155	6.00
156-165	6.50
166-199	6.00
400-end	6.00
47 Parts:	
0-19	6.50
20-69	8.50
70-79	7.50
49 Parts:	
1-99	5.50
100-177 (Rev. 12/1/80)	8.00
178-199 (Rev. 12/1/80)	7.50
200-399	7.00
400-999	7.50
1000-1199	7.50
1200-1299	9.00
1300-end	6.50
50 Parts:	
1-199	6.00
200-end	7.50

CFR ISSUANCES

Complete Listing of 1981 CFR Issuances

This list restates the publication plans for the January, April and July, 1981 quarters and projects the publication plans for the October, 1981 quarter. A projected schedule that will include the January, 1982 quarter will appear in the first **Federal Register** issue of January, 1982, immediately after the CFR checklist.

Pricing information is not available on projected issuances. Individual announcements of the actual release of volumes will continue to be printed in the **Federal Register** and will provide the price and ordering information. The monthly CFR checklist and the Annual Cumulative LSA will continue to provide a cumulative list of CFR volumes actually printed.

Normally, CFR volumes are revised according to the following schedule:

Titles 1-16—January 1
Titles 17-27—April 1
Titles 28-41—July 1
Titles 42-50—October 1

All volumes listed below will adhere to these scheduled revision dates unless a notation in the listing indicates a different revision date for a particular volume.

Titles revised as of January 1, 1981:

Title

1-2
3 Compilation
4
5
6
7 Parts:
0-52
53-209
210-299
300-399
400-699
700-899
900-944
945-980
981-999
1000-1059
1060-1119
1120-1199
1200-1499
1500-1899
1900-2799
2800-2851
2852 (Revised as of July 1, 1981)
2853-end
8

Title

9 Parts:
1-199
200-end
10 Parts:
0-199
200-399
400-499
500-end
11
12 Parts:
1-199
200-299
300-499
500-end
13
14 Parts:
1-59
60-199
200-1199
1200-end
15 Parts:
0-299
300-end
16 Parts:
0-149
150-999
1000-end

Titles revised as of April 1, 1981:

Title

17 Parts:
0-239
240-end
18 Parts:
1-149
150-399
400-end
19
20 Parts:
1-399
400-499
500-end
21 Parts:
1-99
100-169
170-199
200-299
300-499
500-599
600-799
800-1299
1300-end
1308 Table (Cover only)
22
23
24 Parts:
0-199
200-499
500-799
800-1699
1700-end
25
26 Parts:
1(§§ 1.0-1-1.169)
1(§§ 1.170-1.300)
1(§§ 1.301-1.400)
1(§§ 1.401-1.500)
1(§§ 1.501-1.640)
1(§§ 1.641-1.850)
1(§§ 1.851-1.1200)
1(§§ 1.1201-end)
2-29
30-39
40-299
300-499
500-599 (Cover only)
600-end (Cover only)
27 Parts:
1-199
200-end

Titles revised as of July 1, 1981:

Title

CFR Index
28 (Revised as of November 1, 1981)
29 Parts:
0-99
100-499
500-899
900-1899
1900-1910
1911-1919
1920-end
30 Parts:
0-199
200-end
31 Parts:
200-end
32 Parts:
1-39, Vol. I (Revised as of August 1, 1981)
1-39, Vol. II (Revised as of August 1, 1981)
1-39, Vol. III (Revised as of August 1, 1981)
40-399
400-699
700-799
800-999
1000-end
33 Parts:
1-199
200-end
34 Parts:
1-399
400-end
35 (Revised as of December 31, 1981)
36 Parts:
1-199
200-end
37
38 Parts:
0-17
18-end
39
40 Parts:
0-51
52
53-80
81-99
100-149
150-189
190-399
400-424
425-end
41 Parts:
Chap. 1 (1-1 to 1-10)
Chap. 1 (1-11 to App.)-2
Chap. 3-6
Chap. 7
Chap. 8
Chap. 9
Chap. 10-17
Chap. 18 Vol. I
Chap. 18 Vol. II
Chap. 18 Vol. III
Chap. 19-100
Chap. 101
Chap. 102-end

Titles revised as of October 1, 1981:

Title

42 Parts:
1-60
61-399
400-end
43 Parts:
1-999
1000-3999
4000-end
44
45 Parts:
1-199
200-499
500-1199
1200-end
46 Parts:
1-29
30-40
41-69
70-89
90-109
110-139
140-155
156-165
166-199
200-399
400-end
47 Parts:
0-19
20-69
70-79
80-end
48
49 Parts:
1-99
100-177
178-199
200-399
400-999
1000-1199
1200-1299
1300-end.
50 Parts:
1-199
200-end

MICROFICHE EDITION OF THE CFR:

The CFR is now available on microfiche from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402, at the following prices:

1980

Complete set (one-time mailing):
$150.00 (domestic).
Individual copies—$2.00 each (domestic).

1981

Subscription (mailed as issued):
$250.00 (domestic).
Individual copies—$2.00 each (domestic).

AGENCY ABBREVIATIONS
Used in Highlights and Reminders

(This List Will Be Published Monthly in First Issue of Month.)

USDA Agriculture Department

AMS Agricultural Marketing Service
APHIS Animal and Plant Health Inspection Service
ASCS Agricultural Stabilization and Conservation Service
CCC Commodity Credit Corporation
CSRS Cooperative State Research Service
EOA Energy Office, Agriculture Department
EQOA Environmental Quality Office, Agriculture Department
ERS Economic Research Service
FmHA Farmers Home Administration
FAS Foreign Agricultural Service
FCIC Federal Crop Insurance Corporation
FGIS Federal Grain Inspection Service
FNS Food and Nutrition Service
FS Forest Service
FSIS Food Safety and Inspection Service
FSQS Food Safety and Quality Service
IGO Inspector General Office
PSA Packers and Stockyards Administration
REA Rural Electrification Administration
SCS Soil Conservation Service
SEA Science and Education Administration
SRS Statistical Reporting Service
TOA Transportation Office, Agriculture Department

COMMERCE Commerce Department

BEA Bureau of Economic Analysis
BIE Bureau of Industrial Economics
Census Census Bureau
EDA Economic Development Administration
FSPSO Federal Statistical Policy and Standards Office
FTZB Foreign-Trade Zones Board
ITA International Trade Administration
MBDA Minority Business Development Agency
NBS National Bureau of Standards
NOAA National Oceanic and Atmospheric Administration
NTIA National Telecommunications and Information Administration
NTIS National Technical Information Service
PTO Patent and Trademark Office
USTS United States Travel Service

DOD Defense Department

AF Air Force Department
Army Army Department
DCAA Defense Contract Audit Agency
DIA Defense Intelligence Agency
DIS Defense Investigative Service
DLA Defense Logistics Agency
DMA Defense Mapping Agency
DNA Defense Nuclear Agency
EC Engineers Corps
Navy Navy Department

ED Education Department

NCH National Council for the Handicapped

DOE Energy Department

APA Alaska Power Administration
BPA Bonneville Power Administration
CRE Conservation and Renewable Energy, Office of Assistant Secretary
EIA Energy Information Administration
ERA Economic Regulatory Administration
ERO Energy Research Office
ETO Energy Technology Office
FERC Federal Energy Regulatory Commission
OHA Hearings and Appeals Office, Energy Department
SEPA Southeastern Power Administration
SWPA Southwestern Power Administration
WAPA Western Area Power Administration

HHS Health and Human Services Department

ADAMHA Alcohol, Drug Abuse, and Mental Health Administration
CDC Centers for Disease Control
FDA Food and Drug Administration
HCFA Health Care Financing Administration
HDSO Human Development Services Office
HRA Health Resources Administration
HSA Health Services Administration
NIH National Institutes of Health
NIOSH National Institute for Occupational Safety and Health
PHS Public Health Service
RRO Refugee Resettlement Office
SSA Social Security Administration

HUD Housing and Urban Development Department

CARF Consumer Affairs and Regulatory Functions, Office of Assistant Secretary
CPD Community Planning and Development, Office of Assistant Secretary
EQO Environmental Quality Office, Housing and Urban Development Department
FHC Federal Housing Commissioner, Office of Assistant Secretary for Housing
FHEO Fair Housing and Equal Opportunity, Office of Assistant Secretary
GNMA Government National Mortgage Association
ILSRO Interstate Land Sales Registration Office
NCA New Communities Administration
NCDC New Community Development Corporation
NVACP Neighborhoods, Voluntary Associations and Consumer Protection, Office of Assistant Secretary
SEECB Solar Energy and Energy Conservation Bank

INTERIOR Interior Department

BIA Bureau of Indian Affairs
BLM Bureau of Land Management
FWS Fish and Wildlife Service
GS Geological Survey
Mines Mines Bureau
NPS National Park Service
OHA Office of Hearings and Appeals, Interior Department
RB Reclamation Bureau
SMREO Surface Mining Reclamation and Enforcement Office

JUSTICE Justice Department

ANTITRUST Antitrust Division
BJS Bureau of Justice Statistics
DEA Drug Enforcement Administration
FCSC Foreign Claims Settlement Commission
INS Immigration and Naturalization Service
JJDPO Juvenile Justice and Delinquency Prevention Office
LEAA Law Enforcement Assistance Administration
NIC National Institute of Corrections
NIJ National Institute of Justice
OJARS Justice Assistance, Research and Statistics Office
PARCOM Parole Commission
PB Prisons Bureau

LABOR Labor Department

BLS Bureau of Labor Statistics
ESA Employment Standards Administration

ETA Employment and Training Administration
FCCPO Federal Contract Compliance Programs Office
LMSEO Labor Management Standards Enforcement Office
MSHA Mine Safety and Health Administration
OSHA Occupational Safety and Health Administration
P&WBP Pension and Welfare Benefit Programs Office
W&H Wage and Hour Division

STATE State Department

FSGB Foreign Service Grievance Board

DOT Transportation Department

CG Coast Guard
FAA Federal Aviation Administration
FHWA Federal Highway Administration
FRA Federal Railroad Administration
MA Maritime Administration
NHTSA National Highway Traffic Safety Administration
RSPA Research and Special Programs Administration
SLSDC Saint Lawrence Seaway Development Corporation
UMTA Urban Mass Transportation Administration

TREASURY Treasury Department

ATF Alcohol, Tobacco and Firearms Bureau
Customs Customs Service
Comptroller Comptroller of the Currency
FACO Foreign Assets Control Office
FS Fiscal Service
IRS Internal Revenue Service
Mint Mint Bureau
PDB Public Debt Bureau
RSO Revenue Sharing Office
SS Secret Service

Independent Agencies

ACHP Historic Preservation, Advisory Council
ANGTS Alaska Natural Gas Transportation System, Office of Federal Inspector
ATBCB Architectural and Transportation Barriers Compliance Board
CAB Civil Aeronautics Board
CEQ Council on Environmental Quality
CFTC Commodity Futures Trading Commission
CITA Textile Agreements Implementation Committee
CPSC Consumer Product Safety Commission
CRC Civil Rights Commission
CSA Community Services Administration
DIDC Depository Institutions Deregulation Committee
EEOC Equal Employment Opportunity Commission
EPA Environmental Protection Agency
ESC Endangered Species Committee
EXIMBANK Export-Import Bank of the U.S.
FCA Farm Credit Administration
FCC Federal Communications Commission
FDIC Federal Deposit Insurance Corporation
FEC Federal Election Commission
FEMA Federal Emergency Management Agency
FEMA/USFA United States Fire Administration
FFIEC Federal Financial Institutions Examination Council
FHLBB Federal Home Loan Bank Board
FHLMC Federal Home Loan Mortgage Corporation
FLRA Federal Labor Relations Authority
FMC Federal Maritime Commission
FRAC Federal Register Administrative Committee
FRS Federal Reserve System
FSIDP Foreign Service Impasse Disputes Panel
FSLRB Foreign Service Labor Relations Board
FTC Federal Trade Commission
GAO General Accounting Office
GPO Government Printing Office
GSA General Services Administration
GSA/ADTS Automated Data and Telecommunications Service
GSA/FPRS Federal Property Resources Service
GSA/FSS Federal Supply Service
GSA/NARS National Archives and Records Service
GSA/OFR Office of the Federal Register
GSA/PBS Public Buildings Service
GSA/TPUS Transportation and Public Utilities Service
ICA International Communication Agency
ICC Interstate Commerce Commission
IDCA International Development Cooperation Agency
IDCA/AID Agency for International Development
ITC International Trade Commission
IRLG Interagency Regulatory Liaison Group
LSC Legal Services Corporation
MB Metric Board
MSPB Merit Systems Protection Board
MWSC Minimum Wage Study Commission
NACEO National Advisory Council on Economic Opportunity
NASA National Aeronautics and Space Administration
NCCB National Consumer Cooperative Bank
NCUA National Credit Union Administration
NFAH National Foundation for the Arts and the Humanities
NLRB National Labor Relations Board
NRC Nuclear Regulatory Commission
NSF National Science Foundation
NTSB National Transportation Safety Board
OMB Office of Management and Budget
OMB/FPPO Federal Procurement Policy Office
OPIC Overseas Private Investment Corporation
OPM Office of Personnel Management
OPM/FPRAC Federal Prevailing Rate Advisory Committee
OSTP Office of Science and Technology Policy
PADC Pennsylvania Avenue Development Corporation
PBGC Pension Benefit Guaranty Corporation
PRC Postal Rate Commission
PS Postal Service
ROAP Reorganization Office of Assistant to President
RRB Railroad Retirement Board
SBA Small Business Administration
SEC Securities and Exchange Commission
SFC Synthetic Fuels Corporation
SSS Selective Service System
Trade Representative Trade Representative, Office of United States
TVA Tennessee Valley Authority
VA Veterans Administration
WRC Water Resources Council

REMINDERS

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 September 30, 1981

10-1-81
Vol. 46—No. 190
BOOK 2:
Pages
48415-48616

FEDERAL REGISTER

Book 2 of 2 Books
Thursday, October 1, 1981

48418 Part II—USDA/FGIS:
Termination of Designations and Requests for Comments on Applicants.

48422 Part III—DOT/Secretary:
Regulations Agenda and Review List; Semi-Annual Summary.

48524 Part IV—HHS/HCFA:
Medicaid Program; Freedom of Choice; Waivers of and Exceptions to State Plan Requirements.

48532 Part V—HHS/HCFA:
Medicaid Program; Home and Community-Based Services.

48544 Part VI—HHS/HCFA:
Medicare Program; Inpatient Routine Nursing Salary Cost Differential; Interim Rule.

48550 Part VII—HHS/HCFA:
Medicare and Medicaid Program; Less Than Effective Drugs and Inpatient Hospital Tests.

48556 Part VIII—HHS/HCFA:
Medicaid Program; Miscellaneous Medicaid Provisions—Increased State Flexibility.

48564 Part IX—HHS/HCFA:
Professional Standards Review Organizations.

48574 Part X—Justice/PB:
Control, Custody, Care, Treatment and Instruction of Inmates.

48582 Part XI—HHS/Secretary:
Block Grant Programs; Final Rules on Implementation; Revocation of Categorical Health Grant Regulations; and Changes in Requirements.

48600 Part XII—DOT/FAA:
Size of Registration Marks.

48606 Part XIII—LABOR/ETA:
Department of Health and Human Services, Office of Human Development Services; Work Incentive Program for AFDC Recipients Under Title IV of the Social Security Act.

federal register

Thursday,
October 1, 1981

Part II

Department of Agriculture

Federal Grain Inspection Service

Termination of Designations and Requests for Comments on Applicants

DEPARTMENT OF AGRICULTURE

Federal Grain Inspection Service

Termination of Designations of the Gibson City Grain Inspection Department, the Indianapolis Grain Inspection and Weighing Service, Inc., and the Wyoming Department of Agriculture

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This notice announces that the designations of three official agencies will terminate on March 31, 1982, and requests applications from parties interested in being designated as agencies to conduct official inspection services in the geographic areas currently serviced by each of the three present agencies. The three official agencies are the Gibson City Grain Inspection Department, the Indianapolis Grain Inspection and Weighing Service, Inc., and the Wyoming Department of Agriculture.

EFFECTIVE DATE: November 2, 1981.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, Chief, Regulatory Branch, Compliance Division, Federal Grain Inspection Service, U.S. Department of Agriculture, 1400 Independence Avenue, Room 2405 Auditors Building, Washington, DC 20250, telephone (202) 447-8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291; therefore the Executive Order does not apply to this action.

Sections 7(f)(1) of the U.S. Grain Standards Act, as amended (7 U.S.C. 71, *et seq.*, at 79(f)(1)) (Act), specifies that the Administrator of the Federal Grain Inspection Service is authorized, upon application by any qualified agency or person, to designate such agency or person to perform official inspection services after a determination is made that the applicant is better able than any other applicant to provide official inspection services in an assigned geographic area.

The Gibson City Grain Inspection Department (Gibson City), Routes 47 and 9, P.O. Box 20, Gibson City, Illinois 60936, was designated as an official agency under the Act for the performance of official grain inspection functions on February 1, 1979. The Indianapolis Grain Inspection and Weighing Service, Inc. (Indianapolis), 4804 East Michigan Street, Indianapolis, Indiana 46201, was designated as an official agency under the Act for the performance of official grain inspection functions on November 20, 1978. The Wyoming Department of Agriculture (Wyoming), 2219 Carey Avenue, Cheyenne, Wyoming 82002, was designated as an official agency under the Act for the performance of official grain inspection functions on November 20, 1978. The three agencies' designations will terminate on March 31, 1982. Section 7(g)(1) of the Act states generally that designations of official agencies shall terminate no later than triennially and may be renewed in accordance with the criteria and procedures prescribed in the Act.

The geograhic area presently assigned to Gibson City in the State of Illinois pursuant to Section 7(f)(2) of the Act and which is the geographic area that may be assigned to the applicant selected for designation is the following:

Bounded: on the North by the northern Livingston County line from the ICG Railroad line;

Bounded: on the East by the Livingston County line; the Ford County line; the southern Ford County line west to Interstate 57; Interstate 57 south to State Route 136;

Bounded: on the South by State Route 136 west to a point approximately 10 miles west of the eastern McLean County line; and

Bounded: on the West from this point through Arrowsmith to Pontiac along a straight line running north and south, which intersects with the ICG Railroad line northeast to the northern Livingston County line.

Also, the following location which is outside of the foregoing contiguous area, and which is presently assigned to Gibson City and which is part of the geographic area that may be assigned to the applicant selected for designation is:

Farm Service, Arrowsmith, Illinois, in McLean County.

An exception to the described geographic area is the following location situated inside Gibson City's area which has been and will continue to be serviced by the following official agency:

Bunge Corporation, Pontiac, Illinois, in Livingston County to be serviced by the Bloomington Grain Inspection Department.

The geographic area presently assigned to Indianapolis in the State of Indiana pursuant to section 7(f)(2) of the Act and which is the geographic area that may be assigned to the applicant selected for designation are the following Counties:

Bartholomew; Brown; Hamilton, south of State Route 32; Hancock; Hendricks; Johnson; Madison, west of State Route 13 and south of State Route 132; Marion; Monroe; Morgan; and Shelby.

The geographic area presently assigned to Wyoming pursuant to section 7(f)(2) of the Act and which is the geographic area that may be assigned to the applicant selected for designation is the entire State of Wyoming except the geopgraphic area assigned to the Denver Grain Exchange Association, Inc., Commerce City, Colorado, which is as follows:

Goshen County, Platte County, and the following locations in Laramie County: Albin Elevator, Albin; Farmers Coop, Burns; Carpenter Elevator, Carpenter; Pillsbury Company, Egbert; and Pine Bluffs Feed and Grain, Pine Bluffs.

Interested parties, including Gibson City, Indianapolis, and Wyoming, are hereby given oportunity to apply for designation as the official agency for each respective specified geographic area, as described above, under the provisions of Section 7(f) of the Act and section 800.196(b) of the regulations issued thereunder, as applicable. The designations in each specified geographic area are for the period beginning April 1, 1982, and terminating March 31, 1985. Parties wishing to apply for any of these designations should contact the Chief, Regulatory Branch, Compliance Division, at the address listed above for appropriate forms and information. Applications must be postmarked not later than November 2, 1981 to be eligible for consideration.

In making a determination as to which applicant will be designated to provide official inspection service in the geographic areas, consideration will be given to all applications submitted and all other information available to the Administrator. All applications submitted pursuant to this notice will be available for public inspection at the Regulatory Branch, Compliance Division, during regular business hours.

(Sec. 8, Pub. L. 94-582, 90 Stat. 2873, (7 U.S.C. 79))

Dated: September 23, 1981.

J. T. Abshier,

Director, Compliance Division.

[FR Doc. 81-28085 Filed 9-30-81; 8:45 am]

BILLING CODE 3410-EN-M

Request for Comments on Applicants for Designation in the Areas Currently Assigned to Agricultural Seed Laboratories, Decatur Grain Inspection, Inc., and the South Carolina Department of Agriculture

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This notice requests comments from interested parties on the applicants for designation as the official agency in the areas currently assigned to Agricultural Seed Laboratories (Agri Seed), Decatur Grain Inspection, Inc. (Decatur), and the South Carolina Department of Agriculture (South Carolina). The three designations terminate effective 12 p.m., December 31, 1981.

DATE: Comments to be postmarked on or before November 2, 1981.

ADDRESS: Comments must be submitted in writing, in duplicate, to Lewis Lebakken, Jr., Director, Issuance and Coordination Staff, USDA, FGIS, Room 1127, Auditor Buildings, 1400 Independence Avenue, SW., Washington, DC 20250, telephone (202) 447-3910. All comments received will be made available for public inspection at the above address during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Jr., telephone (202) 447-3910.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291; therefore the Executive Order does not apply to this action.

The July 30, 1981, issue of the Federal Register (46 FR 39079) contained a notice from the Federal Grain Inspection Service (FGIS) requesting applications for designation to perform official inspection services under the U.S. Grain Standards Act, as amended (7 U.S.C. 71 *et seq.*) (Act), in the areas currently assigned to Agri Seed, Decatur, and South Carolina. Applications were to be postmarked by August 31, 1981.

One applicant requested designation for all of the geographic area currently assigned to Agri Seed. That applicant is Agricultural Seed Laboratories, Phoenix, Arizona, Owner and Chief Inspector: Thomas B. Storey. Agri Seed applied for a renewal of designation for an additional 3-year period.

One applicant requested designation for all of the geographic area currently assigned to Decatur. That applicant is Decatur Grain Inspection, Inc., Decatur, Illinois, President: John N. Humphrey. Decatur applied for a renewal of designation for an additional 3-year period.

One applicant requested designation for all of the geographic area currently assigned to South Carolina. That applicant is the South Carolina Department of Agriculture, North Charleston, South Carolina, Commissioner: G. Bryan Patrick, Jr., South Carolina applied for a renewal of designation for an additional 3-year period.

In accordance with § 800.206(b)(2) of the regulations under the Act, this notice provides interested persons the opportunity to present their views and comments concerning the applicants. All comments must be submitted to the Issuance and Coordination Staff, specified in the address section of this notice, and postmarked not later than November 2, 1981.

The Administrator of FGIS has determined that a 30-day comment period would not impose any undue obligations on others and, under the circumstances, provides a sufficient period of time for comments while expediting the designation process.

Consideration will be given to all comments filed and to all other information available to the Administrator of FGIS before a final decision is made with respect to this matter. Notice of the final decision will be published in the Federal Register and the applicants will be informed of the decision in writing.

(Sec. 8, Pub. L. 94-582, 90 Stat. 2873 (7 U.S.C. 79))

Dated: September 23, 1981.

J. T. Abshier,

Director, Compliance Division.

[FR Doc. 81-28038 Filed 9-30-81; 8:45 am]

BILLING CODE 3410-EN-M

Request for Comments on Applicants for Designation in the Areas Currently Assigned to California Department of Food and Agriculture and Washington Department of Agriculture

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This notice requests comments from interested parties on the applicants for designation as the official agency in the areas currently assigned to California Department of Food and Agriculture (California) and Washington Department of Agriculture (Washington). The two designations terminate effective 12 p.m., January 31, 1982.

DATE: Comments to be postmarked on or before November 30, 1981.

ADDRESS: Comments must be submitted in writing, in duplicate, to Lewis Lebakken, Jr., Director, Issuance and Coordination Staff, USDA, FGIS, Room 1127, Auditors Building, 1400 Independence Avenue, SW, Washington, DC 20250, telephone (202) 447-3910. All comments received will be made available for public inspection at the above address during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Lewis Bebskken, Jr., telephone (202) 447-3910

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291; therefore the Executive Order does not apply to this action.

The August 4, 1981, issue of the Federal Register (46 FR 39775) contained a notice from the Federal Grain Inspection Service (FGIS) requesting applications for designation to perform official inspection, official weighing, and supervision of weighing services under the U.S. Grain Standards Act, as amended (7 U.S.C. 71 *et seq.*) (Act), in the areas currently assigned to California and Washington. Applications were to be postmarked by September 3, 1981.

One applicant requested designation for all of the geographic area currently assigned to California. That applicant is the California Department of Food and Agriculture, Sacramento, California, Director: Richard E. Rominger. California applied for a renewal of designation for an additional 3-year period.

One applicant requested designation for all of the geographic area currently assigned to Washington. That applicant is the Washington Department of Agriculture, Olympia, Washington, Director: Bob J. Mickelson. Washington applied for a renewal of designation for an additional 3-year period.

In accordance with § 800.206(b)(2) of the regulations under the Act, this notice provides interested persons the opportunity to present their views and comments concerning the applicants. All comments must be submitted to the Issuance and Coordination Staff, specified in the address section of this notice, and postmarked not later than November 30, 1981.

Consideration will be given to all comments filed and to all other information available to the Administrator of FGIS before a final decision is made with respect to this matter. Notice of the final decision will be published in the Federal Register and the applicants will be informed of the decision in writing.

(Sec. 8, Sec. 9, Pub. L. 94-582, 90 Stat. 2873, 2875 (7 U.S.C. 79, 79a))

Dated: September 23, 1981.

J. T. Abshier,

Director, Compliance Division.

[FR Doc. 81-28037 Filed 9-30-81; 8:45 am]

BILLING CODE 3410-EN-M

Federal Register

Thursday
October 1, 1981

Part III

Department of Transportation

Office of the Secretary

Regulatory Agenda and Review List; Semi-Annual Summary

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Ch. I

23 CFR Chs. I and II

33 CFR Chs. I and IV

41 CFR Ch. 12

46 CFR Chs. I and III

49 CFR Subtitle A, Chs. I–VI

[OST Docket No. 59; Notice 80-2]

Department Regulations Agenda and Review List; Semi-Annual Summary

AGENCY: Department of Transportation.

ACTION: Department Regulations Agenda and Review List.

SUMMARY: The Regulations Agenda is a semi-annual summary of each pending proposed regulation that the Department of Transportation ("Department")* has issued and each proposed and final regulation that the Department expects to publish in the Federal Register during the succeeding 12 months or such longer projected period as may be anticipated. The Regulations Review List is a semi-annual summary of the existing regulations that the Department of Transportation has selected for review and possible revocation or revision. The Agenda and the Review List provide the public with information about the Department of Transportation's regulatory activity. It is expected that this information will enable the public to be more aware of, and allow it to more effectively participate in, the Department's regulatory activity.

ADDRESSES: The mailing address for the initiating offices of the Department which appear in the Agenda and the Review List are 400 Seventh Street, SW., Washington, D.C. 20590, except for the Federal Aviation Administration and the St. Lawrence Seaway Development Corporation, which are located at 800 Independence Avenue, S.W., Washington, D.C. 20591, and the U.S. Coast Guard, which is located at 2100 Second Street, S.W., Washington, D.C. 20593.

FOR FURTHER INFORMATION CONTACT:

General

For further information on the Agenda or the Review List, in general, contact: Neil R. Eisner, Assistant General Counsel for Regulation and Enforcement, Department of Transportation, 400 Seventh Street, SW., Washington, D.C. 20590, 202–426–4723.

Specific

For further information about any particular item on the Agenda or the Review List, contact the individual listed in the column headed "Contact" for that item.

SUPPLEMENTARY INFORMATION:

Table of Contents

Supplementary Information:
Background
Definitions
Regulatory Flexibility Act
Explanation of Information on the Regulations Agenda
Explanation of Information on the Regulations Review List
General
Mailing Lists for Regulatory Documents
General Rulemaking Contact Persons
Public Rulemaking Dockets
Request for Comments
Purpose
Agenda
Review List
Appendix A—Instructions for Obtaining Copies of Regulatory Documents
Appendix B—General Rulemaking Contact Persons
Appendix C—Public Rulemaking Dockets
Appendix D—Innovative Regulatory Techniques

Background

Improvement of government regulations is a prime goal of the Reagan Administration. There should be no more regulations than necessary, and those that are issued should be simpler, more comprehensible, and less burdensome. Regulations should not be issued without appropriate involvement of the public; once issued, they should be periodically reviewed and revised, as needed, to assure that they continue to meet the needs for which they originally were designed.

To help the Department of Transportation ("Department") achieve these goals, and in accordance with Executive Order 12291 ("Federal Regulation" 46 FR 13193; February 19, 1981) and the Department's Regulatory Policies and Procedures (44 FR 11034; February 26, 1979), the Department prepares a semi-annual Department Regulations Agenda for publication in the Federal Register. The Agenda summarizes each pending proposed regulation that the Department has issued and each proposed and final regulation that the Department expects to publish in the Federal Register during the succeeding 12 months or such longer projected period as may be anticipated. The Executive Order and the Regulatory Policies and Procedures also include a requirement that the Department prepare a semi-annual list of existing regulations it has selected for review and possible revocation or revision for publication in the Federal Register.

The Agendas and Review Lists are based on reports submitted by the initiating offices by the beginning of February and August each year. After these reports are consolidated for, and reviewed by, the Department Regulations Council, the Department's Regulations Agenda and Review List is prepared and published in the Federal Register. The Department's last Regulations Agenda and Review List was published in the Federal Register on April 2, 1981 (46 FR 20036). The next one is scheduled for publication in the Federal Register on April 1, 1982.

Regulatory Flexibility Act

In 1980, Congress passed the Regulatory Flexibility Act (RFA), P.L. 96–354, which requires the designation of those regulations for which a Regulatory Flexibility Analysis will be prepared, i.e., those regulations that would have a significant economic impact on a substantial number of small entities. The symbol "†" appears at the left margin, prior to the title, for each significant and nonsignificant regulation in this Agenda for which a Regulatory Flexibility Analysis will be, or has been, prescribed. In addition, where the RFA applies to a significant regulation in this Agenda, that fact is noted in the regulation's summary under subheading C "Analysis," by the addition of a slash (/) after the words "Regulatory Evaluation" or "Regulatory Impact Analysis," followed by the words "Regulatory Flexibility Analysis."

The RFA also requires that each year the Department publish a list of those regulations that have a significant economic impact on a substantial number of small entities and are to be reviewed under the Act during the succeeding twelve months. The Review List in this and future Agendas will include those regulations to be reviewed under the RFA or those for which review has been concluded since the last Agenda. The symbol "†" also will appear in the left margin, prior to the title, for each such regulation. It should be noted, however, that after a preliminary assessment of the regulations listed for RFA review, it

* Note.—*The Maritime Administration was made an operating administration of the Department of Transportation on August 6, 1981. At that time, development of this Agenda was already underway and it was too late to include the Maritime Administration regulatory actions in this Agenda. They will publish a separate Agenda on October 29, 1981, and will be included in the Department's next Agenda scheduled for publication on April 1, 1982.*

may be found that the regulations, in fact, do not have a significant economic impact on a substantial number of small entities and a full RFA review will be unnecessary.

Definitions

The Agenda and the Review List cover all rules and regulations of the Department, including those that establish conditions for financial assistance. The following definitions are provided for ease in understanding the information in this document.

(1) *Initiating office* means an operating administration or other organizational element within the Department, the head of which is authorized by law or delegation to issue regulations or to formulate regulations for issuance by the Secretary.

(2) *Significant regulation* means a regulation that is not an emergency regulation and that in the judgment of the head of the initiating office, or the Secretary, or the Deputy Secretary—

(a) Is a major regulation;

(b) Concerns a matter on which there is substantial public interest or controversy;

(c) Has a major impact on another operating administration or other parts of the Department or other Federal Agency;

(d) Has a substantial effect on State and local governments;

(e) Has a substantial impact on a major transportation safety problem;

(f) Initiates a substantial regulatory program or change in policy;

(g) Is substantially different from international requirements or standards; or

(h) Otherwise involves important Department policy.

(3) *Major regulation* means a significant regulation for which a Regulatory Impact Analysis is required to be prepared.

(4) *Emergency regulation* means (a) a regulation that, in the judgment of the head of the initiating office, circumstances require to be issued without notice and opportunity for public comment or made effective in less than 30 days after publication in the Federal Register; or (b) is governed by short-term statutory or judicial deadlines.

(5) *Nonsignificant regulation* means a regulation that, in the judgment of the head of the initiating office, is neither a significant nor an emergency regulation.

A preliminary and final Regulatory Impact Analysis is required for each proposed and final regulation, respectively that (1) is likely to result in:

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

(b) A major effect on the general economy in terms of costs, consumer prices, or production;

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

(d) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets; or

(2) The Secretary or head of the initiating office determines deserves such an analysis.

Explanation of Information on the Regulations Agenda

The Regulations Agenda is divided by initiating offices. For each initiating office the Agenda lists: (1) significant regulations, which are subdivided into two subcategories—major significant regulations and other significant regulations, (2) nonsignificant regulations, and (3) routine and frequent nonsignificant regulations. For each proposed and final regulation, the Agenda provides the following information: (1) a short descriptive title; (2) a summary; (3) the earliest expected date for a decision on whether to issue the proposed or final regulation; (4) a contact office official who can provide additional information, including advice on how to obtain documents referenced in the Agenda; and (5) the related regulatory citation in the Code of Federal Regulations. If final action has been taken on an item included on the previous semi-annual Agenda, that item is still contained in this Agenda and the final action is indicated under the "Summary" column of that item.

For a significant regulation, the summary includes: (1) a description of the proposed or final regulation; (2) a brief statement as to why it is considered significant; (3) a listing of any analyses an initiating office will prepare or has prepared for the rulemaking document; e.g., a Regulatory Impact Analysis or Evaluation, an Environmental Impact Statement (EIS), Regulatory Flexibility Analysis, and an Urban Impact Analysis; (4) a brief statement of the objectives— why the regulation is needed; (5) the legal basis for the action being taken; (6) the past and anticipated chronology of the development of the regulation including any final action taken since the last semi-annual Agenda and (7) the related regulatory citation in the Code of Federal Regulations. It should be noted that, even though a Regulatory Impact Analysis is not required for some items on the Agenda, the Department requires an economic analysis for all of its regulations. This economic analysis is contained in the Regulatory Evaluation.

For nonsignificant regulations issued routinely and frequently as part of an established body of technical requirements (such as the Federal Aviation Administration's Airspace Rules) to keep those requirements operationally current, only the general category of the regulations, the identity of a contact office or official, and an indication of the expected number of regulations are included; individual regulations are not listed.

If a regulatory docket number has already been established, it is contained in parentheses immediately following the short descriptive title of the regulation. If a member of the public desires further information regarding a particular proposal or regulation, reference should be made to this docket number. The Federal Highway Administration also provides an FHPM number at this point for easier reference by those who use the Federal-aid Highway Program Manual (FHPM). The numbers following the FHPM represent, respectively, the volume, chapter, section and subsection at which the material is located in the FHPM.

In the "Earliest Expected Decision Date" column, abbreviations are used to indicate the particular documents being considered for issuance by that date. ANPRM stands for Advance Notice of Proposed Rulemaking, SNPRM for Supplemental Notice of Proposed Rulemaking, NPRM for Notice of Proposed Rulemaking, and FR for Final Rule. Listing a date in this column is not an indication that a proposal or a final rule will be issued on that date; it is the earliest date on which a decision is expected to be made on whether to issue the document listed. Submittal of any proposed or final rule to the Office of Management and Budget for review, under Executive Order 12291, must follow such a decision. For major rules, this review could take 60 days or more. If any document is issued, publication in the Federal Register would follow within a few days. These dates are based on current schedules. Subsequently received information could result in a decision not to take regulatory action or in changes to proposed publication dates. For example, the need for further evaluation could result in a later publication date; evidence of a greater need for the regulation could result in an earlier publication date.

It should be noted that some of the items on the Agenda result from programs that were established to

review existing regulations and revoke or revise those regulations that the initiating office determined were not achieving their intended purpose. Projects under regulatory development that resulted from a review of existing regulations to determine whether they should be revoked or revised are preceded by the word "Review" in the "Title" column. Because some reviews can be large-scale undertakings, and because there are already a number of these in the regulatory development process, the Department thought it would provide the public with valuable information if it indicated not only which regulatory reviews are under consideration but also which reviews have now reached the stage where proposed revisions are being, or have been, prepared. The number of regulatory projects that an initiating office can handle is limited by available resources. Therefore, the number of projects in the regulatory development stage may limit the number of reviews that can be added.

Explanation of Information on the Regulations Review List

The Regulations Review List is divided by initiating offices. For each office, it provides the following information: (1) a short description of the existing regulations involved, including the related citation to the Code of Federal Regulations; (2) a brief description of the reasons for each selection; (3) a contact office or official who can provide additional information; and (4) the target date for completing the review and determining the corrective course of action to be taken. The action taken can be revocation or revision of the regulation, or it can be a determination that no regulatory action is necessary because the regulation is found to be achieving its goals and the goals and objectives of Executive Order 12291 and the Department's Regulatory Policies and Procedures. If final action has been taken on an item included on the previous semi-annual Review List, that item is still contained in this Review List and the final action is indicated under the "Reasons for Selection" column for that item.

General

To allow for easier use of the Agenda and for quick comparison with earlier Agendas, the Department has instituted the following additional procedures in the Agenda: (1) Items listed on the Agenda or Review List retain the same order in each semi-annual publication. If subheadings are used within an initiating office's listing, then the same order is retained within each subheading. (2) New items generally are added at the end of the appropriate portion of the Agenda or Review List and are identified by an asterisk ("*") on the left side of the "Title" when first added. (3) New substantive information added to items that were on an earlier Agenda or Review List is printed in italics.

Mailing Lists for Regulatory Documents

To assist the public in obtaining regulatory documents issued within the Department of Transportation, an Appendix A has been included in this document. The appendix contains instructions on how to be placed on mailing lists for copies of regulatory documents, including the Department's Semi-Annual Regulations Agenda, issued by the operating administrations of the Department and the Office of the Secretary. There is no charge for this service; however, because of the costs involved, the number of copies of a document forwarded to an individual requestor may be limited. Persons already on mailing lists for particular documents within the Department will remain on those lists and should not reapply.

By following the instructions specified in the appendix, a person can be placed on a mailing list for future copies of the Department's Regulations Agenda, which will be updated and published in the Federal Register every year during April and October. By using the Agenda, individuals can determine which Notice or Advance Notice of Proposed Rulemaking, to be issued by elements of the Department, is of interest to them. Then, using the instructions in the appendix, such persons also can be placed on a mailing list to ensure that, after the document of interest is issued, a copy will be mailed to them for their review and comment. In this way, individuals will be relieved of the burden of having to review the Federal Register, perhaps on a daily basis. The Department expects that this process will ensure that those people placed on mailing lists will receive early notice so that their views on the document can be adequately prepared and presented within the established comment period.

General Rulemaking Contact Persons

To assist persons desiring to obtain general information concerning the rulemaking process within the Department's operating administrations, an Appendix B has been added to the Agenda. This appendix sets forth the addresses and the telephone numbers of the persons who can respond quickly to requests for general rulemaking information. Please note, however, that questions related to particular rulemaking actions should still be referred to the contact person listed with the particular rulemaking on the Agenda.

Public Rulemaking Dockets

To facilitate the inspection of docket files and the submission of comments by the public, an Appendix C sets forth the addresses and working hours for the Rules Docket for each operating administration.

Request for Comments

Agenda

Our Agenda is intended primarily for the use of the public. In each of the eight Agendas that we have issued, we have made modifications and refinements that we believe provide the public with more helpful information as well as make the Agenda easier to use. We have, for example, tried to give as many Federal Register and Code of Federal Regulations citations as possible so that the public can easily check source documents when they are needed for more information; we also have tried to maintain the same order in the list of the regulations in the Agenda, adding new items at the end and putting new information in italics so that it would be easier for the public to follow the development of a regulation from one Agenda to the next. We would now like to ask you, the public, to make suggestions or comments on how the Agenda could be further improved. For example, do you find the information presented in an easily understandable manner? Do you find it easy to follow a regulation's development from Agenda to Agenda? Do you find that the format for setting out the information enables you to use the Agenda easily? Do you find that the explanation of the information in the Agenda and the Review List is clearly explained in the preamble to the Agenda? Your responses to these questions or any other comments or suggestions you may have should be sent to Neil R. Eisner, whose address appears above.

Reviews

In an effort to comply further with the spirit of Executive Order 12291 and the Regulatory Flexibility Act, we are also seeking suggestions on existing regulations that should be included on our Review List; that is, which existing regulations issued by an operating administration of the Department or the Office of the Secretary do you believe need to be reviewed to determine whether they should be revised or revoked? The Department is particularly

interested in obtaining information on requirements that have a "significant economic impact on small entities" and therefore, must be reviewed under the Regulatory Flexibility Act. If you have any suggested regulations, please send them, along with your explanation of why they should be reviewed, to the concerned operating administration or the Office of the Secretary, at the appropriate address noted in the "Addresses" paragraph above.

In accordance with the Regulatory Flexibility Act, comments are specifically invited on regulations listed in the Review portion of the Agenda that are targeted for review under the RFA. Those comments should be addressed to the "contact" person of the operating administration involved, at the appropriate address noted in the "Addresses" paragraph above.

It should be noted that the Department has already initiated a systematic review of over 40 of its most costly and controversial existing regulations for possible revision/rescission. The regulations selected for this priority review are identified by a bullet ("•") in the left margin preceding the title. Several of the selected regulations are also included either in the Agenda or review portion of this notice; however, selection for priority review will ensure that they will receive special expedited attention and that they will be reviewed in a systematic fashion.

Innovative Regulatory Techniques

The Department of Transportation is reviewing its regulations for regulatory areas where the application of innovative regulatory techniques would be appropriate. The Department invites the assistance of the public in this search.

Particular techniques that have shown promise throughout the federal government are (1) the creation of marketable rights; (2) the use of economic incentives; (3) the use of performance standards; (4) the use of market-oriented compliance measures; (5) the enhancement of competition; (6) the use of information disclosure; (7) the use of voluntary standards; and (8) the tailoring of standards to distinguish among categories of regulated entities ("tiering"). More complete descriptions of these innovative techniques are set forth in Appendix D. The Department of Transportation is already using these techniques in many regulatory programs. However, the views of the public are solicited with respect to other regulatory programs where these techniques can be applied effectively to reduce the burdens on regulated entities or to reduce governmental costs. If you have any suggestions, please send them to the concerned operating administration or the Office of the Secretary, at the appropriate address noted in the "Address" paragraph above. Additional information on the innovative techniques program can be obtained by contacting Neil R. Eisner, whose address appears above.

Purpose

The Department is publishing this Regulations Agenda and Review List in the Federal Register to share with interested members of the public the Department's preliminary expectations regarding its future regulatory actions. This should enable the public to be more aware of the Department's regulatory activity. Knowledge of the nature and scope of this activity, as well as the specific proposals and reviews being considered, should result in more effective public participation in the Department's regulatory activity. For example, awareness of the dates when notices may be issued seeking public comment should allow appropriate planning and more efficient use of the comment period. By providing the expected date for a decision on whether to issue a final rule, the Department expects that more appropriate planning by those concerned with the regulation will also be possible.

This publication in the Federal Register does not impose any binding obligation on the Department, or any of the offices within the Department, with regard to any specific item on the Agenda or the Review List. Regulatory action in addition to the items listed is not precluded.

If further information is desired on any of the items listed in the Agenda or the Review List, the public is encouraged to contact the individual listed for the particular item. Additional information concerning the Agenda or the Review List, in general, or the Department's Regulatory Policies and Procedures may be obtained from Neil R. Eisner, whose address and telephone number appear above.

Issued in Washington, D.C. on August 31, 1981.

Drew Lewis,

Secretary of Transportation.

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

AGENDA

OST Office of the Secretary

Significant Regulations: Major

[Key to symbols: *New item. †Analysis or review being considered under Regulatory Flexibility Act. ●Regulation selected for priority review. *Italics:* New or changed information since last Agenda]

Title	Summary	Contact	Earliest expected decision date
Allocation of "Slots" at Washington National Airport.	**A. Description:** Proposed amendment to establish procedures for allocating the hourly number of instrument flight operations (takeoffs and landings) or "slots" that may be reserved at Washington National Airport (WNA) in accordance with the FAA's High Density Rule. **B. Why Significant:** This proposal is considered a significant rulemaking project due to substantial public interest and potential costs to airlines. **C. Analysis:** Regulatory Impact Analysis..... **D. Need:** The Civil Aeronautics Board and the Department of Justice have expressed concerns about continuing the antitrust immunity under which the airline scheduling committees currently allocate slots at WNA. A new method of allocation may become necessary. **E. Legal Basis:** Sections 103, 306, 307 (a), (b), and (c), and 313(a), Federal Aviation Act of 1958, as amended (49 U.S.C. 1303, 1347, 1348 (a), (b), and (c), and 1354(a)); § 6(c) DOT Act (49 U.S.C. § 1655(c)); Sec. 2, Act for the Administration of Washington National Airport, 54 Stat. 688. **F. Chronology:** The CAB in conjunction with the FAA commissioned the Polinomics Research Laboratories, Inc., to research the allocation problem. A report of its findings has been prepared. Another report by Econ, Inc. analyzing a slot allocation auction procedure has been prepared under an FAA contract. On August 15, 1980, the Secretary of Transportation issued a Policy for the Operation of Washington National Airport (WNA). The policy and implementing regulations were published in the **Federal Register** on September 18, 1980 (45 FR 62406). On October 29, 1980, DOT issued an emergency regulation for the temporary allocation of slots at WNA for the period December 1, 1980 until April 26, 1981, because of the failure of the scheduling committee to come to an agreement for that period. The emergency regulation was published in the **Federal Register** on November 3, 1980 (45 FR 72637). The NPRM for a long term solution to the slot allocation problem was issued on October 27, 1980 (45 FR 71236). A public hearing was held on February 13, 1981, and the comment period was extended until February 26, 1981 (46 FR 932, January 5, 1981). **G. Citation:** 14 CFR pt. 93.....	Harvey Safeer, (202) 426-3331	Further action to be determined.
Nondiscrimination on the Basis of Handicap.	**A. Description:** *The Department's section 504 rule is one of those selected for priority review. In addition, a May 1981 Federal Court of Appeals decision said that section 504 of the Rehabilitation Act of 1973 did not authorize the Department's rule as it affects mass transit. The Department published an interim final rule changing the transit portion of the rule on July 20, 1981 (46 FR 37488) to conform to the Court's decision. Other parts of the rule will be revised in light of the decision and as part of the priority review of the regulation, with an NPRM to be issued proposing any appropriate changes..* **B. Why Significant:** The section 504 rule is a controversial regulation affecting all parts of DOT as well as many providers and users of DOT-funded or operated programs. *The mass transit section of the rule is controversial and* changes to the rule will be of considerable interest to the public.	Robert C. Ashby, (202) 426-4723	*FR (Interim Amendment) issued. Action completed. NPRM (comprehensive revision) December 1981.*

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

AGENDA

OST — Office of the Secretary

Significant Regulations: Major—Continued

[Key to symbols: *New item. †Analysis or review being considered under Regulatory Flexibility Act. ●Regulation selected for priority review. *Italics:* New or changed information since last Agenda]

Title	Summary	Contact	Earliest expected decision date
	C. Analysis: Regulatory Evaluation. *(Interim amendment); Regulatory Impact Analysis (NPRM for comprehensive revision).* **D. Need:** *These regulatory actions are necessary in order to make the rule consistent with the Court's decision and the Administration's regulatory policy.* **E. Legal Basis:** Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794); *Section 16(a) of the Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1612(a)); section 165(b) of the Federal-aid Highway Act of 1973, as amended (23 U.S.C. 142 nt.).* **F. Chronology:** The Final Rule establishing the Department's section 504 regulations was published May 31, 1979 (44 FR 31442). *Interim final rule published July 20, 1981 (46 FR 37488).* **G. Citation:** 49 CFR pt. 27		

OST — Office of the Secretary

Significant Regulations: Other

Title	Summary	Contact	Earliest expected decision date
Title VI Civil Rights Regulation	**A. Description:** The proposed regulations would assemble in one package all DOT procedures and requirements concerning all recipients of financial assistance under Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d–4). **B. Why Significant:** Substantial public interest is anticipated and it will affect all of the DOT elements and the administration of all grant programs. **C. Analysis:** Regulatory Evaluation **D. Need:** The Department has an existing Title VI regulation dating from 1970, and a Title VI order promulgated by Secretary Coleman on Jan. 19, 1977, and reaffirmed by Secretary Adams in March of that year. A new regulatory package is being developed to replace the previous layering of regulations. **E. Legal Basis:** 42 U.S.C. 2000d–4 **F. Chronology:** NPRM published in the Federal Register January 19, 1981 (46 FR 5588). Comment period closed April 20, 1981. **G. Citation:** 49 CFR pt. 21	Robert J. Coates, (202) 426–*4070*	Further action to be determined.
Minority Business Enterprise Program (Direct Contracting).	**A. Description:** This regulation would implement the requirements of DOT Order 4000.7A for DOT operating elements to take affirmative action to assure that minority business enterprises participate in Departmental procurement programs.	Robert Ashby, (202) 426–4723	*To be withdrawn.*

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

AGENDA

OST

Office of the Secretary

Significant Regulations: Other—Continued

[Key to symbols: *New item. †Analysis or review being considered under Regulatory Flexibility Act. ●Regulation selected for priority review. *Italics:* New or changed information since last Agenda]

Title	Summary	Contact	Earliest expected decision date
	B. Why Significant: Substantial public interest is anticipated given the proposed action's potential impact on DOT's procurement programs. **C. Analysis:** Regulatory Evaluation **D. Need:** To implement the provisions of the DOT Order 4000.7A by providing detailed instructions for carrying out the affirmative action requirements of the Order. To supplement the 1978 amendments to the Small Business Act. **E. Legal Basis:** Executive Order 11625; Executive Order 12138; 45 U.S.C. 803 P.L. 95-507. **F. Chronology:** NPRM was published on May 17, 1979 (44 FR 28928). The comment period closed on July 16, 1979. The Department published a final rule concerning its financial assistance programs on March 31, 1980 (45 FR 21172). *The Department has concluded that further rulemaking in the direct contracting field is unnecessary at this time, and intends to withdraw this proposed rule.* **G. Citation:** 49 CFR pt. 23		
†**Review:** Minority Business Enterprise Program (Financial Assistance Programs).	**A. Description:** The Department is reviewing its regulation establishing a minority business enterprise (MBE) program in its financial assistance programs (49 CFR Part 23). **B. Why Significant:** This regulation has been very controversial, is of interest to most DOT grant recipients and contractors, and affects the operations of all DOT financial assistance programs. **C. Analysis:** Regulatory Evaluation/Regulatory Flexibility Analysis (for NPRM). **D. Need:** As part of the Administration's program of reviewing regulations that are costly or controversial, the Department has decided that it is necessary to consider substantial revisions of the existing rule. The aim of the revisions would be to reduce regulatory burdens associated with the present rule. **E. Legal Basis:** Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d); Title 23 of the U.S.C., 49 U.S.C. 1730; 45 U.S.C. 906; 49 U.S.C. 1615. **F Chronology:** Final Rule published March 31, 1980 (45 FR 21172). NPRM to make interim amendment to this final rule, proposing to delete two controversial provisions, pending revision of the entire rule, published March 12, 1981 (46 FR 16282). Comment period closed March 26, 1981. Final rule for interim amendment *published April 27, 1981 (46 FR 16202). Proposed revision of entire rule anticipated October 1981.* **G. Citation:** 49 CFR pt. 23	Robert Ashby, (202) 426-4723	*FR (Interim Amendment) Issued. Action completed. NPRM (Comprehensive Revision) October 1981.*
Financial Assistance to Participants in Rulemaking Proceedings (Docket No. 48).	**A. Description:** This proposal would permit, but not require, each agency of the Department to fund eligible members of the public for the reasonable and actual costs of preparing and presenting their views at selected agency rulemaking proceedings.	Sam Podberesky, (202) 426-4723	*Action to be terminated.*

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

AGENDA

OST **Office of the Secretary**

Significant Regulations: Other—Continued

[Key to symbols: *New item. †Analysis or review being considered under Regulatory Flexibility Act. ●Regulation selected for priority review. *Italics:* New or changed information since last Agenda]

Title	Summary	Contact	Earliest expected decision date
	B. Why Significant: This issue concerns a matter on which there is substantial public interest and controversy and would have a significant impact on the operating administrations and the Office of the Secretary.		
	C. Analysis: Regulatory Evaluation		
	D. Need: This rule would substantially increase the number of active, informed, and independent participants at many rulemaking proceedings within the Department, thereby increasing the diversity and balance of views presented to the Department, and enhancing the Department's knowledge of the interests likely to be affected by its proposed rules.		
	E. Legal Basis: The Department's rulemaking authority under the Department of Transportation Act, 49 U.S.C. 1651 et seq., and related statutes.		
	F. Chronology: On Jan. 13, 1977, the Department published regulations for a one-year demonstration program to provide financial assistance to certain participants in rulemaking proceedings of NHTSA. (42 FR 2863). At the same time, the Department issued an ANPRM, inviting public comments on the feasibility, wisdom, and scope of a permanent Department-wide program of financial assistance. Upon conclusion of the demonstration program, NHTSA evaluated the program and recommended that the Department establish an amended version of the program throughout the Department. On March 16, 1978, the demonstration program in NHTSA was extended until the Secretary decided whether to issue final, permanent Departmental regulations (43 FR 10918). On January 23, 1979, the regulation governing the NHTSA financial assistance demonstration program was revised to improve its administration. The Department is not in a position at this time to proceed with the issuance of an NPRM in view of the action taken by Congress, on the Department's Fiscal Year 1981 appropriations. The Department's FY 1981 Appropriations Act prohibits the funding of public participation in the Departmental rulemaking proceedings.		
	G. Citation: 49 CFR pt. 5		
Public Availability of Information	**A. Description:** This involves a revision of DOT's Freedom of Information Act regulations. Specific areas to be revised may include the fee schedule and the policy on waivers of fees for public interest groups and the press.	Rebecca Lima Dailey, (202) 426-4542	NPRM *October* 1981.
	B. Why Significant: Substantial public interest		
	C. Analysis: Regulatory Evaluation		
	D. Need: Freedom of Information Regulations need periodic revision to keep current with changes in case law, policy, and implementation costs.		
	E. Legal Basis: 5 U.S.C. 552 (Freedom of Information Act)		
	F. Chronology: The regulations were last revised in 1975. (40 FR 7915) A new revision is currently under internal development.		
	G. Citation: 49 CFR pt. 7		

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

AGENDA

OST — Office of the Secretary

Significant Regulations: Other—Continued

[Key to symbols: *New item. †Analysis or review being considered under Regulatory Flexibility Act. ●Regulation selected for priority review. *Italics:* New or changed information since last Agenda]

Title	Summary	Contact	Earliest expected decision date
Nondiscrimination in Federally-Assisted Programs of the Department of Transportation—State Transportation Agencies' EEO Affirmative Action Programs.	**A. Description:** The proposed regulation would set forth requirements and procedures for all State Departments of Transportation (DOTs) equal employment opportunity compliance programs. It would also consolidate FHWA, FRA, and UMTA responsibilities in this area. **B. Why Significant:** This proposed regulation would affect the equal opportunity employment programs of all State transportation agencies. **C. Analysis:** Regulatory Evaluation..... **D. Need:** OST, FHWA, FRA, and UMTA each have responsibility for implementing the equal employment opportunity programs of State DOTs. This proposed rule would assure full coordination among these departmental elements, reduce the burden on the recipients, simplify reporting requirements, and eliminate duplication of effort. **E. Legal Basis:** Section 22(a) of the Federal-Aid Highway Act of 1968, as amended; Section 905 of the Railroad Revitalization and Regulatory Reform Act of 1976; Section 19 of the Urban Mass Transportation Act of 1964, as amended; Section 504 of the Rehabilitation Act of 1973. **F Chronology:** The proposed regulation *has been* forwarded to EEOC for review and coordination. **G. Citation:** 23 U.S.C. 140(a), 45 U.S.C. 801, 49 U.S.C. 1615, 49 CFR 1.48(c), 2.49(u), 1.51(a).	Robert J. Coates, (202) 426-*4070*	*Further action to be determined.*

OST — Office of the Secretary

Nonsignificant Regulations

Title	Summary	Contact	Earliest expected decision date
Consolidation of Transportation Grants to U.S. Territories.	The regulation would comply with Title V of Pub. L. 95-134, which permits departments and agencies to consolidate grant programs, reduce reporting requirements, and waive local matching fund requirements. NPRM was published on 1/8/79 (44 FR 1765) (49 CFR pt. 29).	Don Ryan, (202) 426-9605	*Further action to be determined.*
Rulemaking procedures.....	Amendments to the Office of the Secretary regulations on notice-and-comment rulemaking. (49 CFR pt. 5).	Sam Podberesky, (202) 426-4723	Further action to be determined.
Nondiscrimination on the Basis of Age in DOT Financial Assistance Programs.	This regulation would prohibit age discrimination by recipients of DOT financial assistance programs. NPRM published on October 22, 1979 (44 FR 60946).	Leslie Baldwin, (202) 426-4388	Further action to be determined.
Part-time Career Employment Program.	This internal order would convert certain full-time positions in the Department to permanent part-time positions, in accordance with the Federal Employees' Part-Time Career Employment Act of 1978. Comment period closed on November 14, 1980 (45 FR 61074) *Internal order, in the form of an amendment to the DOT Personnel Manual, published August 1981.*	Norma Phelps, (202) 426-0185	*Action complete.*

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

AGENDA

OST — Office of the Secretary

Nonsignificant Regulations—Continued

[Key to symbols: *New item. †Analysis or review being considered under Regulatory Flexibility Act. ●Regulation selected for priority review. *Italics:* New or changed information since last Agenda]

Title	Summary	Contact	Earliest expected decision date
*Real Property Appraisal and Appraisal Review Regulation.	This regulation would prescribe requirements for the appraisal of property to be acquired pursuant to Title III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.	Lynne Adams-Whitaker, (202) 426-4723	NPRM Early 1982.
*Award of Fees and Expenses to Successful Litigants.	This regulation would provide for the award of attorney fees and other expenses to parties who prevail over the Federal Government in certain administrative and court proceedings pursuant to the Equal Access to Justice Act. (49 CFR pt. 6).	Lynne Adams-Whitaker, (202) 426-4723	FR October 1981.
*Minority Business Enterprise Program (Financial Assistance).	This regulation would change the definition of the term "Hispanic" to include persons of European hispanic origin. (49 CFR pt. 23).	Robert C. Ashby, (202) 426-4723	FR September 1981.

USCG — U.S. Coast Guard

Significant Regulations: Major

Title	Summary	Contact	Earliest expected decision date
†Review: Proposed Design Standards for Tank Barges (Docket No. CGD 75-083). Upgrade Existing Tank Barge Construction (Docket No. CGD 75-083a).	**A. Description:** This action would encompass two regulatory projects centered on tank barge construction standards which resulted from Presidential initiatives of March 17, 1977, directing study of the tank barge pollution problem. One project will address new barge construction while the other will pertain to existing barges. **B. Why Significant:** Considered significant due to substantial Congressional and public interest. **C. Analysis:** Regulatory Impact Analysis, Environmental Impact Statement/Regulatory Flexibility Analysis. **D. Need:** Increased public awareness of the oil pollution problem, as well as international and domestic interest in this area, have made improved design standards important as a means of reducing the possibility of pollution. **E. Legal Basis:** Sec. 201, 86 Stat. 427, as amended (46 U.S.C. 391a). **F. Chronology:** The upgrade of tank barge construction standards was published as an NPRM in the Federal Register of December 24, 1971 (36 FR 24960). As a result of the 63 written comments received, it was decided that the standards needed to be studied further, especially as they would apply to existing barges. In 1974, the Coast Guard and the Maritime Administration performed a joint study of the tank barge pollution problem which found that certain construction techniques might provide a significant advantage for eliminating oil pollution from tank barges. However, the study had several weaknesses and regulatory action was not taken.	LCDR Spackman, (202) 426-4431; LCDR Rock, (202) 426-2183	Further action to be determined. *Notice of intended future action October 1981.*

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

AGENDA

USCG U.S. Coast Guard

Significant Regulations: Major—Continued

[Key to symbols: *New item. †Analysis or review being considered under Regulatory Flexibility Act. ●Regulation selected for priority review. *Italics:* New or changed information since last Agenda]

Title	Summary	Contact	Earliest expected decision date
	In July 1977, the Coast Guard began a reexamination of the tank barge construction standards. It was determined that new barge construction should be treated separately from existing barges. An ANPRM concerning impacts related to existing barges was published on June 14, 1979 (44 FR 34440). An NPRM on the standards for new construction was published on June 14, 1979 (44 FR 34440). Public hearings were held on August 2, 1979 (Washington, D.C.); August 15, 1979 (Seattle); August 23, 1979 (New Orleans); September 5, 1979 (Washington, D.C.); and September 7, 1979 (St. Louis). The comment period ended September 30, 1979. The comment period was extended to December 1, 1979. Supplemental Notice published March 13, 1980 (45 FR 16438) announced a National Academy of Sciences (NAS) study which was conducted from February 15, 1980 through *July 1981. Rulemaking has been deferred until review of the NAS study is completed.* **G. Citation:** 46 CFR pts. 32-40		
Review: Construction and Equipment; Existing Self-Propelled Vessels Carrying Bulk Liquefied Gases (Docket No. 77-069).	**A. Description:** Would amend regulations for existing self-propelled vessels that carry bulk liquefied gases by including the substantive requirements for the "Code for Existing Ships Carrying Liquefied Gases in Bulk" adopted by the Intergovernmental Maritime Consultative Organization (IMCO). These amended regulations would also increase safety levels of existing ships carrying gas. **B. Why Significant:** This is significant because it involves a large number of existing U.S. and foreign flag ships which carry liquefied gas and because it is the subject of substantial public interest. **C. Analysis:** Regulatory Impact Analysis **D. Need:** Increased use of liquefied gases has intensified the problems associated with this product. Since this product has unique properties and dangers, a dedicated set of regulations is needed to address them. **E. Legal Basis:** R.S. 4417(a) as amended by section 5, P.L. 95-474 (46 U.S.C. 391a); See 6(d)(1), 80 Stat. 937 (49 U.S.C. 1655(b)(1)). This rulemaking is also the Port and Tanker Safety Act of 1978. **F. Chronology:** An Advance Notice of Proposed Rulemaking was published June 30, 1977 (42 FR 33353). This action was taken pursuant to the Port and Tanker Safety Act of 1978. **G. Citation:** 46 CFR pts. 31, 34, 38, 40, 54, 98, 154	LCDR McGowan, (202) 426-2160	NPRM December 1981.
Damage Stability and Flooding Protection Standards for Great Lakes Bulk Dry Cargo Vessels (Docket No. CGD 80-159).	**A. Description:** Would require a level of subdivision for new ships which is at least equivalent to that required for Maritime Administration construction loan guarantees. Would reduce the risk of catastrophic sinking and increase the time available to utilize recently improved survival gear. **B. Why Significant:** This project would initiate a significant change in policy which differs substantially from international standards. Additionally, it could result in a major price increase for an individual industry. **C. Analysis:** Regulatory Impact Analysis	*Mr. Granholm,* (202) 426-2187	NPRM *August* 1982.

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

AGENDA

USCG — U.S. Coast Guard

Significant Regulations: Major—Continued

[Key to symbols: *New item. †Analysis or review being considered under Regulatory Flexibility Act. ●Regulation selected for priority review. *Italics:* New or changed information since last Agenda]

Title	Summary	Contact	Earliest expected decision date
	D. Need: Due to lack of subdivision in the cargo hold, catastrophic sinkings of Great Lakes bulk carriers can occur very rapidly and with little or no warning, thus precluding the use of survival gear. Unique features of Great Lakes geography and shipping may permit application of unusual alternatives such as route modifications to increase the safety of existing vessels. **E. Legal Basis:** RS 4405 (46 U.S.C. 375); R.S. 4417 (46 U.S.C. 391); R.S. 4462 (46 U.S.C. 416). **F Chronology:** January 7, 1981, work plan approved..... **G. Citation:** 46 CFR Parts 45 and 93.....		

USCG — U.S. Coast Guard

Significant Regulations: Other

Title	Summary	Contact	Earliest expected decision date
†Review: Qualifications of the Person in Charge of Oil Transfer Operations, Tankerman Requirements (Docket No. CGD 79-116 and 79-116a).	**A. Description:** Would redefine and establish qualifying criteria for certifying individuals engaged in the carriage and transfer of the various categories of dangerous cargoes in bulk. **B. Why Significant:** Considered significant because this is the result of a Presidential initiative. **C. Analysis:** Regulatory Evaluation, Environmental Impact Statement, Inflationary Impact Statement/Regulatory Flexibility Analysis. **D. Need:** Most pollution incidents are the result of personnel error; consequently, the minimum qualifications of persons involved in handling polluting substances should be specified. **E. Legal Basis:** 86 Stat. 427, as amended (46 U.S.C. 391a); Sec. 6(b)(1), 80 Stat. 937 (49 U.S.C. 1655(b)(1)); 49 CFR 1.46(n)(4). **F Chronology:** Environmental Analysis and Inflationary Impact Statement completed February, 1977. NPRM published April 25, 1977 (42 FR 21190). Public hearing June, 1977. Extensive comments were received on this NPRM and it was withdrawn on April 30, 1979. NPRM published December 1980 (45 FR 83268 and 45 FR 83290). Public hearings held in January and February 1981. **G. Citation:** 33 CFR pt. 155; 46 CFR pts. 12, 13, 30, 31, 35, 70, 90, 98, 105, 151, 153, and 157.	CDR Amet, (202) 426-2251	FR October *1982.*
Review: Pollution Prevention, Vessels and Oil Transfer Facilities (Docket No. CGD 75-124a).	**A. Description:** Would reduce accidental or intentional discharge of oil or oily wastes during vessel operations.	*LCDR Gregory, (202) 755-1354*	NPRM *indefinite.*

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

AGENDA

USCG **U.S. Coast Guard**

Significant Regulations: Other—Continued

[Key to symbols: *New item. †Analysis or review being considered under Regulatory Flexibility Act. ●Regulation selected for priority review. *Italics:* New or changed information since last Agenda]

Title	Summary	Contact	Earliest expected decision date
	B. Why significant: This regulation is the significant part of Docket No. CGD 75-124. Substantive changes to the NPRM are proposed so that a supplemental NPRM is needed. It is considered significant due to opposition from the owners/operators of offshore marine service vessels and inland waterways vessels to the oil-water separator requirements of 33 CFR 155.330. Also, considerable expense may be incurred by the towing service to install separators and monitors or alarms, if alternative measures are not used. Without these sections, the remainder of CGD 75-124 is nonsignificant and was published as a final rule on January 31, 1980 (45 FR 7156). The Coast Guard is presently attempting to determine whether a significant number of small entities would be affected by this rulemaking; a Regulatory Flexibility Analysis may be required. **C. Analysis:** Regulatory Evaluation **D. Need:** (1) Necessity to reduce the number of oil spills. (2) Clarification of existing rules. (3) Additional requirement for oil-water separators under the 1973 International Convention for the Prevention of Pollution from Ships. **E. Legal Basis:** Section 311(i)(1) (C) and (D) of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1321(i)(1) (C) and (D)). **F Chronology:** NPRM published June 27, 1977 (42 FR 32670). Supplemental NPRM published October 27, 1977 (42 FR 56625). Public hearings held: New Orleans, LA. 11/22/77, St. Louis, MO. 11/30/77, Wash., D.C., 11/28/77. **G. Citation:** 33 CFR 155.330-155.410		
†**Review:** Licensing of Pilots (Docket No. CGD 77-084).	**A. Description:** This proposal would require: recency of service for each route upon which a pilot is authorized to serve; licenses to be issued with tonnage limitations commensurate with pilot experience; and consideration of shiphandling simulator training for pilots of very large vessels including Very Large Crude Carriers (VLCC). **B. Why Significant:** Considered significant because there is substantial interest among marine personnel about this matter and because opposition is expected from Federal pilots. **C. Analysis:** Regulatory Evaluation/Regulatory Flexibility Analysis. **D. Need:** Increased ship size has led to unusual handling characteristics with which some pilots may not be familiar. This rule will allow use of simulator training for these kinds of vessels. **E. Legal Basis:** 46 U.S.C. 214, 224, 230, 233, 237; 49 U.S.C. 1655(b)(1). **F Chronology:** A Regulatory Analysis and Work Plan were completed in October 1978. NPRM published November 28, 1980 (45 FR 79258). Public hearings were held in January and February 1981. Revisions to the NPRM are planned as a result of the hearings. **G. Citation:** 46 CFR pt. 10	Mr. J. Hartke, (202) 755-8683	*Supplemental NPRM January 1982.*

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

AGENDA

USCG **U.S. Coast Guard**

Significant Regulations: Other—Continued

[Key to symbols: *New item. †Analysis or review being considered under Regulatory Flexibility Act. ●Regulation selected for priority review. *Italics:* New or changed information since last Agenda]

Title	Summary	Contact.	Earliest expected decision date
Tank Vessel Operations Regulations, Puget Sound (Docket No. CGD 78-041).	**A. Description:** This regulation would govern the operation of tank vessels in the Puget Sound area to protect against environmental harm resulting from vessel or structure damage, destruction, or loss. **B. Why Significant:** This is considered a significant rulemaking due to Congressional and public interest. In addition, it may generate controversy among the public, environmentalists, and the oil industry. **C. Analysis:** Regulatory Evaluation, Environmental Impact Statement. **D. Need:** To reduce the possibility of environmental harm resulting from oil spills in Puget Sound by governing the operation of tankers so as to reduce the risk of collision or grounding. **E. Legal Basis:** Port and Waterways Safety Act (33 U.S.C. 1221). **F. Chronology:** Secretary Adams signed a 180-day Interim Rule on March 14, 1978, prohibiting entry of oil tankers in excess of 125,000 Deadweight Tons in Puget Sound March 23, 1978 (43 FR 12257). ANPRM published March 27, 1978 (43 FR 12840) with public hearing held April 20-21, 1978. NPRM published April 12, 1979 (44 FR 21974). Public hearings were held in Washington State on June 11-14, 1979. The interim navigation rule will remain in effect until cancelled (44 FR 36174). The Puget Sound rulemaking has been broken into three parts: 78-041 Tank Vessel Operations, 78-041a Puget Sound VTS Service Area, and 78-041b, Puget Sound VTS General Rules. 78-041b, the General Rules, were published as a final rule on July 21, 1980 (45 FR 48822). On August 11, 1980, the effective date was deferred until October 1, 1980, and a correction to the interim final rule was published August 11, 1980 (45 FR 53135). An editonal correction to the August 11, 1980, publication was published November 10, 1980 (45 FR 74471). The Puget Sound VTS Service Area portion (78-041a) was reclassified as nonsignificant and future issues of the agenda will list it in the nonsignificant section. A supplemental notice on the new nonsignificant portion was published on July 21, 1980 (45 FR 48826). The Tank Vessel Operations (78-041) portion remains significant. A supplemental NPRM announcing tanker/tug risk analysis tests was published on July 21, 1980 (45 FR 48827). **G. Citation:** 33 CFR pts. 160, 161	Mr. Ziegfeld, (202) 755-*5116*	FR December 1981.

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

AGENDA

USCG — U.S. Coast Guard

Nonsignificant Regulations

[Key to symbols: *New item. †Analysis or review being considered under Regulatory Flexibility Act. ●Regulation selected for priority review. *Italics:* New or changed information since last Agenda]

Title	Summary	Contact	Earliest expected decision date
Vessel Traffic Service (VTS), Bervick Bay, La. (Docket 73-186).	Would codify certain operating procedures now being done under local order. (33 CFR pt. 161).	Ens LeBlanc, (202) 426-*5116*	NPRM *August* 1981.
VTS Houston-Galveston, Texas (Docket No. CGD 74-029).	Would make mandatory a now voluntary vessel traffic service. NPRM published September 18, 1980 (45 FR 62158). (33 CFR pt. 161).	Ens LeBlanc, (202) 426-*5116*	FR *September* 1981.
Review: Revision of Electrical Regulations (Docket No. CGD 74-125).	Would generally revise and update the electrical regulations to conform to latest technology and to include steering requirements for vessels other than tank vessels. This project was downgraded from significant. Supplemental NPRM published March 3, 1980 (45 FR 13982).	LCDR Mowery, (202) 426-2206	FR *December* 1981.
Pilot Ladders and Powered Pilot Hoists (Docket No. CGD 74-140).	Would establish new regulations for pilot hoists and revise regulations for pilot ladders and chain ladders. NPRM published July 23, 1979. (44 FR 43016). Publication of FR deferred pending evaluation of comments. (46 CFR pts. 160, 163).	Mr. R. Markle, (202) 426-1445	FR *October* 1981.
Review: Fixed Fire Extinguishing Systems on Uninspected Vessels (Docket No. CGD 74-284).	Would establish standards for the construction and installation of Halon 1301 and other fixed fire extinguishing systems as optional systems for compliance with existing regulations. (46 CFR 162.029).	Mr. K. Wahle, (202) 426-1444	NPRM *October* 1981.
Elevators and Dumbwaiters (Docket No. CGD 75-001).	Would adopt the 1978 American National Standards Institute (ANSI) code with certain modifications for vessel construction. NPRM published April 5, 1976 (41 FR 14386). (46 CFR pt. 58).	*LT(jg) Cairns,* (202) 426-2206	*Further action to be determined.*
Opening Signals for Drawbridges (Docket No. 75-237).	If approved, would establish uniform signals for opening drawbridges. NPRM published June *1,* 1980 (45 FR 43226) (33 CFR pt. 117).	Mr. Teuton, (202) 426-1380	FR *August* 1981.
†**Review:** Stability Standards for Towing and Offshore Vessel Hull Forms (Docket No. CGD 76-018).	Would establish intact stability standards for both towing and free-route modes of subject vessels. ANPRM published April 12, 1976 (41 FR 15349). (46 CFR pt. 42).	Mr. F Perrini, (202) 426-2187	NPRM *February 1982.*
Review: Subdivision and Stability of Passenger Vessels (Docket No. CGD 76-053).	Proposes more flexible regulations by allowing alternate compliance with Intergovernmental Maritime Consultative Organization as an alternative to existing requirements. (46 CFR pts. 73, 74).	Mr. J. Howell, (202) 426-2187,	NPRM *August* 1981.
†Pilotage Requirements (Docket No. CGD 76-060).	Would clearly delineate when and in what areas pilots are required. (46 CFR 157.20-40).	CDR McCowen, (202) 426-2240	Further action to be determined.
Review: Stability Standards for Hopper Dredges (Docket No. CGD 76-080).	Would improve capability of a dredge to withstand flooding caused by damage to hull or interior piping. NPRM published December 10, 1979 (44 FR 70791). (46 CFR pt. 93).	*Mr. W. Cleary,* (202) 426-2187	FR *October* 1981.
Cargo Monitors on Tank Vessels (Docket No. CGD 76-088b).	Proposed requirements for installation and use of cargo monitors. NPRM published June 27, 1977 (42 FR 32684). (33 CFR pt. 157).	LCDR Cool, (202) 426-4431	Supplemental NPRM *October* 1981.
Review: Casualty Reporting (Docket No. CGD 76-170).	Would update the regulation by changing the monetary and other damage criteria. As a result of numerous comments, a revised NPRM was published. NPRM published October 19, 1978 (43 CFR 48982). Correction published October 23, 1978 (43 FR 49316). NPRM published December 3, 1979 (44 FR 69308). Interim final rule published November 24, 1980 (45 FR 77439). (46 CFR 4.05).	Capt Blomquist, (202) 426-1455	*FR February 1982.*
Review: Radar Observer Endorsement for Personnel (Docket No. CGD 76-193a).	Would require specialized training in use of radar equipment. NPRM published November 6, 1980 (45 FR 73716). (48 CFR Pt. 10).	CDR Arnet, (202) 426-2251	FR *December* 1981.

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

AGENDA

USCG **U.S. Coast Guard**

Nonsignificant Regulations—Continued

[Key to symbols: *New item. †Analysis or review being considered under Regulatory Flexibility Act. ●Regulation selected for priority review. *Italics:* New or changed information since last Agenda]

Title	Summary	Contact	Earliest expected decision date
Review: Shipboard Fumigation Standards (Docket No. CGD 76-206).	Proposed operational requirements for fumigation procedures on vessels. (46 CFR pt. 147a).	*Mr. J. McAnulty,* (202) 426-1577	NPRM *April 1982.*
Review: Exemption for Cargo Vessels in Alaska Serving Remote Villages (Docket No. CGD 76-223).	Would allow special uses for specific vessels serving in the Alaskan Trade. (46 CFR pts. 6, 30, 42, 43, 70, 90, and 151; 33 CFR pt. 1) *FR published 9 March 1981 (46 FR 15685).*	LT Murray, (202) 426-2190	*Action complete.*
Review: Marine Safety Investigations (Docket No. CGD 77-018).	Would implement investigation authority under Ports and Waterways Safety Act. NPRM published January 25, 1979 (44 FR 5368). (33 CFR pt. 168).	*LCDR Gregory, (202) 755-1354*	FR *January 1982.*
Damage Stability, Subchapter "O" Barges (Docket No. CGD 77-027).	Would apply damage stability requirements for chemical vessels to ocean chemical barges. (46 CFR 151.10-10).	Mr. F. Pemni, (202) 426-2187	NPRM *February 1982.*
Ocean Dumping Surveillance Equipment Requirements, (new Part) (Docket No. CGD 77-029).	Would establish equipment requirements to conduct surveillance to prevent unlawful dumping of material into ocean waters. NPRM published December 13, 1979 (44 FR 72188). After reviewing the comments and evaluating the current state of ocean dumping, the Coast Guard has determined that this proposal would be too expensive for the potential benefits to be expected. For this reason, the proposal is being withdrawn. (33 CFR pt. 158). *Withdrawn April 30, 1981 (46 FR 24213).*	LCDR Voyik, (202) 755-7938	*Withdrawn.*
Review: Designation of Oceanographic Vessels (Docket No. CGD 77-081).	Would establish standard procedures for designating oceanographic research vessels and allow their exemption from certain manning requirements. NPRM published December 22, 1980 (45 FR 84104). (46 CFR pt. 188).	CDR McCowen, (202) 426-2240	FR *December* 1981.
Vessel Traffic Service (VTS) New York, N.Y. (Docket No. CGD 77-087).	Establishes regulations for vessel traffic service in New York Harbor. NPRM published February 16, 1978 (43 FR 6906). Final Rule published August 2, 1979 (44 FR 45381). Effective date suspended indefinitely September 24, 1979 (45 FR 50005) (44 FR 2133). (33 CFR pt. 161).	*LT Burnette, (202) 426-5716*	*Effective date to be established.*
Requirement for First Purchaser List Kept by Boat Dealers (Docket No. CGD 77-115).	Would require boat dealers to assist in creating a list of retail purchasers so manufacturers could send notice to alert of safety defects. NPRM published December 29, 1980 (45 FR 85475). (33 CFR pt. 179).	Mr. Ellison, (202) 426-1065	*Further action to be determined.*
†Review: Waterfront Facilities (Docket No. CGD 77-128).	Would revise waterfront facility regulations by consolidating and updating general regulations. ANPRM published April 10, 1978 (43 FR 15108). (33 CFR pts. 126-32).	*LCDR Gregory, (202) 755-1354*	NPRM *March 1982.*
Review: Amendments to Alternative Compliance (Docket No. CGD 77-136).	Would provide editorial improvement and clarification of existing regulations. NPRM published January 26, 1981 (46 FR 8030). (33 CFR pt. 81).	*Mr. C. Llana, (202) 426-5116*	FR *August* 1981.
Review: Miscellaneous Changes to 46 CFR 56 (Docket No. CGD 77-140).	Would update Title 46, Subchapter F—Marine Engineering. (46 CFR pt. 56).	*LT(jg) Jackson, (202) 426-2160*	NPRM *January 1982.*
*Review: Acceptance of American Society of Mechanical Engineers (ASME) "U" or "UM" Pressure Vessels (Docket 77-147).	Would accept pressure vessels bearing the ASME "U" or "UM" stamp without U.S. Coast Guard inspection. NPRM published December 29, 1980 (45 FR 85488). (46 CFR Part 54).	Mr. H. Hime, (202) 426-2160	FR December 1981.

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

AGENDA

USCG U.S. Coast Guard

Nonsignificant Regulations—Continued

[Key to symbols: *New item. †Analysis or review being considered under Regulatory Flexibility Act. ●Regulation selected for priority review. *Italics:* New or changed information since last Agenda]

Title	Summary	Contact	Earliest expected decision date
Revision of Navigation Safety Regulations (Docket No. CGD 77-196).	This docket was previously titled "Designation of Confined or Congested Waters." 33 CFR Part 164 is being revised. This revision would amend existing navigation safety regulations and incorporate changes in electronic position fixing devices and electronic relative motion analyzers, delete references to confined or congested waters, and resolve certain other ambiguities. (33 CFR pt. 164).	*Mr. T. Falvey, (202) 426-5116*	Further action to be determined.
Lifesaving Systems for Great Lakes Vessels (Docket No. CGD 77-202).	Would amend regulations for lifeboats and other equipment to improve chances of personnel survival following abandonment of vessel. This project has been redocketed and will appear in future agendas under the number CGD 77-202. Redocketed from No. CGD 75-033. (46 CFR Subchapters D, H, I, T, and Q).	Mr. R. Markle, (202) 426-1445	NPRM *February 1982.*
Review: Second Class Operator for Towing Vessels (Docket No. CGD 77-204).	Would allow able seaman service on ocean going vessels to be credited toward second class towboat license. NPRM published May 25, 1978. (43 FR 22653). (46 CFR pt. 10).	CDR Struck, (202) 426-2240	Further action to be determined.
Review: Halon 1301 Fire Extinguishing Systems for Merchant Vessels (Docket No. CGD 77-232).	Would allow Halon 1301 for specific types of installations. (46 CFR 164.035).	Mr. R. Eberly, (202) 426-2197	NPRM *August* 1981.
Navigation Lights for Small Vessels (Docket No. CGD 77-233).	Would specify approval procedures and installation requirements for International Rules navigation lights for small vessels. NPRM published September 7, 1978 (43 FR 39946). Supplemental NPRM published December 29, 1980 (45 FR 85468). (33 CFR pt. 89).	Mr. L. Gray, (202) 426-4027	FR *September* 1981.
Officers on Uninspected Vessels (Docket No. CGD 78-027).	The amendment would clarify 46 CFR 157.30-10 regarding the number of deck officers and engineers to be on board uninspected vessels. NPRM published October 27, 1980 (45 FR 70920). *FR published 21 May 1981 (46 FR 27654).*	CDR McCowen, (202) 426-2240	*Action complete.*
Hazardous Substances, Pollution Prevention for Vessels and Marine Transfer Facilities (Docket No. CGD 78-032).	Would establish regulations to prevent pollution from hazardous substances from vessels and marine transfer facilities. *Incorporated into project CGD 77-128* (33 CFR pts. 154, 155 and 156).	*LT Balch,* (202) 426-9578	*Withdrawn.*
†Liquefied Natural Gas Waterfront Facility (Docket No. CGD 78-038).	Would establish LNG Waterfront Facility Safety Regulations in accordance with Memorandum of Understanding between USCG and Materials Transportation Bureau, RSPA. ANPRM published August 3, 1978 (43 FR 34362). Will merge with CGD 77-128. Supplemental ANPRM published March 8, 1979 (44 FR 12693). (33 CFR pt. 126).	*LCDR Gregory, (202) 755-1354*	NPRM *March 1982.*
Vessel Traffic Service (VTS), Puget Sound (Docket No. CGD 78-041a).	Would establish requirements for a Vessel Traffic Service in the Puget Sound area. This rulemaking was separated from Docket No. CGD 78-041 which appears earlier in this Agenda as a significant rulemaking. Published December 22, 1980 (45 FR 80457); originally scheduled to go into effect February 1, 1981. Effective date delayed March 31, 1981 (46 FR 10706) for review under E.O. 12291.	Mr. Ziegfeld, (202) *426-5116*	*Action complete.*
Review: St. Mary's River, Vessel Traffic Service (Docket No. CGD 78-079).	Would revise and restate existing anchorage and navigation regulations for St. Mary's River, re-promulgating them under the authority of the Ports and Waterways Safety Act. NPRM published January 5, 1981 (46 FR 946). Comment period extended on February 19, to May 15, 1981 (46 FR 12987). (33 CFR pt. 161).	Mr. E. LaRue, (202) 426-*5116*	FR *August* 1981.

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

AGENDA

USCG **U.S. Coast Guard**

Nonsignificant Regulations—Continued

[Key to symbols: *New item. †Analysis or review being considered under Regulatory Flexibility Act. ●Regulation selected for priority review. *Italics:* New or changed information since last Agenda]

Title	Summary	Contact	Earliest expected decision date
Notification of Marine Casualties (Docket No. CGD 78-098).	If approved, would require vessels within a certain distance of United States coasts to notify the Coast Guard of certain casualties. Further action on this project depends on the outcome of a study suggested in response to the ANPRM. ANPRM published April 16, 1979 (44 FR 22476). (33 CFR pt. 124 transferred to 161).	*LCDR Gregory,* (202) 755-1354	*To be withdrawn.*
Aluminum Hatch Covers Aboard Tank Ships (Docket No. CGD 78-121).	Would prohibit aluminum hatch covers on tank ships, because they can melt down in ship-board fires. NPRM published October 27, 1980 (45 FR 70918). (46 CFR 32.60-1).	Mr. R. Eberly, (202) 426-2197	*Further action to be determined.*
Review: Bulk Chemical Tanker Update (Docket No. CGD 78-128).	Would update and revise standards for self-propelled vessels carrying hazardous liquid. (46 CFR pt. 153). NPRM published July 17, 1980 (45 FR 48058).	LT *Gormanson,* (202) 426-1217	FR *December* 1981.
Inland Waters Navigation Regulations—Waters Connecting Lake Huron and Lake Ene (Docket No. CGD 78-151).	Would modernize existing regulations. (33 CFR pt. 162)	Mr. LaRue, (202) 426-*5116*	NPRM *September* 1981.
Review: Mandatory Marking of Obstructions (Docket No. CGD 78-156).	Would clarify and consolidate the requirements for marking of obstructions. (33 CFR pt. 64).	LT Johnson, (202) 426-1974	*Further action to be determined.*
Review: Private Aids to Navigation and State Aids to Navigation (Docket No. CGD 78-157).	Would codify and clarify the aids to navigation regulations concerning State and private aids to navigation. (33 CFR pt. 66).	LT Johnson, (202) 426-1974	Further action to be determined.
Review: Mandatory Markings for Artificial Islands, Installations, and other Devices (Docket No. CGD 78-158).	Would revise the marking regulations to bring them into agreement with the latest procedures. (33 CFR pt. 67).	LT Johnson, (202) 426-1974	Further action to be determined.
Review: Aids to Navigation—General Interference with, Damages to and Charges for Aids to Navigation (Docket No. CGD 78-159).	Would codify, revise and clarify the existing regulations. (33 CFR pts. 60, 62, 66, 70, 74, and 76).	LT Johnson, (202) 426-1974	Further action to be determined.
Review: General Revision to Subchapter N (Docket No. CGD 78-160).	Proposed general revisions to Subchapter N, Artificial Islands and Fixed Structures on the Outer Continental Shelf. Revisions to include changes made necessary by new legislation and the Coast Guard Commercial Diving Rules. NPRM published May 1, 1980 (45 FR 29072). (33 CFR pt. 140).	*LT Cashman, (202) 472-5160*	FR *September* 1981.
Review: Termination of Windsurfer Exemption (Docket No. CGD 78-163).	Would determine whether to continue an exemption that allows operators of windsurfer boats to not carry personal flotation devices. ANPRM published March 29, 1979. NPRM published July 17, 1980 (45 FR 47876). (33 FR pt. 175).	*Mr. Franseen,* (202) 426-*1080*	*To be withdrawn.*
Approval of Inflatable Personal Flotation Devices (PFDs) (Docket No. CGD 78-174).	Would establish performance standards for inflatable PFDs and procedures for granting product approval to these devices. ANPRM published March 15, 1979. (46 CFR pt. 160).	LT Weiss, (202) 426-1444	NPRM September 1981.
Offshore Oil Lightering (Docket No. CGD 78-180).	Would establish requirements for vessel to vessel transfers of oil or hazardous materials if the cargo is bound for a U.S. port. NPRM published May 31, 1979 (44 FR 31486). (33 CFR pt. 156).	LCDR Hendrickson, (202) 426-9578	Supplemental NPRM *September* 1981.

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

AGENDA

USCG **U.S. Coast Guard**

Nonsignificant Regulations—Continued

[Key to symbols: *New item. †Analysis or review being considered under Regulatory Flexibility Act. ●Regulation selected for priority review. *Italics:* New or changed information since last Agenda]

Title	Summary	Contact	Earliest expected decision date
Review: Amendment to Hull Identification Requirements (Docket No. CGD 79-013).	Would further delineate responsibility for marking boats with a hull identification number. Would require a second number inside the boat to aid in identification of stolen boats. NPRM published December 29, 1980 (45 FR 85476). (33 CFR pt. 181).	Mr. Ellison, (202) 426-1065	*Further action to be determined.*
Review: Stability Subchapter (Docket No. CGD 79-023).	Would bring together all the existing stability regulations and identifiable past practices into a single subchapter including a part pertaining to the carriage of passengers and separate parts pertaining to cargoes, vessel use, and special types.	*LCDR Feeney,* (202) *426-2167*	NPRM *April 1982.*
Port and Tanker Safety Act Delegations Under Section 9. Ports and Waterways Safety Act (Docket No. CGD 79-026).	Would delegate to Captains of the Port authority and responsibility to prohibit vessel operations and cargo transfers which may be unsafe. (33 CFR pt. 160). NPRM published December 3, 1979 (44 FR 69306). (33 CFR pt. 160). *Supplemental NPRM published June 11, 1981 (46 FR 30835).*	*LCDR Gregory,* (202) *755-1354*	*FR June 1982.*
Installation, Maintenance and Inspection of Pilot Accommodation and Chain Ladders, and Powered Pilot Hoists (Docket No. CGD 79-032).	Would establish inspection procedures and timetables for embarkation apparatus.	LT Murray, (202) 426-*2183*	*Further action to be determined.*
Limited Access Areas (Docket No. CGD 79-034).	Would realign limited access area regulations in 33 CFR. (33 CFR pts. 125, 127, 128, and 165).	*LCDR Gregory,* (202) *755-1354*	FR *October* 1981.
Steering Gear, Drills and Tests (Docket No. CGD 79-038).	Would require all inspected vessels over 100 gross tons and foreign vessels over 1600 gross tons to have written procedures for loss of steering control, and to conduct log emergency steering drills. Docket No. CGD 79-038a incorporates changes to Title 46 CFR and CGD 79-038b incorporates changes to Title 33 CFR.	*Mr. Falvey,* (202) 426-*4958*	*Further action to be determined.*
Crane Operator Qualifications and Standards for Offshore Crane Design Inspection, Testing and Operation (Docket No. CGD 79-059).	Would develop required qualifications for crane operators employed on the Outer Continental Shelf and standards for crane design, inspection, and testing. ANPRM published January 10, 1980 (45 FR 2052). (33 CFR pt. 146 and 46 CFR pt. 92).	*Mr. R. Barr, (202) 472-5160*	NPRM *November* 1981.
†Marine Personnel Safety Standards (Docket No. CGD 79-065).	Would develop a new Subchapter prescribing general personnel safety standards for inspection vessels and offshore facilities. (Subchapter V).	*LT Gold,* (202) 426-2183 LT F Whipple, (202) 426-5160	NPRM *December* 1981.
Stowage of Lifeboats and Liferafts (Docket No. CGD 79-072).	Would amend various subchapters to require inspected vessels under 1600 gross tons on coastwise voyage and having widely separated accommodation or working spaces, to carry inflatable liferafts in those areas capable of accommodating 50 percent of the people on board. NPRM published December 3, 1979 (44 FR 69311). Supplemental NPRM published May 27, 1980 (45 FR 35366). *Rule published May 26, 1981 (46 FR 28167).*	CDR J. DeLeonardis, (202) 426-2183	*Action complete.*
†Personnel Job Safety Requirements for Fixed Installations on the Outer Continental Shelf (Docket No. CGD 79-077).	This regulation would develop personnel safety and health requirements for artificial island, fixed installations and other devices on the Outer Continental Shelf (33 CFR Subchapter No. 46 CFR Subchapter 1A and V.) *Notice of meeting published March 5, 1981 (46 FR 15402). Correction published March 19, 1981 (46 FR 17702).*	LT Cashman, (202) 471-5150	NPRM *August 1982.*
Vessel Personnel Licensing and Certification Standards of Foreign Countries (Docket No. CGD 79-081(a)).	Establishes procedures for verification of training, qualification and watchkeeping standards of personnel serving on foreign tank vessels. Interim FR Published April 7, 1980 (45 FR 23425).	CDR D. Struck, (202) 426-2240	Further action to be determined.

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

AGENDA

USCG **U.S. Coast Guard**

Nonsignificant Regulations—Continued

[Key to symbols: *New item. †Analysis or review being considered under Regulatory Flexibility Act. ●Regulation selected for priority review. *Italics:* New or changed information since last Agenda]

Title	Summary	Contact	Earliest expected decision date
Foreign Tank Vessel Manning Levels (Docket No. CGD 79-081(b)).	Would establish minimum manning levels for foreign tank vessels while operating on U.S. navigable waters. NPRM published November 17, 1980 (45 FR 75712).	CDR D. Struck, (202) 426-2240	FR *February 1982.*
Amendment to Application of Vessel Numbers (Docket No. 79-087).	Would delete date of birth and citizenship data from application for vessel number. NPRM published August 21, 1980. (45 FR 55768). (33 CFR pt. 174).	Mr. Dewees, (202) 426-4176	Further action to be determined.
Shipment of Bulk Hazardous Waste by Water (Docket No. CGD 79-095).	Would establish requirements for transportation of bulk hazardous wastes. NPRM published October 14, 1980 (45 FR 67708).	Mr. R. M. Query, (202) 426-1217	*Further action to be determined.*
U.S. Coast Guard Reserve (Docket No. CGD 79-105).	Would update the administrative regulations pertaining to the Coast Guard reserve.	Mr. Cotter, (202) 426-2348	FR December 1981.
Inland Waterways Navigation Thimble Shoals (Docket No. CGD 79-120).	Would make two existing regulations consistent. (33 CFR pts. 128 and 162). *NPRM published June 4, 1981 (46 FR 29904).*	ENS Le Blanc, (202) 426-*5116*	*FR July 1981.*
Applications for Exemptions for SBT, CBT or COW, for Existing Vessels in Specific Trades (Docket No. CGD 79-126).	Would establish procedures for exemption from Segregated Ballast (SBT), Clean Ballast (CBT), or Crude Oil Washing (COW), for existing vessels in specific trades. NPRM published May 22, 1980 (45 FR 34306). FR published January 15, 1981 (46 FR 3510); originally scheduled to go into effect on February 2, 1981. Effective date delayed until March 31, 1981 (46 FR 10706) for review under E.O. 12291.	LCDR A. Spackman, (202) 426-4431	*Action complete.*
Joint U.S.-Canada Vessel Traffic Management regulations for the Pacific region (Docket No. CGD 79-131).	Would implement the provisions of an Agreement for a Cooperative Vessel Traffic Management System for the Pacific Region. (33 CFR pt. 161).	*Mr. A. Whitten,* (202) 426-*5116*	NPRM August 1981.
Shipboard Noise Abatement (Docket No. CGD 79-134).	Would develop noise abatement standards (noise levels, hearing conservation program, etc.) for inspected vessels over 100 gross tons. (Will be included in subchapter V).	LT Murray, (202) 426-2183	NPRM *October* 1981.
Start-in-Gear Protection (Docket No. CGD 79-137).	Would establish a requirement for manufacturers of outboard engines producing more than 115 pounds of thrust to have a feature that would prevent the engine from being started while the transmission was in gear. NPRM published March 24, 1980 (45 FR 18987); comment due July 24, 1980. FR published January 15, 1981 (46 FR 3514); scheduled to go into effect on August 1, 1982, subject to review under E.O. 12291 (33 CFR 181 and 183).	Mr. L. *Gray,* (202) 426-4027	Undergoing Executive Order 12291 review.
Review: Inland Waterways Navigation Great Lakes (Docket No. CGD 79-151).	Would update existing regulations in 33 CFR pt. 162, NPRM published August 25, 1980 (45 FR 56365). FR published January 26, 1981 (46 FR 7959); originally scheduled to go into effect on February 25, 1981. Effective date delayed until March 31, 1981 (46 FR 10706) for review under E.O. 12291. *Decision made to allow rule to go into effect.*	ENS Le Blanc, (202) 426-*5116*	*Action complete.*
Review: Load Line Equivalent Regulations (Docket No. CGD 79-153).	Would rearrange existing regulations in 46 CFR 42, Load Line, to comply with International Maritime Consultative Organization Resolution A.320(IX).	*Mr. W. Cleary,* (202) 426-2187	NPRM *October* 1981.
Deepwater Port Liability Fund Requirements. (Docket No. CGD 79-158).	Would implement provisions of the Deepwater Port Act of 1974 to establish and administer liability limits and compensation relative to accidental oil spills at deep water port sites. (33 CFR pts. 137.150). NPRM published October 2, 1980 (45 FR 67708).	Mr. F. Martin, (202) 472-5052	*FR September 1981.*

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

AGENDA

USCG U.S. Coast Guard

Nonsignificant Regulations—Continued

[Key to symbols: *New item. †Analysis or review being considered under Regulatory Flexibility Act. ●Regulation selected for priority review. *Italics:* New or changed information since last Agenda]

Title	Summary	Contact	Earliest expected decision date
Review: Tank Stop Valves (Docket No. CGD 79-159).	Would amend the regulations for tank stop valves to make them applicable to sluice gates and sluice valves as well as piping systems. *ANPRM published 16 April 1981 (46 FR 220).*	LCDR Mowery, (202) 426-2160	*Further action to be determined.*
Modification to Line Throwing Device Requirements (Docket No. CGD 79-160).	Would modify the regulation requiring a linethrowing device only in cargo vessels over 500 gross tons and passenger vessels on international voyages. NPRM published December 11, 1980 (45 FR 81616).	LT *Gold,* (202) 426-2183	FR *December* 1981.
*Use of Dangerous Articles as Ship's Stores (Docket No. CGD 79-166).	Would establish acceptance, handling, and use of dangerous articles as products approved for use on board vessels. (46 CFR pt. 147).	Mr. J. McAnulty, (202) 426-1577	*ANPRM February 1982.*
Review: Painters for Life Floats and Buoyant Apparatus (Docket No. CGD 79-167).	Would require life floats and buoyant apparatus to have painters that are secured to the vessel.	Mr. R. Markle, (202) 426-1444	*January 1982.*
Launching Devices for Liferafts (Docket No. CGD 79-168).	Proposed specification for approval of devices used for launching inflatable liferafts. (46 CFR pts. 160 and 163).	*LT(jg) Girton,* (202) 426-1445	NPRM *December 1981.*
Review: License in Temporary Grades (Docket No. CGD 79-173).	Would provide for licenses in temporary grades or special endorsements or licenses to permit temporary service. NPRM published August 18, 1980 (45 FR 54776).	CDR D. Struck, (202) 426-2240	*Further action to be determined.*
Disclosure of Safety Standards and Country of Registry (Docket No. CGD 79-180).	Would update 46 CFR 80.10 in compliance with 46 U.S.C. 362(b).	CDR DeLeonard, (202) 426-2183	*NPRM September 1981.*
†Shipboard Asbestos Standards (Docket No. CGD 79-181).	Would develop safety standards threshold values, etc., for use of asbestos on inspected vessels. (Will be included in Subchapter V).	LT Fust, (202) 426-2183	NPRM *October* 1981.
Update of Subchapter O Cargo List (Docket No. CGD 80-001).	Would update the subchapter O cargo table in 46 CFR 151.05. NPRM published July 3, 1980 (45 FR 45327).	Mr. J. Jakabcin, (202) 426-6260	FR *August* 1981.
*Tank Vessels, Corrections and Clarifications to Title 33 CFR (Docket No. CGD 80-09).	Would eliminate conflicting requirements in Titles 46 and 33 CFR for minimum bolts per flange on transfer connections, fixed piping. In addition it would eliminate confusion in tank barge security and smoking regulations.	LT Murray, (202) 426-2183	NPRM *August* 1981.
Prince William Sound VTS Amendment (Docket No. CGD 80-010).	Updates Prince William Sound Vessel Traffic System regulations. NPRM published December 29, 1980 (45 FR 85471). (33 CFR pt. 161). *Final rule published July 2, 1981 (46 FR 34579).*	Mr. E. LaRue, (202) 426-*5116*	*Action complete.*
*Emergency Position Indicating Radiobeacons (EPIRB) (Docket No. 80-24).	Would require use of EPIRB's on vessels operating on the Great Lakes.	Mr. Markle, (202) 426-1444	NPRM *August* 1981.
*Review: Coast Guard Claims regulations (Docket No. CGD 80-33).	This proposal would update the regulations pertaining to claims made against the Coast Guard. (33 CFR pt. 25).	LCDR Bissell, (202) 426-2245	*Further action to be determined.*
Valve Inspection for Thermal Fluid Heaters (Docket No. 80-64).	Would clarify the inspection standards for valves on thermal heaters.	LT(jg) *Strasser,* (202) 426-2183	NPRM *September* 1981.
Carriage of Liquefied Gases (Docket No. 80-65).	*Would reconcile the existing regulations with the IMCO (International Maritime Consultative Organization) Gas Code* (46 CFR 38.05).	LT P Wieczynski, (202) 426-1217	NPRM *January 1982*
Regulated Navigation Area, Tomlinson Bridge, New Haven, Conn. (Docket No. CGD 80-069).	Would include a portion of the waters of New Haven Harbor around the Tomlinson Bridge as a Regulated Navigation Area. NPRM published June 16, 1980 (45 FR 40621). (33 CFR pt. 128).	*LCDR Gregory,* (202) *755-1354*	*October 1981.*

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

AGENDA

USCG U.S. Coast Guard

Nonsignificant Regulations—Continued

[Key to symbols: *New item. †Analysis or review being considered under Regulatory Flexibility Act. ●Regulation selected for priority review. *Italics:* New or changed information since last Agenda]

Title	Summary	Contact	Earliest expected decision date
Loran C Position Transmitting System (Docket No. CGD 80-093).	Would require an automatic position transmitting capability of deep draft ships approaching Hinchen Brook Entrance and in the lower portion of Prince William Sound, Alaska. (33 CFR pt. 161).	Mr. A. Whitton, (202) 426-4958	NPRM *August* 1981.
Mooring and Fleeting of Tows on Snake Island, Texas (Docket No. 80-094).	Would prohibit the mooring and fleeting of tows on Snake Island, Texas. (33 CFR 128). *NPRM published July 13, 1981 (46 FR 35941).*	ENS LeBlanc, (202) 426-5116	*FR November 1981.*
San Juan, Puerto Rico Restricted Seaplane Landing Area (Docket No. 80-095).	Would redefine the restricted seaplane landing area in San Juan Harbor, Puerto Rico. NPRM published December 11, 1980 (45 FR 81607). (33 CFR pt. 162). *Final rule published May 21, 1981 (46 FR 27644).*	ENS Leblanc, (202) 426-4958	*Action complete.*
COLREGS Demarcation Line, Chesapeake Bay, VA. (Docket No. CGD 80-096).	Would relocate the Collision Avoidance Regulations (COLREGS) Demarcation line at the entrance to Chesapeake Bay to less congested waters. (33 CFR pt. 82). NPRM published December 18, 1980 (45 FR 83267). *Withdrawn June 25, 1981 (46 FR 32886).*	ENS LeBlanc, (202) 426-4958	*Withdrawn.*
Documentation of Vessels (Docket No. CGD 80-107).	Would revise 46 CFR parts 66 and 67 to implement the provisions of Public Law 96-594. *Project number CGD 80-108 has been incorporated into this project.*	Mr. P. Camilla, (202) 426-1492	NPRM *November* 1981.
Qualifying Corporations as U.S. Citizens for Documentation Purposes under 46 U.S.C. 883-1 (Docket No. CGD 80-108).	Would consolidate and revise existing regulations dealing with corporate citizenship into a separate subpart of Title 46 CFR pt. 67. *Consolidated into CGD 80-107.*	LT M. Drazal, (202) 426-1492	*Action complete.*
Inflatable Liferaft Stability (Docket No. CGD 80-113).	Would provide specific rules for function, size, and placement of stability appendages. *ANPRM published June 29, 1981 (46 FR 33341).*	Mr. M. Daniels, (202) 426-1445	ANPRM *November* 1981.
Lights for barges at bank or dock (Docket No. CGD 80-115).	Would delete the list of lighting exemptions for barges moored at certain banks or docks as now listed in 33 CFR pt. 95 and authorize Captains of the Port to authorize or deny lighting exemption requests. *NPRM published May 18, 1981 (46 FR 27128). FR published August 13, 1981 (46 FR 40873) (33 CFR pt. 95).*	ENS LeBlanc, (202) 426-5116	*Action complete.*
Portable Deadlights on Great Lakes Vessels (Docket No. CGD 80-116).	Would permit inside portable deadlights on deckhouse and companion way doors as alternatives to hinged inside deadlights.	Mr. F. Thompson, (202) 426-2174	*April 1982.*
Proposed Changes to Puget Sound VTS Rules (Docket No. CGD 80-119).	Would solicit public comment on determining appropriate means to reduce conflicts between various areas of Puget Sound and adjacent waterways (33 CFR pt. 161). *ANPRM published April 14, 1981 (46 FR 22207).*	Mr. Whittem, (202) 426-5116	*NPRM September 1981.*
Revocation of certain Load Line Regulations (Docket No. CGD 80-120).	Would revoke obsolete load line regulations and revise other regulations accordingly (46 CFR pt. 43).	Mr. F. Thompson, (202) 426-2174	NPRM *October* 1981.
General Provisions: Offshore Supply Vessels (Docket No. CGD 80-133).	Would establish procedures for registering offshore supply vessels. *Rule published October 20, 1980 (FR 69243).*	LT Rolman, (202) 426-1464	*Action completed.*
Vessel Navigational Visibility (Docket No. CGD 80-134).	Would identify constraints on operation and recommend effective procedures to eliminate or reduce inadequate bridge visibility. *ANPRM published May 11, 1981 (46 FR 26086).*	LCDR Henry, (202) 426-2197	*NPRM May 1982.*
Fire test for carpets (Docket No. 80-135).	Would clarify "equivalent fire resistive" carpet and specify limitations on use of carpet aboard commercial vessels other than passenger vessels.	Mr. W. Boyce, (202) 426-2197	NPRM *May 1982.*

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

AGENDA

USCG **U.S. Coast Guard**

Nonsignificant Regulations—Continued

[Key to symbols: *New item. †Analysis or review being considered under Regulatory Flexibility Act. ●Regulation selected for priority review. *Italics:* New or changed information since last Agenda]

Title	Summary	Contact	Earliest expected decision date
Maneuvering Performance Regulations (Docket No. CGD 80-136).	Would establish performance standards for new tank vessels; and possibly all vessels *in response to mandates in Port and Tanker Safety Act.*	Mr. P. Cojeen, (202) 426-2197	ANPRM *October* 1981.
Private/Semiprivate facilities (Docket No. CGD 80-138).	Would add definition of "private" and "semiprivate" wash rooms and toilet facilities to inspected vessel rules as now in Mobile Offshore Drilling Units, American Bureau of Shipping (ABS) rules.	Mr. F Thompson, (202) 426-2174	*Withdrawn.*
Load Line Survey Fees (Docket No. CGD 80-143).	Would permit American Bureau of Shipping (ABS) to set fees without Coast Guard regulatory action.	Mr. *Granholm,* (202) 426-2188	*FR August* 1981.
Great Lakes Pilotage Rates (Docket No. CGD 80-148).	Would increase the basic rates for Great Lakes Pilotage by an average of 10 percent. NPRM January 12, 1981 (46 FR 2656). *FR published March 26, 1981 (46 FR 18716).*	Mr. J. Hartke, (202) 755-8863	*Action complete.*
Review: Revocation of Obsolete Specifications (Docket No. 80-155).	Would revoke approval specifications for cork and balsa ring life buoys and material specifications for cork and balsa. *NPRM published July 20, 1981 (46 FR 37290).*	Mr. F. Thompson, (202) 426-2174	NPRM *January 1982.*
*Amendments to Regulations allowing cork and balsa wood rings buoys (Docket 80-155a).	Would amend regulations in 33 CFR parts 144, 149 and 175 that allow cork and balsa wood ring buoys on artificial islands, fixed offshore structures and recreational boats. NPRM published July 20 (46 FR 37386). This regulatory project was split from Docket No. 80-155.	Mr. F. Thompson, (202) 426-2174	NPRM January 1982.
Material Standards for Fixed Structures (CGD 80-160).	Description: Would revise and update 33 CFR, Subchapter N, including lifesaving and firefighting equipment.	Lt. *Cashman,* 472-5160	NPRM *April 1982.*
*Colregs Demarcation Lines—Savannah River, GA. Amelia Island, FLA (Docket 80-142).	Would move the Colregs lines along the coast of Georgia to coincide with the Georgia Dept. of Natural Resources fishing lines. (33 CFR pt. 80). NPRM published July 27, 1981 (46 FR 38378).	Ens. LeBlanc, (202) 426-5116	FR September 1981.
*Inland Navigation Rules Certificates of Alternative Compliance (Docket 80-157).	Would set out procedures by which a vessel can receive a certificate of alternative compliance which recognizes the inability of a vessel of particular construction to comply with a particular provision of the Inland Rules. NPRM published May 14, 1981 (46 FR 26661). (33 CFR Pt. 96).	Mr. C. Llana, (202) 426-5116	FR August 1981.
*Annex V to Inland Navigation Rules Pilot Rules (Docket 80-158).	Would set out pilot rules of special applicability to supplement the new Inland Navigation Rules. (33 CFR pt. 88). NPRM published July 16, 1981 (46 FR 37012).	Mr. C. Llana, (202) 426-5116	FR October 1981.
*Ocean Thermal Energy Conversion (OTEC) Facility and Plantship Requirement (Docket 80-161).	Would establish minimal rules mandated under the OTEC Act for marine environmental protection and safety of life and property at sea (33 and 46 CFR).	Mr. F. Martin, (202) 472-5052	NPRM August 1981.
*Annex II to Inland Navigation Rules—Additional Signals for Fishing Vessels Fishing in Close Proximity (Docket 81-006).	Would provide trawlers and purse seiners with standardized signals to indicate when they are handling their nets (33 CFR pt. 85). NPRM published July 16, 1981 (46 FR 37006).	Mr. C. Llana, (202) 426-5116	FR October 1981.
*Annex IV to Inland Navigation Rules—Distress Signals (Docket 81-007).	Would provide the marine community with standardized signals for vessels to be used exclusively for indicating distress and the need for assistance (33 CFR pt. 87). NPRM published July 16, 1981 (46 FR 37002).	Mr. C. Llana, (202) 426-5116	FR October 1981.
*Annex I to Inland Navigation Rules—Positioning and Technical Details of Lights and Shapes (Docket 81-008).	Would set out the technical details for navigation lights and shapes for vessels (33 CFR pt. 86). NPRM published July 16, 1981 (46 FR 37002).	Mr. C. Llana, (202) 426-5116	FR October 1981.

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

AGENDA

USCG **U.S. Coast Guard**

Nonsignificant Regulations—Continued

[Key to symbols: *New item. †Analysis or review being considered under Regulatory Flexibility Act. ●Regulation selected for priority review. *Italics:* New or changed information since last Agenda]

Title	Summary	Contact	Earliest expected decision date
*Annex III to Inland Navigation Rules Technical Construction Details for Sound Signal Appliances (Docket 81-009).	Would provide technical details for navigation lights and shapes for vessels (33 CFR pt. 86). NPRM published July 16, 1981 (46 FR 37008).	Mr. C. Llana, (202) 426-5116	FR October 1981.
*Servicing Inflatable Liferafts (Docket 81-010).	Would allow liferaft servicing in U.S. and foreign ports without Coast Guard Marine inspectors.	LT(jg) Delikat, (202) 426-1445	NPRM February 1982.
*Automated Main and Auxiliary Machinery (Docket 81-030).	Would implement the provisions for periodically unattended machinery spaces in the "Recommendation Concerning Regulations for Machinery and Electrical Installations on Cargo and Passenger Vessels" adopted by IMCO and the guidance on system design in Coast Guard Navigation and Inspection Circular on Automated Main and Auxiliary Machinery.	Mr. Slatt, (202) 426-2160	NPRM November 1981.
*Optional Simplified Admeasurement of Commercial Vessels (Docket 81-032).	Would implement Public Law 96-594, a bill to simplify admeasurement of commercial vessels of less than 24 meters (79 feet), and non-self propelled vessels of any size which are not engaged or intending to engage in international voyages by sea.	Mr. Higgins, (202) 426-2192	FR December 1981.
*Delete Fifth District Merchant Marine Technical Office Address from Regs (Docket 81-039).	Would remove Fifth District Merchant Marine Technical Office from regulations.	LCDR Anderson, (202) 426-2197	FR August 1981.
*Transfer of Corps of Engineers Gulf of Mexico Shipping Fairway Regulations to Coast Guard (Docket 81-040).	Would transfer the Army Corps of Engineers regulations designating Shipping Fairways in the Gulf of Mexico to the Coast Guard (33 CFR pt. 74).	Mr. C. Young, (202) 426-5116	NPRM December 1981.
*Licensing of Officers of Inspected Vessels of less than 100 gross tons (Docket 81-043).	Would amend 46 CFR parts 157, 175, 185, 186 and 187 to reflect statutory intent of P.L. 96-378 concerning the licensing of officers, and manning of inspected vessels of less than 100 gross tons.	CDR McCowen, (202) 426-2240	NPRM October 1981.
*Charge for Coast Guard's aid to navigation work (Docket 81-051).	Would delete the buoy and vessel costs currently listed in 33 CFR 74 and direct the owner to contact the Coast Guard for a list of reimbursable service charges (33 CFR pt. 74).	LT Johnson, (202) 426-1974	NPRM September 1981.
*General Bridge Permit Regulations (Docket 81-057).	Would establish rules for issuing general bridge permits (33 CFR pt. 115).	Mr. J. Schwartz, (202) 426-1974	NPRM October 1981.

USCG **U.S. Coast Guard**

Routine and Frequent Nonsignificant Regulations

Title	Total	Contact	Decision date
Safety/Security Zone Regulations	15	Mr. Ziegfeld, (202) *426-5116*	*October* 1981-*October* 1982.
Anchorage Area Regulations	12	Mr. Ziegfeld, (202) *426-5116*	*October* 1981-*October* 1982.

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

AGENDA

USCG — U.S. Coast Guard

Routine and Frequent Nonsignificant Regulations—Continued

[Key to symbols: *New item. †Analysis or review being considered under Regulatory Flexibility Act. ●Regulation selected for priority review. *Italics:* New or changed information since last Agenda]

Title	Total	Contact	Decision date
Drawbridge Regulations	50	Mr. F Teuton, (202) 426-1380	*July* 1981–*July* 1982.

FAA — Federal Aviation Administration

Significant Regulations: Major

Title	Summary	Contact	Earliest expected decision date
Flammability Standard for Crewmember Uniforms (Docket No. 14451).	**A. Description:** Would establish flammability specifications for crewmember uniforms that will provide protection against heat and flame. **B. Why Significant:** This proposal is considered a significant rulemaking project due to substantial public interest and potential cost to airlines. **C. Analysis:** Regulatory Impact Analysis **D. Need:** To establish basic flammability specifications for crewmember uniforms, since clothing now used is made of conventional fabrics which may be ignited under many of the emergency conditions that may result. **E. Legal Basis:** Secs. 313(a), 601, and 604, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421(a), 1422; Sec. 6(c), DOT Act (49 U.S.C. § 1655(c)). **F Chronology:** Prior to April 1974, a number of informal conferences were held with members of the public including the Association of Flight Attendants (AFA), regarding flammability of flight attendant uniforms. A project was established to examine AFA claims regarding uniform flammability. National Bureau of Standards (NBS) Center for Fire Research was selected as research contractor. ANPRM No. 75-13 was issued March *13,* 1975 (40 FR 11737), to solicit public information and comments. A follow-up contract was established with the NBS to evaluate comments and conduct further testing, the contract was extended through August 1979. A public hearing was held on May 28 and 29, 1980, to further explore the technical and economic factors that would be involved in implementing flammability standards. Participants in the hearing agreed to explore nonregulatory solutions to the problems raised by AFA. Notice 75-13B reopening the comment period until December 16, 1980 was published August 21, 1980 (45 FR 55760). *The withdrawal of this proposal was published June 22, 1981 (46 FR 32409).* **G. Citation:** 14 CFR Part 121	William J. Sullivan, (202) 755-8716	*Withdrawn.*
Review: Operations Review Notice No. 7 (Docket No. 17669).	**A. Description:** Would revise the flight and duty time limitations and rest requirements for flight crewmembers used by domestic, flag, and supplemental air carriers, commercial operators of large aircraft, and air *taxi operators.* **B. Why Significant:** This proposal is considered a significant regulation because of the controversy associated with the complexity and enforcement problems of the current rules.	William J. Sullivan, (202) 755-8716	*Withdrawn.*

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

AGENDA

FAA

Federal Aviation Administration

Significant Regulations: Major—Continued

[Key to symbols: *New item. †Analysis or review being considered under Regulatory Flexibility Act. ●Regulation selected for priority review. *Italics:* New or changed information since last Agenda]

Title	Summary	Contact	Earliest expected decision date
	C. Analysis: Regulatory Impact Analysis..... **D. Need:** This proposal is needed to eliminate the complexity of the current regulations and to assure that flight and duty time limitations are based upon today's operating environment. **E. Legal Basis:** Secs. 313(a), 601, and 604 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 and 1424) and Sec. 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)). **F. Chronology:** The proposals contained in this notice are based on related proposals discussed at the December 1975 Operations Review Conference. The notice was published in the Federal Register on February 27, 1978 (43 FR 8070), with a closing date of May 30, 1978, for public comments. The initial comment period was extended by supplemental notice on May 25, 1978 (43 FR 22540), to July 14, 1978, with reply comments allowed on or before August 18, 1978. A Supplemental Notice of Proposed Rulemaking (SNPRM) was published August 11, 1980 (45 FR 53315). The comment period closes October 10, 1980. Reply comments are due by November 10, 1980. Comment period extended to December 10, 1981. Notice to extend comment period published October 19, 1980 (45 FR 67283). *The withdrawal of the SNPRM was published June 22, 1981 (46 FR 32413).* **G. Citation:** 14 CFR Pts. 121 and *135*.....		

FAA

Federal Aviation Administration

Significant Regulations: Other

Title	Summary	Contact	Earliest expected decision date
Parts Manufacturer Approvals (Docket No. 17147).	**A. Description:** Would (1) simplify the procedure for approving a PMA applicant's design on the basis of identicality to an already approved design; (2) reduce PMA application and reporting requirements; and (3) add a marking requirement which will facilitate field installation of replacement parts manufactured under a PMA and help avoid use of incorrect parts. **B. Why Significant:** The proposed revision is considered to be significant because it is controversial. **C. Analysis:** Regulatory Evaluation..... **D. Need:** Differences of opinion exist with respect to the methods available for showing identicalness of parts. Also the Parts Manufacturer Approval application and reporting requirements may be unnecessarily burdensome. **E. Legal Basis:** Secs. 313(a), 601 and 603 of the Federal Aviation Act of 1958 (49 U.S.C 1354(a), 1421, and 1423).	William J. Sullivan, (202) 755-8716	FR *February 1982.*

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

AGENDA

FAA — Federal Aviation Administration

Significant Regulations: Other—Continued

[Key to symbols: *New item. †Analysis or review being considered under Regulatory Flexibility Act. ●Regulation selected for priority review. *Italics:* New or changed information since last Agenda]

Title.	Summary	Contact	Earliest expected decision date
	F Chronology: This project was initiated December 23, 1975. NPRM No. 77-19 was published in the Federal Register (42 FR 43985). Comment period later reopened until January 4, 1978 (NPRM No. 77-19A, 42 FR 61048) and again reopened until May 15, 1978 (NPRM No. 77-19B, 43 FR 15432). Portions of NPRM 77-19 dealing with other subjects were handled separately. Supplemental Notice of Proposed Rulemaking (SNPRM) was published January 15, 1981 (46 FR 3775). Initial comment period closed April 15, 1981; reply comment period closed May 15, 1981. *NPRM 77-19D reopening the comment period until August 24, 1981, and the reply comment period until September 21, 1981, was published July 23, 1981 (46 FR 38062).*		
	G. Citation: 14 CFR Pt. 21		
Review: Operations Review Notice No. 14.	**A. Description:** Would establish regulations for flight and duty time limitations and rest requirements for flight attendants used by domestic, flag, and supplemental air carriers, commercial operators of large aircraft and air travel clubs.	William J. Sullivan, (202) 755-8716	*Further action to be determined.*
	B. Why Significant: This proposal is considered a significant regulation because there is substantial public interest in it.		
	C. Analysis: Regulatory Evaluation		
	D. Need: Because flight attendants perform important duties relating to the safety of flight, flight and duty time limitations and rest requirements are necessary to prevent excessive fatigue from adversely affecting the performance of those duties.		
	E. Legal Basis: Secs. 313(a), 601, and 604 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 and 1424) and Sec. 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).		
	F. Chronology: The proposals contained in this notice are based on related proposals discussed at the December 1975, Operations Review Conference. *These proposals are undergoing review in accordance with EO 12291 to determine whether rulemaking should be initiated.*		
	G. Citation: 14 CFR Pts. 121 and 123		
Administrative User Charges (Docket No. 19110).	**A. Description:** Would revise existing FAA fees for aircraft registration and for recording conveyances affecting title to, or any interest in, aircraft. In addition, it proposes to establish fees for FAA certification of pilots, instructors, and other airmen, including medical certification. It is intended that this proposed rule will provide for the recovery of expenses that the FAA incurs in these activities. The proposed action would be in accordance with the sense of the Congress.	John M. Rodgers, (202) 426-3420	*Withdrawn.*
	B. Why Significant: This proposal is considered a significant project because it involves an area of substantial public interest and controversy.		
	C. Analysis: Regulatory Evaluation		
	D. Need: This proposal will provide for the recovery of expenses that the FAA incurs in these activities and is in accordance with the sense of Congress.		

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

AGENDA

FAA **Federal Aviation Administration**

Significant Regulations: Other—Continued

[Key to symbols: *New item. †Analysis or review being considered under Regulatory Flexibility Act. ●Regulation selected for priority review. *Italics:* New or changed information since last Agenda]

Title	Summary	Contact	Earliest expected decision date
	E. Legal Basis: Secs. 313, 503, 505, 601, 602, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354, 1401, 1403, 1421, and 1422); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)), Title V; Independent Offices Appropriation Act of 1952 (31 U.S.C. 483(a)). F Chronology: NPRM published on April 20, 1978 (43 FR 16924). The closing date for comments was July 19, 1978. *The withdrawal of this NPRM was published June 29, 1981 (46 FR 33284).* G. Citation: 14 CFR Pts. 47, 49, 61, 63, 65, 67, 143, and 187.		
Wind Shear (Docket No. 19110)	A. Description: Would revise existing regulation to require all large passenger-carrying aircraft be equipped with a device that will display wind shear information to the pilots. B. Why Significant: This action is considered a significant project because it will generate substantial public interest and will be controversial. C. Analysis: Regulatory Evaluation D. Need: As a result of several accidents involving wind shear, it is necessary to identify equipment that will enable pilots to identify low level wind shear conditions. E. Legal Basis: Secs. 313(a), 601 and 604 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 and 1424) and Sec. 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)). F. Chronology: In 1975, the FAA began a two year effort to develop a wind shear program. As part of the program, FAA began work to develop a wind shear warning and pilot aiding device which has achieved encouraging results. Following the initial announcement of this proposal it was determined that a regulatory analysis would not be required; however, an evaluation will be made and docketed. The ANPRM *No. 79-11* was published on May 3, 1979 (44 FR 25807) and comment period closed August 3, 1979. G. Citation: 14 CFR Pt. 121	William J. Sullivan, (202) 755-8716	NPRM *November* 1981.
Metropolitan Washington Airports Policy *(Docket No. 21955).*	A. Description: Develops and implements a comprehensive policy and regulations (1) defining the respective roles of Washington National and Dulles International Airports, and (2) governing the future use, operation, development and maintenance of those airports. B. Why Significant: The proposed policy is of substantial interest to the public, potentially affecting State and local governments and the aviation community. C. Analysis: Regulatory Evaluation	*Edward P Faberman,* (202) *426-3235*	*FR October 1981.*

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

AGENDA

FAA **Federal Aviation Administration**

Significant Regulations: Other—Continued

[Key to symbols: *New item. †Analysis or review being considered under Regulatory Flexibility Act. ●Regulation selected for priority review. *Italics:* New or changed information since last Agenda]

Title	Summary	Contact	Earliest expected decision date
	D. Need: The lack of a firm, long-range policy has substantially hindered maximum effective and efficient management of the airports. Planning and funding processes have necessarily been limited to relatively short-term objectives. Efforts to lessen the impact of the airports on surrounding communities continue to be hampered by the absence of well-defined policy goals and guidelines. Aircraft operators using the airports have been similarly disadvantaged with respect to long-term planning and objectives. **E. Legal Basis:** Sections 103, 307, 313 of the Federal Aviation Act of 1958 (49 U.S.C. 1303, 1348 and 1354); Sections 2 and 5 of the Act for the Administration of Washington National Airport, 54 Stat. 688 as amended by 61 Stat. 94; Sec. 4 of the Second Washington National Airport Act, 64 Stat. 770; Sec. 6 of the Department of Transportation Act (49 U.S.C. 1655). **F. Chronology:** A Notice of Proposed Policy was published March 23, 1978 (43 FR 12141). The NPRM was published January 21, 1980 (45 FR 4314). The comment period closed April 15, 1980. The Amendments were published September 18, 1980 (45 FR 62406). Effective date extended to April 26, 1981, published October 27, 1980 (45 FR 11251). Notice proposing additional extension of effective date until October 25, 1981, published on March 5, 1981 (46 FR 15458). *On July 13, 1981, an NPRM was published proposing to withdraw the Amendments (46 FR 36068). The comment period closed August 31, 1981.* **G. Citation:** 14 CFR Pts. 93 and 159		

FAA **Federal Aviation Administration**

Nonsignificant Regulations

Title	Summary	Contact	Earliest expected decision date
Additional Equipment Requirements for Multiengine Turbojet Airplanes. (Formerly "Third Attitude Gyro, Ground Proximity Warning System, and Cockpit Voice Recorders").	Proposed amendment to add instrument and equipment requirements (1) to require a third gyroscopic attitude instrument, independently powered in case of total aircraft electrical failure, on all multiengine turbojet powered airplanes not already required to have a third gyroscopic attitude and (2) to require a ground proximity warning system and a cockpit voice recorder on all turbojet powered airplanes configured with 6 or more passenger seats. (14 CFR Pts. 23, 25, 91, and 121).	William J. Sullivan, (202) 755-8716	*Project cancelled.*
Review: Aircraft Engine Regulations Notice (Docket No. 16919).	Proposed amendment to resolve a number of regulatory issues raised by engine manufacturers and to update those standards. The NPRM *No. 80-21* was published November 20, 1980 (45 FR 76872). The comment period closed February 18, 1981. (14 CFR Pts. 23, 25, 27, 29, and 33).	William J. Sullivan, (202) 755-8716	FR *December* 1981.

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

AGENDA

FAA Federal Aviation Administration

Nonsignificant Regulations—Continued

[Key to symbols: *New Item. †Analysis or review being considered under Regulatory Flexibility Act. ●Regulation selected for priority review. *Italics:* New or changed information since last Agenda]

Title	Summary	Contact	Earliest expected decision date
Takeoff and Landing Minimums. (Formerly "Instrument Approach Procedures") *(Docket No. 20060).*	The rule clarifies prescribed conditions for approach and landing under specified weather conditions. The NPRM was published March 6, 1980 (45 FR 14801). The comment period closed May 6, 1980. The amendment was published January 8, 1981 (46 FR 2280); it went into effect on May 8, 1981, after review under E.O. 12291. (14 CFR Pts. 91 and 121).	William J. Sullivan, (202) 755-8716	*Action complete.*
Airport Noise Regulations (Docket No. 16279).	Environmental Protection Agency's proposed revision to require airport noise certification as a condition for Airport and Airway Development Act funding. The NPRM was published on 11/22/76 (41 FR 51522). The Final Rule was published January 26, 1981 (46 FR 8316). (14 CFR Pt. 91).	Richard Tedrick, (202) 755-9027	*Action complete.*
Review: Operations Review Notice No. 11 (Docket No. 21269).	This proposal features provisions providing for the use of "mini-evacuation" tests, requirements for the elimination of the three-pointer altimeter in turbojet-powered airplanes, and allows for the use of "blocked seats" under certain conditions. The NPRM was published January 19, 1981. The comment period closed April 20, 1981. (14 CFR Pts. 121, 145, and 183).	William J. Sullivan, (202) 755-8716	*Further action to be determined.*
Review: Operations Review Notice No. 12 (Docket No. 21071).	Proposed extensive revisions to update and improve regulations applicable to aircraft maintenance, preventive maintenance, rebuilding and alteration of aircraft. The NPRM was published November 20, 1980 (45 FR 76894). The comment period closed February 18, 1981. (14 CFR Pts. 43 and 91).	William J. Sullivan, (202) 755-8716	FR *November* 1981.
Review: Operations Review *Program Close-out* Notice No. 13.	*Notice announcing the disposition of all proposals not addressed in previous Operations Review Notices and the availability of an index of the disposition of all Operations Review proposals.*	William J. Sullivan, (202) 755-8716	NPRM *December* 1981.
Review: Part 91 Notice (Docket No. 16431).	The agency conducted a Regulatory Review Conference of 14 CFR Part 91, Subpart B, in September 1977, in order to update that part. This action will cover all proposals covered by the review except for lost communications. (14 CFR Pt. *91*).	Hal Becker, (202) 426-3656	NPRM *October* 1981.
Review: Part 91 Review Lost Communications (Docket No. 16431).	*Proposed amendment to simplify lost communications procedures.*	Hal Becker, (202) 426-3656	NPRM *September* 1981.
Review: Objects Affecting Navigable Airspace (Docket No. 16920).	*Would revise and reorganize 14 CFR Part 77 in a more logical sequence and presentation of regulatory requirements relating to proposed construction or alteration and their impact on navigable airspace. It is also intended to clarify and strengthen agency actions in determining whether a particular object would be a hazard to air navigation.* Notice of Review was published on 6/19/78 (43 FR 26322). (14 CFR Pt. 77). Review Conference held December 4-8, 1980.	Keith Potts, (202) 426-3731	NPRM *November* 1981.
Civil Helicopter Noise Certification (Docket No. 13410).	Would establish noise certification levels and procedures for civil helicopters: An ANPRM was published 12/28/73, (38 FR 35487). The NPRM was published 7/19/79 (44 FR 42410). The comment period was extended until March 5, 1981 (46 FR 931) (14 CFR Pt. 36).	Richard Tedrick, (202) 755-9027	FR July *1982.*

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

AGENDA

FAA — Federal Aviation Administration

Nonsignificant Regulations—Continued

[Key to symbols: *New item. †Analysis or review being considered under Regulatory Flexibility Act. ●Regulation selected for priority review. *Italics:* New or changed information since last Agenda]

Title	Summary	Contact	Earliest expected decision date
Implementation of OMB Circular A-95 (Docket No. 17337).	Final procedures and regulations implementing OMB Circular A-95 (coordination of Federal assistance programs with State, areawide, and local planning agencies), based on public comment on interim procedures in Special Federal Aviation Regulation 35 (42 FR 59476, 11/17/77). *The amendment was published June 11, 1978 (46 FR 30808)* (14 CFR Pt. 152).	John Gable, (202) 426-8090	*Action complete.*
Implementation of Energy Policy (Docket No. 16617).	Implementation of the Energy Policy and Conservation Act. The NPRM was published on 3/31/77. (42 FR 17135). (14 CFR Pt. 11).	*David Winer,* (202) 755-9717	*Further action to be determined.*
Review: Update of Part 139	Revision of 14 CFR Part 139 to update and clarify the part including fire-fighting and rescue requirements. (14 CFR Pt. 139).	Jose Roman, (202) 426-3087	*Further action to be determined.*
Protective Breathing Equipment	Proposed rule to establish minimum performance standards and operating rules for protective breathing equipment. (14 CFR Pts. 25, 29, 37, 91 and 121).	William J. Sullivan, (202) 755-8716	*Project cancelled.*
Pilot Oxygen Mask Use Requirements (Formerly "Supplemental Oxygen").	Proposed rule to permit certain widebody turbojet airplanes to operate up to flight level of 45,000 feet above sea level without requirements for the pilot to use supplemental oxygen. (14 CFR Pts. 25, 29, 37, 91, and 121).	William J. Sullivan, (202) 755-8716	NPRM *October* 1981.
Review: Metropolitan Washington Airports Regulations.	Proposed revision to reflect changed operational conditions and policies and to simplify, clarify and consolidate the regulations pertaining to the National Capital Airports. (14 CFR Pt. 159).	Edward S. Faggen, (703) 557-8123	*Further action to be determined.*
Miscellaneous Minor Amendments (Docket No. 21129).	Proposed nonsubstantive amendments that are routine, editorial and clarifying in nature. The NPRM *No. 80-23* was published December 4, 1980. The comment period closed February 4, 1981. (14 CFR Pts. 23, 25, 37, 45, 61, 63, 65, 91, and 121).	William J. Sullivan, (202) 755-8716	FR December 1981.
Review: *Revision of Part 91 (Formerly Aircraft Owners and Pilots Association (AOPA) Petition) (Docket No. 18334).*	*This review deals with the air traffic and general operating rules in Part 91—the most fundamental aviation regulations. This action would reorganize and rearrange the rules without substantive change, to make them easier to use and understand. A later action will review and revise them to eliminate unnecessary burdens in keeping with E.O. 12291. AOPA withdrew its petition on November 20, 1980, so the FAA could proceed with this two-step review. ANPRM 79-2 published the original AOPA petition for comment on January 22, 1979 (44 FR 4571). (14 CFR Part 91).*	William J. Sullivan, (202) 755-8716	NPRM *August* 1981.
Foreign Airman Certification	Proposed amendments to establish priorities for processing applications by foreign airmen for U.S. Airman Certificates. (14 CFR Pts. 61, 63, 65, and 67).	William J. Sullivan, (202) 755-8716	*Further action to be determined.*
Recording of Aircraft Titles and Security Documents—Notice of Lien (Docket No. 14236).	Proposed amendment to prescribe specific procedures for filing Notice of Lien with the Aircraft Registry. This proposal would also require release of the Notice filed upon satisfaction of the lien. The NPRM was published January 13, 1975 (40 FR 2445). (14 CFR Part 49).	Virginia Swimmer, (405) 686-2284	*Further action to be determined.*
Cessna Finance Petition (Docket No. 17311).	Petition for rulemaking to amend Part 47 to provide all persons who hold a security interest in aircraft the same protection now afforded the seller of an aircraft under a conditional sales contract. The ANPRM was published 10/20/77 (42 FR 55891). The NPRM was published May 22, 1980 (45 FR 34826). The comment period was extended to August 21, 1980. (14 CFR Pt. 47).	Virginia Swimmer, (405) 686-2284	*February 1982.*

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

AGENDA

FAA — Federal Aviation Administration

Nonsignificant Regulations—Continued

[Key to symbols: *New item. †Analysis or review being considered under Regulatory Flexibility Act. ●Regulation selected for priority review. *Italics:* New or changed information since last Agenda]

Title	Summary	Contact	Earliest expected decision date
Airplane and Airport Operators Security Rules (Docket No. 19726).	Implements safety standards mandated by the Airline Deregulation Act of 1978, and insures that commuter air carrier passengers enjoy the same level of security as persons traveling on air carriers holding Certificates of Public Convenience and Necessity from the CAB. The NPRM was published November 1, 1979 (44 FR 63048). Comment period closed February 11, 1980. The amendments were published January 15, 1981 (46 FR 3782). *Notice of OMB approval and correction of amendment published July 13, 1981 (46 FR 36053). Rules become effective 9/11/81; however, operators may elect to comply earlier, (14 CFR Parts 107, 108 (new), 121, 129, and 135).*	William J. Sullivan, (202) 755-8716	*Action complete.*
Use of Alcohol or Drugs (Formerly "Blood Alcohol Level Tests") *(Docket No. 21631).*	Proposed rule which will subject Certificated Flight Crewmembers suspected of being under the influence of alcohol to blood-alcohol tests and establish a specific blood-alcohol content level at which a pilot is considered to be intoxicated. *The NPRM was published July 27, 1981 (46 FR 38480). The comment period closes November 25, 1981.* (14 CFR Pts. 61 and 91).	William J. Sullivan, (202) 755-8716	*FR July 1982.*
Microwave Landing System (MLS).	Proposed rule to recognize the MLS selected by ICAO and to prescribe measuring standards and procedures for the approval, installation, operation, and maintenance of such systems on non-Federal navigation facilities. The NPRM was published September 8, 1980. (45 FR 59256). The comment period closes November 7, 1980. (14 CFR Pt. 171).	William Redeen, (202) 426-8634	FR July 1981.
Airplane Tires (Formerly "Tires Retrofit") (Docket No. 19793).	Proposed rule to require installation of improved tires on certain turbojet transport category airplanes. The NPRM was published 11/27/79. (41 FR 68759). The comment period closed 2/27/79. *The NPRM was withdrawn May 21, 1981 (46 FR 27889).* (14 CFR Pt. 91).	William J. Sullivan, (202) 755-8716	*Withdrawn.*
Revision of Applicability of Part 139.	Proposed amendment to require the certification of airports serving commuter air carriers, as well as air carriers holding certificates of public convenience and necessity from the CAB. This revision would respond to the Airline Deregulation Act of 1978 and ensures that passengers traveling aboard commuter air carriers enjoy the same level of safety as passengers traveling aboard CAB certificated air carriers. The NPRM was published June 12, 1980. (45 FR 39857). The comment period closed August 11, 1980. (14 CFR Part 139).	Jose Roman, Jr., (202) 426-3087	*Further action to be determined.*
Review: Rotorcraft Review Notice No. 1 Certification, IFR, and Deicing *(Docket No. 21180).*	This notice proposes to add new airworthiness standards and update existing criteria in the areas of instrument flight rules (IFR) certification and ice protection certification. It also proposes revisions to the applicability of sections of Part 27 and 29 which allow for increased productivity for rotorcraft engaged primarily in utility or cargo operations and provides additional protection for rotorcraft carrying 10 or more passengers. The NPRM *No. 80-25* was published December 18, 1980. The comment period closed April 17, 1981 (45 FR 83424). A public meeting was held August 18-20, 1980. (14 CFR Parts 1, 27, 29, 33, 43, 45, 61, 91, 121, 127, 133, and 135).	William J. Sullivan, (202) 755-8716	FR *December* 1981.

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

AGENDA

FAA — Federal Aviation Administration

Nonsignificant Regulations—Continued

[Key to symbols: *New item. †Analysis or review being considered under Regulatory Flexibility Act. ●Regulation selected for priority review. *Italics:* New or changed information since last Agenda]

Title	Summary	Contact	Earliest expected decision date
Inoperative Instruments or Equipment (Formerly "Minimum Equipment Lists (MEL)").	*This notice proposes to revise Part 91 to include provisions that will allow the operation of powered aircraft with certain installed instruments and equipment inoperative. The proposal would consolidate minimum equipment list requirements presently contained in various parts of the Federal Aviation Regulations into one regulation. (14 CFR Parts 43, 91, 121, 125, and 135).*	William J. Sullivan, (202) 755-8716	NPRM *September* 1981.
Hang Gliding *(Docket No. 21631).*	Proposed addition to FAR Part 101 to designate general safety rules for hang gliding in order to accommodate increasing hang gliding activity in the National Airspace System. *The NPRM was published July 27, 1981 (46 FR 38472). The comment period closes November 25, 1981.* (14 CFR Part 101).	Hal Becker, (202) 426-3656	*FR February 1982.*
Parachute Jumping, Notice and Authorization Requirements.	Proposed amendments would require notice of parachute jumps in terms of above mean sea level and would require ATC authorization for jumps in/into a terminal control area. (14 CFR Part 105).	Hal Becker, (202) 426-3656	NPRM *August* 1981.
Review: Operations on and in Vicinity of an Airport.	Proposed review of rules pertaining to operations on/in the vicinity of controlled and uncontrolled airports, including radio communications, altitudes, and noise abatement areas. *Further action on this proposal will be incorporated into the National Airspace Review.* (14 CFR Part 91).	Hal Becker, (202) 426-3656	Action terminated.
Terminal Control Areas (TCA's): Phoenix.	Terminal Control Areas (TCA's) are proposed to reduce the midair collision potential by eliminating the mix of controlled and uncontrolled aircraft in a higher density terminal environment. The NPRM was published April 7, 1980 (45 FR 23457). *A Supplemental NPRM was published June 15, 1981, (46 FR 31269). The comment period closed July 30, 1981.* (14 CFR Part 71).	S. Wugalter, (202) 426-*8783*	*Further action to be determined.*
Terminal Control Areas (TCA's): Tampa.	Terminal Control Areas (TCA's) are proposed to reduce the midair collision potential by eliminating the mix of controlled and uncontrolled aircraft in a higher density terminal environment. (14 CFR Part 71). NPRM published February 4, 1980 (45 FR 7559). Comment period closes 5/5/80. *The withdrawal of this NPRM was published June 22, 1981. (46 FR 32267).*	S. Wugalter, (202) 426-8783	*Withdrawn.*
Terminal Control Areas (TCA's): Fort Lauderdale/Miami. Docket No. 186905/80-R30-4.	Terminal Control Areas (TCA's) are proposed to reduce the midair collision potential by eliminating the mix of controlled and uncontrolled aircraft in a higher density terminal environment. The NPRM was published September 22, 1980. (45 FR 62839). The comment period closed December 22, 1980. (14 CFR Part 71).	S. Wugalter, (202) 426-*8783*	*Further action to be determined.*
Terminal Control Areas (TCA's): Orlando.	Terminal Control Areas (TCA's) are proposed to reduce the midair collision potential by eliminating the mix of controlled and uncontrolled aircraft in a higher density terminal environment. (14 CFR Part 71).	S. Wugalter, (202) 426-*8783*	Action terminated.
Terminal Control Areas (TCA's): Memphis.	Terminal Control Areas (TCA's) are proposed to reduce the midair collision potential by eliminating the mix of controlled and uncontrolled aircraft in a higher density terminal environment. (14 CFR Part 71).	S. Wugalter, (202) 426-*8783*	Action terminated.
Terminal Control Areas (TCA's): Portland.	Terminal Control Areas (TCA's) are proposed to reduce the midair collision potential by eliminating the mix of controlled and uncontrolled aircraft in a higher density terminal environment. (14 CFR Part 71).	S. Wugalter, (202) 426-*8783*	Action terminated.

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

AGENDA

FAA **Federal Aviation Administration**

Nonsignificant Regulations—Continued

[Key to symbols: *New item. †Analysis or review being considered under Regulatory Flexibility Act. ●Regulation selected for priority review. *Italics:* New or changed information since last Agenda]

Title	Summary	Contact	Earliest expected decision date
Operations Review Notice No. 8A (Docket No. 17897).	Proposed amendment to require that all flight attendants remain seated at their assigned stations during taxiing except to perform duties related to the safety of the airplane and its occupants. NPRM published June 19, 1980 (45 FR 41956). On August 28, 1980 the comment period was reopened. (45 FR 59295). The comment period closed October 23, 1980. Reply comments were due by November 23, 1980. *The withdrawal of the NPRM was published May 21, 1981 (46 FR 27893).* (14 CFR 121 and 127).	*William* J. Sullivan, (202) 755-8716	*Withdrawn.*
Air Carrier—Carry-On Baggage—(Formerly National Federation of the Blind (NFB)—Carriage of Canes) *(Docket No. 17320).*	Petition for rulemaking to permit the stowage of a blind person's flexible cane in a readily accessible location, on all passenger-carrying flights, so that the cane would be available to that person in case of evacuation of an aircraft in an emergency situation. The NPRM was published November 13, 1980. The comment period closed January 12, 1981 (45 FR 75138). *The amendment was published July 23, 1981 (46 FR 38043).*	*William* J. Sullivan, (202) 755-8716	*Action complete.*
Size of Registration Marks—(Formerly Modification of Aircraft Registration Markings) *(Docket No. 20424).*	Proposed amendment to increase height of markings from 3 inches to 12 inches on certain fixed-wing aircraft, decrease height of markings from 20 inches to 3 inches on airships and balloons, and retain the 3-inch height of markings on experimental amateur-built, and experimental exhibition aircraft. NPRM published July 31, 1980 (45 FR 50810). The comment period was extended until November 28, 1980 (45 FR 64207) (14 CFR 39).	*William* J. Sullivan, (202) 755-8716	FR *October* 1981.
Special Airport Traffic Area and Communication Rule.	Proposed amendments to establish special airport traffic areas for certain Canadian airports that are adjacent to the U.S.-Canadian border and which have operating air traffic control towers; the amendments would also require aircraft communications with those towers while operating in the area. *The NPRM was published April 7, 1981 (46 FR 24199). The comment period closes June 30, 1981. (14 CFR Part 93).*	Hal Becker, (202) 426-3656	*FR December* 1981.
Export Airworthiness Approvals (Docket No. 17502).	Petition for rulemaking to amend § 21.339(a) to allow restricted category aircraft to be eligible for special export airworthiness approvals and to amend the restricted category civil aircraft operating limitations. The NPRM *No. 80-20* was published November 20, 1980 (45 FR 76868). The comment period closed January 19, 1981. (14 CFR Part 21).	William J. Sullivan, (202) 755-8716	FR *August* 1981.
Pitot Heat Indication Systems (Docket No. 18904).	Petition to amend the rules to require installation of pitot heat indicating systems only on transport category airplanes operated for hire. A summary of the petition was published on October 18, 1979 (44 FR 60107). The comment period closed November 14, 1979. The NPRM *No. 80-27* was published January 2, 1981 (46 FR 00076). The comment period closed March 5, 1981. (14 CFR Parts 91, 121, 123, and 135).	William J. Sullivan, (202) 755-8716	FR *August* 1981.
Pyrotechnic Devices for Certain Over-Water Flights (Docket No. 18904).	Petition to establish minimum standards for pyrotechnic signaling devices required for certain overwater operations. This action would require these devices to at least meet U.S. Navy Weapons System Specifications WS 13697B. A summary of the petition was published on October 18, 1979 (44 FR 60107). The comment period closed November 14, 1980. (14 CFR Parts 91, 121, and 135).	William J. Sullivan, (202) 755-8716	*Project cancelled.*

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

AGENDA

FAA — Federal Aviation Administration

Nonsignificant Regulations—Continued

[Key to symbols: *New item. †Analysis or review being considered under Regulatory Flexibility Act. ●Regulation selected for priority review. *Italics:* New or changed information since last Agenda]

Title	Summary	Contact	Earliest expected decision date
FAA Access to Flight Data Recorder and Cockpit Voice Recorder Tapes (Docket No. 20661).	Proposed amendment to allow the FAA to obtain flight data recorder and cockpit voice recorder information at any time at any place. The information is needed to study human factor elements associated with aircraft operation. NPRM 80-14 was published August 28, 1980 (45 FR 57694). The comment period closed October 27, 1980. A supplemental NPRM was published January 19, 1981 (46 FR 5506). The comment period closes May 18, 1981. *The NPRM was withdrawn May 21, 1981 (46 FR 27897).* (14 CFR Parts 121 and 135).	William J. Sullivan, (202) 755-8716	*Withdrawn.*
Elimination of Duties and Activities of Flight Crewmembers Not Required for Safe Operation of Aircraft (Docket No. 20659).	Prohibits flight crewmembers from performing duties and activities not required for the safe operation of aircraft during critical phases of flight. NPRM 80-12 was published August 28, 1980. (45 FR 57684). Comment period closed October 27, 1980. The amendments were published January 19, 1981 (46 FR 05500). Scheduled to go into effect on May 18, 1981 subject to Executive Order 12291 review. (14 CFR Parts 121 and 135). *At the request of the Office of Management and Budget, a postponement of the effective date of this rule to June 18, 1981, was published on May 26, 1981 (46 FR 28303), and it was postponed a second time until July 18, 1981. The second postponement was published June 25, 1981. (46 FR 32863). A decision was then made to allow the rule to go into effect on July 18.*	William J. Sullivan, (202) 755-8716	*Action complete.*
Airworthiness Standards: Aircraft and Products Design and Procedural Standards for Type Certificates, Type Certificate Amendments and Supplemental Type Certificates (Docket No. 20660).	Proposed amendments to provide the FAA the means to require updating of safety standards for type certificates, amended type certificates, and supplemental type certificates. NPRM 80-13 was published August 28, 1980 (45 FR 57687). Comment period extended until March 31, 1981 (45 FR 80434). *The NPRM was withdrawn May 21, 1981 (46 FR 27885)* (14 CFR Parts 21, 39, and 91).	William J. Sullivan, (202) 755-8716	*Withdrawn.*
Noise Levels for Turbojet-Powered Airplanes and Large Propeller-Driven Airplanes (Docket No. 16231).	Environmental Protection Agency's proposed revision to FAR 36 requiring further reductions in noise levels of subsonic aircraft. *The amendment was published June 29, 1981 (46 FR 33454).*	Richard Tedrick, (202) 755-9027	*Action complete.*
Acoustical Change Definition (Docket No. 20026).	Proposed in response to ATA petition (published March 6, 1980) to define "acoustical change" and to limit its applicability in maintenance situations.	Richard Tedrick, (202) 755-9027	NPRM *October* 1981.
Terminal Control Area (TCA) San Antonio.	Terminal Control Areas (TCAs) are proposed to reduce the midair collision potential by eliminating the mix of controlled and uncontrolled aircraft in a higher density terminal environment. (14 CFR Part 71).	S. Wugalter, (202) 426-8488	Action terminated.
Terminal Control Area (TCA) Buffalo.	Terminal Control Areas (TCAs) are proposed to reduce the midair collision potential by eliminating the mix of controlled and uncontrolled aircraft in a higher density terminal environment. (14 CFR Part 71).	S. Wugalter, (202) 426-8488	*Action terminated.*
Terminal Control Area (TCA) New York (Modification).	Terminal Control Areas (TCAs) are proposed to reduce the midair collision potential by eliminating the mix of controlled and uncontrolled aircraft in a higher density terminal environment. *The NPRM was published January 8, 1981 (46 FR 2088). The comment period closed April 8, 1981.* (14 CFR Part 71).	S. Wugalter, (202) 426-8783	*To be determined.*

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

AGENDA

FAA — Federal Aviation Administration

Nonsignificant Regulations—Continued

[Key to symbols: *New item. †Analysis or review being considered under Regulatory Flexibility Act. ●Regulation selected for priority review. *Italics:* New or changed information since last Agenda]

Title	Summary	Contact	Earliest expected decision date
Terminal Control Area (TCA) San Diego (Modification).	Terminal Control Areas (TCAs) are proposed to reduce the midair collision potential by eliminating the mix of controlled and uncontrolled aircraft in a higher density terminal environment. *The NPRM was published January 29, 1981. The comment period closed March 16, 1981. (46 FR 9631). The amendment was published June 29, 1981 (46 FR 33229).* (14 CFR Part 71).	S. Wugalter, (202) 426-8488	*Action complete.*
Terminal Control Area (TCA) Honolulu (Modification). *(Docket No. 18605/80-APC-6).*	Terminal Control Areas (TCAs) are proposed to reduce the midair collision potential by eliminating the mix of controlled and uncontrolled aircraft in a higher density terminal environment. *The NPRM was published April 23, 1981 (46 FR 23065). The comment period closed June 8, 1981.* (14 CFR Part 71).	S. Wugalter, (202) 426-*8783*	*To be determined.*
Terminal Control Area (TCA) Las Vegas (Modification).	Terminal Control Areas (TCAs) are proposed to reduce the midair collision potential by eliminating the mix of controlled and uncontrolled aircraft in a higher density terminal environment. (14 CFR Part 71).	S. Wugalter, (202) 426-*8783*	*To be determined.*
Proposed Issuance of Notices to Airmen (NOTAMs) for Communicating Emergency Flight Rules.	*The* amendment expressly *established* the NOTAM system as an authorized means by which emergency flight rules are communicated to pilots and operators. *The amendment was published March 13, 1981. (46 FR 16666). (14 CFR Part 91).*	Hal Becker, (202) 426-3656	*Action complete.*
Exclusive—Use Requirements Supplemental Air Carriers and Commercial Operators (Docket No. 20784).	*The* provisions in Section 121.155 of the Federal Aviation Regulations that a supplemental air carrier or commercial operator may not use any aircraft that it does not have the sole possession, control and use of for flight for at least 6 months. This updating of the Federal Aviation Regulations would eliminate, without any derogation of safety, an unnecessary economic burden which the present rule imposes on this segment of aviation. NPRM 81-2 issued Jan. 16, 1981. Comment period closed March 27, 1981. *The amendment was published on July 9, 1981 (46 FR 35611).* (14 CFR Part 121).	William J. Sullivan, (202) 755-8716	*Action complete.*
Flight Operations Control Systems (Docket No. 18591).	Based upon a Transamerica Airlines (TIAS) and World Airways (WRLS) joint petition for rule making, the FAA is considering amending Part 121 to allow among other things all operations to be conducted under a flight operations control system. *Advance* Notice 80-16 (14 FR 67103) issued Oct. 2, 1980, published the entire petition and requested comments to assist the FAA in determining what if any regulatory proposals should be developed. Comment period closed Jan. 7, 1981. Based on comments received an NPRM will be issued proposing changes to Part 121 (14 CFR 121).	William J. Sullivan, (202) 755-8716	NPRM *April 1982.*
Standards and Certification for Issuance of Airman Medical Certificate (Docket No. 21130).	Proposes exemption procedures for the issuance of airman medical certificates to persons with certain medical conditions who do not initially qualify for certification under the medical standards in the Federal Aviation Regulations. The NPRM *No. 80-24* was published January 2, 1980 (45 FR 80296). The comment period on NPRM 80-24 closed Feb. 4, 1981. A public hearing was held Feb. 3-4, 1981. (14 CFR Part 67).	William J. Sullivan, (202) 755-8716	FR *October* 1981.
Review: Rotorcraft Review Notice No. 2—Systems.	This notice is the second of a series of notices that propose to add new airworthiness, operation, and maintenance standards for rotorcraft. This particular notice proposes changes to Parts 27, 29, and 91 and deals only with the flight controls and associated systems on rotorcraft. (14 CFR Parts 27, 29, and 91).	William J. Sullivan, (202) 755-8716	NPRM *December* 1981.

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

AGENDA

FAA Federal Aviation Administration

Nonsignificant Regulations—Continued

[Key to symbols: *New item. †Analysis or review being considered under Regulatory Flexibility Act. ●Regulation selected for priority review. *Italics:* New or changed information since last Agenda]

Title	Summary	Contact	Earliest expected decision date
Review: Rotorcraft Review Notice No. 3—Powerplants.	This notice is the third of a series of notices to be issued as part of the FAA's comprehensive Rotorcraft Regulatory Review Program. This notice contains proposals which would amend and update the engine and related equipment certification requirements in Parts 27 and 29 of the Federal Aviation Regulations. (14 CFR Parts 27 and 29).	William J. Sullivan, (202) 755-8716	NPRM *January 1982.*
Review: Rotorcraft Review Notice No. 4—Airframe.	This is the fourth of a series of notices to be issued as part of the FAA's comprehensive Rotorcraft Regulatory Review Program. This notice contains proposals which would amend and update the airframe and related equipment requirements in Parts 27 and 29 of the Federal Aviation Regulations. (14 CFR Parts 27 and 29).	William J. Sullivan, (202) 755-8716	NPRM May *1982.*
Review: Rotorcraft Review Notice No. 5—Operations and Maintenance.	This is the fifth of a series of notices to be issued as part of the FAA's comprehensive Rotorcraft Regulatory Review Program. This notice contains proposals which would amend and update the operations and maintenance requirements pertaining to rotorcraft and covered in Parts 43, 45, 61, 91, 121, 127, 133, and 135 of the Federal Aviation Regulations. Part 1 would also be amended to add a definition of a Class D rotorcraft-load combination. (14 CFR Parts 43, 45, 61, 91, 121, 127, 133, and 135).	William J. Sullivan, (202) 755-8716	NPRM *December* 1981.
*Added Instrument Rating (Docket No. 22051).	This notice proposes to amend the rules governing the requirements for the issuance of an original or additional instrument rating onto an airman certificate. The proposal would delete the requirement for an individual to acquire cross-country experience in a specific category of aircraft. The NPRM was published August 10, 1981 (46 FR 40646). The comment period closes October 10, 1981. (14 CFR Part 61).	William J. Sullivan, (202) 755-8716	FR July 1982.
*Transport Category Airplanes—Cabin Ozone Concentration.	This proposed amendment would exempt operators of "cargo-only" aircraft and narrow-body two- and three-engine aircraft from installing ozone equipment or establishing ozone avoidance procedures. (14 CFR Parts 25 and 121).	William J. Sullivan, (202) 755-8716	NPRM September 1981.
*Major Repairs (Docket No. 21988).	This notice proposes certain actions which will improve understanding of the term "major repair" and corollary terms used in relation to maintenance and repair procedures for aircraft, airframes, aircraft engines, propellers, and appliances. NPRM 81-10 was published July 23, 1981 (46 FR 38054). (14 CFR Part 43).	William J. Sullivan, (202) 755-8716	FR July 1982.
*Airman and Repair Station Certification for Foreign Nationals.	This proposed rule would establish a regulatory needs requirement and schedule of fees for issuance of airmen and repair station certificates to foreign nationals at overseas locations. (14 CFR Pts. 61, 63, 65, 67, 145 and 187). The NPRM was published August 10, 1981 (46 FR 40529). The comment period closes 10/10/81.	Kathleen W. Gorman, (202) 426-3230	FR October 1981.
*Flight Crewmember Flight Time Limitations and Rest Requirements.	Proposed amendment to revise the flight time limitations and rest requirements for flight crewmembers utilized by domestic, flag, and supplemental air carriers, commercial operators, air taxi operators, and scheduled air carriers with helicopters. The complexity of the current rule has required numerous interpretations and has been a burdensome requirement. A proposal is to be developed which is both less complex and less burdensome in compliance with Executive Order 12291. (14 CFR Parts 121 and 135).	William J. Sullivan, (202) 755-8716	NPRM November 1981.

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

AGENDA

FAA — Federal Aviation Administration

Routine and Frequent Nonsignificant Regulations

[Key to symbols: *New item. †Analysis or review being considered under Regulatory Flexibility Act. ●Regulation selected for priority review. *Italics:* New or changed information since last Agenda]

Title	Summary	Contact	Decision date
Other Items:			
Part 95 Instrument Flight Rules Altitudes.	2500	*Don Tuna,* (202) *426-8277*	*October 1, 1981–September 30, 1982.*
Airworthiness Directives	300	*Jack McGrath,* (202) *426-8192*	*October 1, 1981–September 30, 1982.*
Standard Instrument Approach Procedures.	2800	*Don Tuna,* (202) *426-8277*	*October 1, 1981–September 30, 1982.*
Airspace Actions	525	S. Wugalter, (202) 426-*8783*	*October 1, 1981–September 30, 1982.*

FHWA — Federal Highway Administration

Significant Regulations: Major

Title	Summary	Contact	Earliest expected decision date
	ENGINEERING AND TRAFFIC OPERATIONS		
Buy America Requirements (Docket No. 78-35).	**A. Description:** This amendment to an existing regulation would establish provisions for the protection of domestic structural steel on construction projects with an estimated cost of $450,000 or more. *This entry has been moved to "Significant Regulations—Other" portion of Agenda.*	*Kenneth L. Ziems,* (202) 426-4847	
Geometric Design Criteria for Resurfacing, Restoration, and Rehabilitation (RRR) of Streets and Highways Other Than Freeways (Docket No. *80-3*).	**A. Description:** This regulation would contain criteria intended to provide additional flexibility in some of the basic geometric features of design, primarily those in which modification would result in appreciable savings in costs and other impacts while improving safety. **B. Why Significant:** This regulation is considered significant because the adoption of new design criteria specifically for RRR projects has proven to be controversial. **C. Analysis:** Regulatory Impact Analysis **D. Need:** To implement the 1976 amendment to 23 U.S.C. 101 redefining "construction" to include resurfacing, restoration, and rehabilitation. Geometric design criteria are needed to effectively administer a RRR program for preservation work on the Federal-aid highway systems. **E. Legal Basis:** 23 U.S.C. 101, 109, 315, and 402: 49 CFR 1.48(b).	Alvin R. Cowan or Kenneth Davis, (202) 426-0312	*FR October 1981.*

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

AGENDA

FHWA **Federal Highway Administration**

Significant Regulations: Major—Continued

[Key to symbols: *New item. †Analysis or review being considered under Regulatory Flexibility Act. ●Regulation selected for priority review. *Italics:* New or changed information since last Agenda]

Title	Summary	Contact	Earliest expected decision date
	F Chronology: An ANPRM published August 25, 1977, (42 FR 42876) offered three alternatives. A Notice published October 28, 1977 (42 FR 56751) extended the comment period for the ANPRM to November 22, 1977. A notice of withdrawal of the ANPRM was published January 9, 1978 (43 FR 2734). Because of the adverse comments, all alternatives were rejected and FHWA decided to develop a new set of criteria for Resurfacing, Restoration, and Rehabilitation (RRR) projects. An NPRM was published on August 23, 1978 (43 FR 37556). A correction to the NPRM was published September 12, 1978 (43 FR 40539). A Notice published on October 19, 1978 (43 FR 48658) extended the comment period for the NPRM to January 4, 1979. On May 23, 1979 (44 FR 29921) FHWA published as a Notice a status report on the creation of an internal task force appointed to evaluate comments received on the NPRM and make recommendations to the Administrator. *Another NPRM proposing a more flexible approach was published* on January 5, 1981 (46 FR 1228). A public meeting was held on February 3, 1981. *The public comment period closed on May 5, 1981, and the comments received are now under evaluation. It should also be noted that the Presidential Task Force on Regulatory Relief has identified the existing design criteria regulation for regulatory review.* **G. Citation:** 23 CFR pt. 625		
	FEDERAL MOTOR CARRIER SAFETY REGULATIONS		
Minimum Cab Space Dimensions (Docket No. MC-79).	**A. Description:** This regulation would specify minimum size for the cab portion of the regulated commercial vehicles manufactured after a certain date. **B: Why Significant:** This proposal has the potential of being costly if extensive changes to cab configuration become necessary. **C. Analysis:** Regulatory Impact Analysis **D. Need:** Changes in truck technology and maximum limitation on size by States have led to the development of reduced cab space in favor of increased cargo space to remain within State length limitations. The impact on safe operations and driver workplace may be negatively affected. **E. Legal Basis:** 49 U.S.C. 304 and 1655 **F Chronology:** An ANPRM was issued on February 14, 1978 (43 FR 6273). Comment period closed on July 14, 1978. A review of present cab sizes was conducted and a report issued on February 27, 1980. No further action anticipated until additional research is completed; earliest possible action will not occur within the next 12 months. **G. Citation:** 49 CFR 393	Gerald J. Davis, (202) 426-9767	Further action to be determined.
†Minimum Levels of Financial Responsibility.	**A. Description:** Section 30 of the Motor Carrier Act of 1980, Pub. L. 96-296 (signed July 1, 1980) gives the Secretary of Transportation the statutory authority to modify, by regulation, the minimum levels of financial responsibility for motor carriers within 1 year of enactment of the Act.	Gerald Davis, (202) 426-9767	*Action complete.*

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

AGENDA

FHWA **Federal Highway Administration**

Significant Regulations: Major—Continued

[Key to symbols: *New item. †Analysis or review being considered under Regulatory Flexibility Act. ●Regulation selected for priority review. *Italics:* New or changed information since last Agenda]

Title	Summary	Contact	Earliest expected decision date
	B. Why Significant: It has been determined that this proposal may have substantial impact on the motor carrier or insurance industry. **C. Analysis:** Regulatory Evaluation/Regulatory Flexibility Analysis. **D. Need:** The purpose of the financial responsibility provision of the Act, is to create incentives for the motor carrier industry to focus on the safety aspects of highway transportation and to assure the general public that a motor carrier maintains an adequate level of financial responsibility sufficient to satisfy claims covering public liability, property damage, and environmental restoration. **E. Legal Basis:** The Motor Carrier Act of 1980, Pub. L. 96-296 Section 30. **F. Chronology:** An ANPRM was published on August 28, 1980 (45 FR 57676). An NPRM was published on January 20, 1981 (46 FR 8186). The comment period *closed* on April 12, 1981. *The final rule was published on June 11, 1981 (46 FR 3094), and became effective July 1, 1981.* **G. Citation:** 9 CFR 367		
†Review: Hours of Service of Drivers (Docket No. MC-70-1).	**A. Description:** The Federal Highway Administration (FHWA) *has considered* a revision of the regulations pertaining to hours of service limitations for commercial vehicle drivers engaged in interstate or foreign commerce. **B. Why Significant:** *A* proposal *could* be controversial and could have a major cost impact on the motor carrier industry. **C. Analysis:** Regulatory Impact Analysis/Regulatory Flexibility Analysis. **D. Need:** *FHWA has considered this action* in response to petitions and requests from public interest groups, labor organizations, and individual drivers for the revision of these regulations. **E. Legal Basis:** 49 U.S.C. 304 and 1655 **F. Chronology:** An ANPRM which stated that FHWA was considering an extensive review of the Hours of Service of Drivers regulation was published on February 12, 1976 (Docket MC-70, Notice 76-14, 41 FR 6275). A second ANPRM was issued on May 22, 1978 (43 FR 21905) setting forth three plans for comments. A notice of public hearings was published August 29, 1978 (43 FR 38608). Public hearings were held in 7 major cities. A request for comment relating to this regulation was issued on January 14, 1980 (45 FR 5781) based on a petition filed by owner operators requesting longer driving and working hours. Petition denied on December 15, 1980. *Based upon the results of analytical research, FHWA has decided that further rulemaking action is not warranted at this time. A docket closing notice was published on September 3, 1981 (46 FR 44198). The recordkeeping requirements imposed by the current regulation will be the subject of a separate rulemaking action.* **G. Citation:** 49 CFR pt. 395	Gerald J. Davis, (202) 426-9767	*Withdrawn.*

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

AGENDA

FHWA — Federal Highway Administration

Significant Regulations: Other

[Key to symbols: *New item. †Analysis or review being considered under Regulatory Flexibility Act. ●Regulation selected for priority review. *Italics:* New or changed information since last Agenda]

Title	Summary	Contact	Earliest expected decision date
	PLANNING		
Review: Urban Transportation Planning Process: Transportation Improvement Program.	**A. Description:** *Revised final regulations were issued on July 30, 1981 (46 FR 40170). These regulations withdrew the final regulations issued on January 19, 1981 (46 FR 5702), and included only those proposed revisions that are intended to (1) reduce redtape and simplify administration of the planning process, especially for areas under 200,000 population, (2) incorporate recent legislative changes, and (3) clarify the purpose of Transportation System Management (TSM) and other aspects of the planning process.* **B. Why Significant:** These are significant regulations since they significantly impact the Urban Mass Transportation Administration (UMTA) and involve important Department policy. **C. Analysis:** Regulatory Evaluation..... **D. Need:** Continuing review has identified areas where added flexibility will not impair effectiveness and recent national policies and statutory changes need to be implemented. **E. Legal Basis:** 23 U.S.C. 104(f)(3), 134 and 315..... **F Chronology:** The recommendations of the FHWA Regulation Reduction Task Force were adopted in October 1977. The Surface Transportation Assistance Act of 1978 was enacted on November 6, 1978. Following agreement with UMTA and EPA, insofar as air quality is concerned, proposed regulatory changes will be prepared. An NPRM was issued on October 30, 1980 (45 FR 71990) and a final rule on January 19, 1981 (46 FR 5702). Effective date delayed until March 31, 1981 (46 FR 10706) for review under Executive Order 12291. *An additional 90 days was provided by notice of March 30, 1981 (46 FR 19233) and an additional 30 days delay was provided by notice of June 30, 1981 (46 FR 33513).* The need for future revisions to these regulations will be considered on the basis *of results of a comprehensive review of the urban transportation planning process, legislative action,* and the experience gained under these regulations. **G. Citation:** 23 CFR pt. 450, Subpt. A and C. 49 CFR 613 (FHPM 4-4-2 and 4-4-6).	FHWA Sam Rea, (202) 426-2961 UMTA Bob Kirkland, (202) 426-4991	*Action complete.*
	RIGHT-OF-WAY AND ENVIRONMENT		
Review: Outdoor Advertising Control and Acquisition.	**A. Description:** This regulation would provide a definition of "effective control" of outdoor advertising as required by 23 U.S.C. 131. It would also set further requirements for signs exempt from control under the statute and establish the basic framework for State development of police power regulations and procedures. The regulation would also outline the requirements for Federal participation in the acquisition of compensable nonconforming outdoor advertising devices. **B. Why Significant:** This proposal may involve substantial public interest, is controversial and involves important departmental policy. **C. Analysis:** Regulatory Evaluation.....	*Myron Laible,* (202) 245-0021	*To be withdrawn.*

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

AGENDA

FHWA **Federal Highway Administration**

Significant Regulations: Other—Continued

[Key to symbols: *New item. †Analysis or review being considered under Regulatory Flexibility Act. ●Regulation selected for priority review. *Italics:* New or changed information since last Agenda]

Title	Summary	Contact	Earliest expected decision date
	D. Need: This regulation is necessary for the maintenance of national uniformity in the outdoor advertising control program. Since 23 U.S.C. 131 is regulatory in nature, it is necessary to establish and maintain minimum Federal program requirements.		
	E. Legal Basis: 23 U.S.C. 131, 148, and 315: 49 CFR 1.48		
	F. Chronology: The proposal involves the consolidation of two existing regulations, 23 CFR pt. 750, subpts. D and G, and one interim regulation 23 CFR pt. 750, subpt. E. The regulations have been in effect since September 16, 1975 and July 29, 1974, respectively. The interim regulations have been in effect since October 18, 1976. The proposed consolidation will be issued as an NPRM. An ANPRM, published April 30, 1979, (44 FR 25387) and a Notice, published May 17, 1979, (44 FR 28946) announced public hearings as part of an overall review of the Highway Beautification Program. These currently proposed regulations may be modified as a result of this review. A Notice published June 15, 1979 (44 FR 34516) announced a hearing site change and a change in hearing procedures. On June 25, 1979 (44 FR 37100), a Notice announced amendments to the Highway Beautification Act by the Surface Transportation Assistance Act of 1978. A Notice published on July 12, 1979 (44 FR 40781) announced the establishment of a National Advisory Committee on Outdoor Advertising and Motorist Information. On July 23, 1979 (44 FR 43236), a Notice announced the availability of a report on Directional and Informational Sign Standards and Systems. This report is to be considered as part of the reassessment of the Highway Beautification Program. No further action anticipated until Advisory Committee submits recommendations; earliest possible action will not occur within the next year. *This proposal is being withdrawn at this time because no action can be taken until the recommendations of the Advisory Committee have been fully considered.*		
	G. Citation: 23 CFR pt. 750, subpt. C. (FHPM 7-6-2)		
Review: Air Quality Guidelines	**A. Description:** This regulation, which was developed jointly with UMTA, establishes administrative procedures regarding: (1) conformity of highway plans, programs, and projects with air quality implementation plans, and (2) priority for highway improvements with air quality benefits. This regulation is a revision of existing Air Quality Guidelines.	FHWA *Jesse R. Chaves,* (202) 426-4836, UMTA *Jocelyn Karp,* *(202) 426-1906, or James Getzewich,* *(202) 426-4991*	*Withdrawn.*
	B. Why Significant: This Regulation is considered significant because it affects another Federal agency and may be controversial.		
	C. Analysis: Regulatory Evaluation		
	D. Need: Currently, permanent administrative procedures on funding sanctions, priority of highway improvements with air quality benefits, and conformity of highway plans, programs, and projects with air quality implementation plans are lacking even though the existing Air Quality Guidelines were amended on November 19, 1979 (44 FR 66193) to provide interim procedures. These regulations are a result of the Clean Air Act Amendments of 1977 which became law in August 1977.		

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

AGENDA

FHWA

Federal Highway Administration

Significant Regulations: Other—Continued

[Key to symbols: *New item. †Analysis or review being considered under Regulatory Flexibility Act. ●Regulation selected for priority review. *Italics:* New or changed information since last Agenda]

Title	Summary	Contact	Earliest expected decision date
	E. Legal Basis: Clean Air Act Amendments of 1977. (42 U.S.C. 7401). **F. Chronology:** A joint EPA/FHWA Notice on Sec. 176(a) of the Clean Air Act Amendments, which covers only project approval sanctions, was published June 11, 1979 (44 FR 33473). Interim procedures were published November 19, 1979 (44 FR 66193). An interim final rule was published on January 26, 1981 (46 FR 8426). Public comments were requested and the docket *closed* July 27, 1981. *Future revisions to this rule will be considered based upon the results of a priority review of air quality requirements and a review of comments submitted to the docket.* No action is anticipated on this rule within the next 12 months. **G. Citation:** 23 CFR pt. 770. (FHPM 7-7-9)		
†Minimum Levels of Financial Responsibility.	**A. Description:** Section 30 of the Motor Carrier Act of 1980, Pub. L. 96-296 (signed July 1, 1980) gives the Secretary of Transportation the statutory authority to modify, by regulation, the minimum levels of financial responsibility for motor carriers within 1 year of enactment of the Act. *This entry has been moved to "Significant Regulations: Major" portion of agenda.*	Gerald Davis, (202) 426-9767	Further action to be determined.
	SAFETY		
Employee Safety and Health Standards (Docket No. MC-64).	**A. Description:** This regulation would provide safety and health standards to govern employees engaged in the operation, maintenance, and loading and unloading of motor vehicles, designed to eliminate uncertainty with regard to the jurisdictional authority of the Occupational Safety and Health Administration (OSHA). **B. Why Significant:** This proposal may have a significant impact on OSHA. **C. Analysis:** Regulatory Evaluation. **D. Need:** These standards are designed to eliminate uncertainty with regard to the jurisdictional authority of the OSHA and to improve safety and health standards for employees of motor carriers. **E. Legal Basis:** 49 U.S.C. 304 and 1655. **F Chronology:** An NPRM was issued March 2, 1978 (43 FR 8566) and the closing date for the comment period was May 31, 1978. A notice on June 9, 1978 (43 FR 25145) extended the comment period to June 30, 1978. As a result of the analysis of the comments, another NPRM is being considered. No further action is anticipated within the next 12 months. **G. Citation:** 49 CFR pt. 399.	Gerald Davis, (202) 426-9767	Further action to be determined.
Buy America Requirements (Docket No. 78-35).	**A. Description:** This amendment to an existing regulation would establish provisions for the protection of domestic structural steel on construction projects with an estimated cost of $450,000 or more. **B. Why Significant:** This regulation involves a matter which may become controversial or arouse significant public interest. **C. Analysis:** Regulatory *Evaluation*	*Kenneth L. Ziems,* (202) 426-4847	*FR January 1982.*

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

AGENDA

FHWA **Federal Highway Administration**

Significant Regulations: Other—Continued

[Key to symbols: *New item. †Analysis or review being considered under Regulatory Flexibility Act. ●Regulation selected for priority review. *Italics:* New or changed information since last Agenda].

Title	Summary	Contact	Earliest expected decision date
	D. Need: This regulation is required to implement the provisions of Section 401 of the Surface Transportation Assistance Act of 1978. **E. Legal Basis:** Section 401 of the Surface Transportation Assistance Act of 1978: P.L. 95-599. **F. Chronology:** A final regulation was issued under emergency procedures on November 17, 1978 (43 FR 53717). FHWA asked for comments, and the comment period closed on January 17, 1979. An emergency amendment to the existing final rule was published on November 17, 1980 (45 FR 75643) in order to implement a recent court order. An NPRM was published on November 24, 1980 (45 FR 77456). The comment period closed on January 23, 1981. *In accordance with E.O. 12291, FHWA has conducted a priority review of this controversial regulation. The regulation has been reclassified as a non-major significant regulation because the major economic impact ($100 million annual) earlier expected was not verifiable, and FHWA is unable to support the claim that the regulation is inflationary or to determine the amount of trade diverted. Also, the Federal-aid highway program uses less than one-half of one percent of total U.S. consumption of steel.* **G. Citation:** 23 CFR 835.410		
*Hours of Service of Drivers; Drivers' Logs.	**A. Description:** The Federal Highway Administration is proposing possible alternatives to the drivers' log record-keeping requirement used to enforce the hours of service rules. **B. Why Significant:** The drivers' log is a major paperwork burden item, and is presently the key means of enforcing a major safety rule. **C. Analysis:** Regulation Evaluation **D. Need:** This action is part of the Administration's efforts to reduce administrative burdens. **E. Legal Basis:** 49 U.S.C. 304 **F. Chronology:** NPRM expected to be published November 1981. **G. Citation:** 49 CFR Part 396	Gerald J. Davis, (202) 426-9767	NPRM November 1981.
*Highway Safety Programs: Determination of Effectiveness.	**A. Description:** NHTSA and FHWA are involved in a joint rulemaking to determine those highway safety programs that are the most effective in reducing accidents, injuries and deaths. The objective is to replace the current Highway Safety Program. The rulemaking is summarized in the NHTSA portion of this Agenda.		ANPRM September 1981.

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

AGENDA

FHWA — Federal Highway Administration

Nonsignificant Regulations

[Key to symbols: *New item. †Analysis or review being considered under Regulatory Flexibility Act. ●Regulation selected for priority review. *Italics:* New or changed information since last Agenda]

Title	Summary	Contact	Earliest expected decision date
	GENERAL MANAGEMENT AND ADMINISTRATION		
Rulemaking Procedures	The proposed rule would incorporate the Federal Highway Administration's redtape reduction policy and provide procedures for processing petitions for rulemaking and related matters.	Stan Abramson, (202) 426-0761	*Further action to be determined.*
Administrative Hearings	This rule is proposed to provide a general procedure for administrative hearings. This proposed rule would allow the Administrator to initiate administrative proceedings on discretion, or on complaint, and would govern procedure under such proceedings. (23 CFR 20).	Hugh T. O'Reilly, (202) 426-0780	NPRM 1981.
	PAYMENT PROCEDURES		
Review: Payroll and Related Expense of Public Employees: General Administration and other Overhead: and Cost Accumulation Centers and Distribution Methods.	This revision to an existing regulation prescribes policies and procedures governing the extent to which Federal funds may participate in the cost of salaries and wages and related labor costs, incurred by public forces of State highway departments, counties, cities, or other political subdivisions. Final rule published January 15, 1981 (46 FR 3501). Originally scheduled to go into effect on February 17, 1981. Effective date delayed until March 31, 1981 (46 FR 10706) for review under E.O. 12291. (23 CFR pt. 140; FHPM 1-4-5).	J. E. Lewis, (202) 426-0562	*Action complete.*
	PLANNING		
Review: Carpool and Van Pool Projects,	This regulation revision reflects the required changes brought about by the Surface Transportation Assistance Act of 1978 plus related program modifications. NPRM published December 10, 1979 (44 FR 70753). Final rule published January 8, 1981 (46 FR 2298). Effective date delayed until March 31, 1981 (46 FR 10706) for review under E.O. 12291, *and final rule was withdrawn on March 30, 1981 (46 FR 19232) pending further review under E.O. 12291.* (23 CFR pt. 656: FHPM 4-8-3).	Barbara Reichart, (202) 426-0210	*Further action to be determined.*
Review: Highway Planning Program Administration (Docket No. 78-24).	This revision to an existing regulation would reflect recent policy changes in management of the highway planning and research program, e.g., allowing separate projects for components of the program (urbanized area planning, statewide planning, research and development), and applying matching rates to time periods rather than a fiscal year fund, etc. NPRM was published January 11, 1979 (44 FR 2400). As a result of comments received to the Docket, as well as internal coordination, FHWA is considering combining this regulation with 23 CFR Part 450, Subpart B, Metropolitan Planning Funds, since both deal with program administration. (23 CFR Part 420, Subpart A and Part 450, Subpart B; FHPM 4-1-2-1).	R. B. Puckett, (202) 426-0175	Further action to be determined.
Review: Payback Regulation Amendments.	Federal Highway Administration regulations in 23 CFR Part 480 prescribe the circumstances under which states must repay the Federal Government for the Federal contribution to the purchase of property for Interstate highway projects that are later withdrawn. Congress, in Public Law 96-106, amended 23 U.S.C. 103(e) to change the circumstances under which repayment must be made. This revision to an existing regulation would incorporate the legislative changes in 23 CFR Part 480. NPRM published November 20, 1980 (45 FR 76705).	C. L. Shufflebarger, (202) 426-0404	FR 1981.

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

AGENDA

FHWA — Federal Highway Administration

Nonsignificant Regulations—Continued

[Key to symbols: *New item. †Analysis or review being considered under Regulatory Flexibility Act. ●Regulation selected for priority review. *Italics:* New or changed information since last Agenda]

Title	Summary	Contact	Earliest expected decision date
*Economic Growth Center Development Highways.	This amendment deletes the requirement for preparation of special studies following implementation of certain growth center projects. Final rule published on August 20, 1981, effective on publication (46 FR 42266); (23 CFR 490A: FHPM 4-8-2).	Arthur Balek, (202) 426-0570	Action complete.
*Interstate System Withdrawal and Substitution of Alternative Projects.	This amendment to an existing regulation reflects a DOT policy which prohibits the withdrawal of and substitution of mileage added to the Interstate System after August 13, 1973, under the provisions of 23 U.S.C. 103(e)(1). This amendment is expected to be published as a final rule in September 1981.	C. L. Shufflebarger, (202) 426-0404	FR September 1981.
	RESEARCH AND DEVELOPMENT		
Review: Research and Development (R&D) Programs (Docket No. 79-21).	These revisions to existing regulations will reduce unnecessary requirements, increase administrative flexibility and simplify procedures in R&D work funded with Federal-aid highway funds. An NPRM was published September 27, 1979 (44 FR 55766). (23 CFR parts 520, 524, 530, 540, 544 and 560; FHPM 5-2-1, 5-2-4, 5-4-1, 5-4-3, and 5-6-1).	Harry H. Hersey, (703) 285-2057	FR 1981.
	ENGINEERING AND TRAFFIC OPERATIONS		
Resurfacing, Restoration and Rehabilitation (RRR) Work.	This regulation would set forth policy and project procedures for implementing RRR program as it relates to pavement design practices. (FHPM 6-2-4-2).	Leon M. Noel, (202) 426-0327	Further action to be determined.
Review: Skid Resistant Surface Design.	This regulation would set forth pavement design policy as it pertains to skid resistance on Federal-aid highway projects. An NPRM was published April 10, 1980 (45 FR 24505). Comments received on NPRM were evaluated. No action is anticipated on this regulation within the next 12 months. (23 CFR 628: FHPM 6-2-4-3).	Leon M. Noel, (202) 426-0327	Further action to be determined.
Selection of Pavement Type	This regulation would set forth policy for the selection of pavement type on Federal-aid projects. ANPRM published on August 21, 1980 (45 FR 55763). (FHPM 6-2-4-4).	Leon M. Noel, (202) 426-0327	*Further action to be determined.*
Review: Reimbursement for Railroad Work.	*This revision to an existing regulation would update and simplify certain selected policies, procedures and requirements on reimbursement to the States for railroad work done on projects undertaken pursuant to the provisions of 23 CFR pt. 646 B. An NPRM is under preparation updating and modifying reimbursement rates, lump sum maximum amount and required insurance coverage provisions. (23 CFR 140; FHPM 1-4-8).*	J. A. Carney, (202) 426-0104	*NPRM October 1981.*
Review: Design and Construction Critena for Bikeway Construction (Docket No. 79-3).	This regulation establishes design and construction guidelines for bikeways. ANPRM published on February 8, 1979 (44 FR 7979). NPRM published August 4, 1980 (45 FR 51720). No action is anticipated on this regulation within the next 6 months. (23 CFR pts. 652 and 663).	Richard Lemieux, (202) 426-0314	Further action to be determined.
Review: Design Standards for Highways *(Docket No. 80-2).*	This regulation would amend the existing geometric design standards for highways for new construction and major reconstruction of federal-aid highways by replacing several publications incorporated by reference in 23 CFR Part 625 with a single new publication. Public comments were requested on the geometric design critena as presented in a draft of the new publication.	Wilson B. Harkins, (202) 426-0313	*FR Fall 1982.*

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

AGENDA

FHWA — Federal Highway Administration

Nonsignificant Regulations—Continued

[Key to symbols: *New item. †Analysis or review being considered under Regulatory Flexibility Act. ●Regulation selected for priority review. *Italics:* New or changed information since last Agenda]

Title	Summary	Contact	Earliest expected decision date
	"A Policy on Geometric Design of Highways and Streets" prepared by the American Association of State Highway and Transportation Officials. Comments received as a result of NPRM published February 14, 1980 (45 FR 10236) *have been evaluated and recommended changes submitted to AASHTO for consideration. It should also be noted that the Presidential Task Force on Regulatory Relief has identified the existing design criteria rule for regulatory review. (46 FR 27722). Notice regarding status of proposed rule published November 17, 1980 (45 FR 75690) indicates further rulemaking action is not anticipated before Fall 1982.* (23 CFR Part 625, FHPM 6-2-1-1).		
Design and Construction Requirements for Highway Pedestrian Overpasses and Underpasses.	This regulation would develop standards for the design and construction of pedestrian overpasses and underpasses for accessibility and usability by physically handicapped persons (per March 7, 1979, Agreements with Architectural and Transportation Barriers Compliance Board). This regulation would follow the completion of the research in progress titled "Design Guidelines to Make Crossing Structures Accessible to the Physically Handicapped." Rulemaking action is not anticipated within the next year.	Ali Sevin and Larry King, (202) 426-0306 or Lee Burstyn, (202) 426-0761	Further action to be determined.
Review: Traffic Control Devices on Federal-Aid and Other Streets and Highways.	This revision to an existing regulation prescribed the policies and procedures of FHWA relative to obtaining basic uniformity in the visible features and functioning of traffic control devices on all highway open to public travel in accordance with the Manual on Uniform Traffic Control Devices for Streets and Highways. An NPRM was published September 27, 1979 (44 FR 55598). Final rule was published January 8, 1981 (46 FR 2038); originally scheduled to go into effect on January 30, 1981. Effective date delayed until March 31, 1981 (46 FR 10706) for review under E.O. 12291 *and final rule was withdrawn on March 30, 1981 (46 FR 19232) pending further review under E.O. 12291.* (23 CFR pt. 655: FHPM 6-8-3-1).	Donald P. Ryan, (202) 426-0411	*Further action to be determined.*
Review: Forest Highways	This revision to an existing regulation would update and simplify administrative procedures applicable to Forest Highway projects administered by direct Federal offices and State highway agencies. The revisions will conform to the Surface Transportation Assistance Act of 1978. NPRM published on August 25, 1980 (45 FR 56355). (23 CFR pt. 660: FHPM 6-9-2-1).	R. C. Coles, (202) 426-0460	FR *October* 1981.
Review: Contract Procedures (Docket No. 78-16).	This revision to an existing regulation would simplify Federal-aid contract procedures. NPRM was published on August 18, 1978 (43 FR 36685). (23 CFR pt. 635: FHPM 6-4-1-6).	K. L. Ziems, (202) 426-4847	Further action to be determined.
Review: General Materials Requirements.	This regulation would simplify procedures relating to general material requirements for Federal-aid construction work. NPRM published January 29, 1981 (46 FR 9642). No action is anticipated on this revision within the next 6 months. (23 CFR pt. 635: FHPM 6-4-1-16).	K. L. Ziems, (202) 426-4847	Further action to be determined.
Review: Accommodation of Utilities.	This revision to an existing regulation would update and simplify policies and procedures for accommodating utility facilities on the rights-of-way of Federal and Federal-aid highway projects. An NPRM was published April 17, 1980 (45 FR 26280). (23 CFR pt. 645: FHPM 6-6-3-2).	J. A. Carney, (202) 426-0104	Further action to be determined.
Review: Traffic Safety in Highway and Street Work Zones.	This proposal would modify existing requirements to assure a reduction in the incidence of accidents occurring where two-way traffic is maintained on one roadway of a normally divided highway. NPRM published October 16, 1980 (45 FR 68663). (23 CFR 630J: FHPM 6-4-2-12).	Kenneth L. Ziems, (202) 426-4847	*FR October 1981.*

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

AGENDA

FHWA — Federal Highway Administration

Nonsignificant Regulations—Continued

[Key to symbols: *New item. †Analysis or review being considered under Regulatory Flexibility Act. ●Regulation selected for priority review. *Italics:* New or changed information since last Agenda]

Title	Summary	Contact	Earliest expected decision date
Review: Utility Relocation, Adjustments and Reimbursement.	This revision to an existing regulation would update and simplify the policies and procedures for the adjustment and relocation of utility facilities on Federal-aid highway projects and projects under the direct supervision of the Federal Highway Administration. An ANPRM was published March 8, 1979 (44 FR 12209). An NPRM was published November 20, 1980 (45 FR 76924). No action is anticipated on this revision within the next *6* months. (23 CFR pt. 645: FHPM 1-4-4).	J. A. Carney, (202) 426-0104	Further action to be determined.
Uniform Criteria for Warning Devices at *Railroad-Highway Grade Crossings (Docket No. 78-13 *and Docket No. 80-11).*	This regulation would issue uniform nationwide criteria for the selection of various types of warning devices to be installed at railroad-highway grade crossings. ANPRM published August 10, 1978 (43 FR 35491) and June 12, 1980 (45 FR 40062). No action is considered necessary at this time. Withdrawal notice to be published. (23 CFR 625, 646, and 655).	*Bob Helland,* (202) 426-0411	To be withdrawn.
*Pavement Structural Design Policy.	This revision to existing regulations will update procedures dealing with rigid pavement structural design and participation. (23 CFR 625, 626; FHPM 6-2-1-1 and FHPM 6-2-4-1).	Leon M. Noel, (202) 426-0327	NPRM 1981.
*Directional Signing for American Revolution Bicentennial Activities.	The regulation on directional signing for Bicentennial activities established guidelines for the design, installation, and funding of signs related to the American Revolution Bicentennial. Since the Bicentennial activities have been completed, the FHWA rescinded the regulation on July 9, 1981 (46 FR 35502).	F. C. Vandenbroeder, (202) 426-0411	Action complete.
	RIGHT-OF-WAY AND ENVIRONMENT		
Review: Procedures for Abatement of Highway Traffic Noise and Construction Noise (Docket No. 78-33).	This revision would make substantial reductions in the detailed procedures and interpretive information in the existing regulation. This is being done pursuant to the FHWA Regulation Reduction Task Force recommendations. An ANPRM was published December 6, 1978 (43 FR 57161). (23 CFR pt. 772; FHPM 7-7-3).	*Jerry A. Reagan,* (202) 426-4836	NPRM 1981.
*Relocation Assistance; Revised Interest Payments.	The purpose of this proposal is to change the discount rate to be used when computing an interest differential payment for homeowners displaced by Federal or federally assisted highway projects. (23 CFR Part 740).	Gerald Starkweather, (202) 426-0117	NPRM 1981.
	HIGHWAY SAFETY		
Skid Accident Reduction Program..	This rule would set forth policy for development and implementation of a program in each State designed to reduce the number and severity of wet weather accidents. No action is anticipated within the next *6* months. (FHPM 8-2-3-1).	Mike *Burk,* (202) 426-2131	Further action to be determined.
	FEDERAL MOTOR CARRIER SAFETY REGULATIONS		
Radioactive Materials Routing.....	This regulation exempts radioactive materials from the routing provisions contained in the Federal Motor Carrier Safety Regulations at 49 CFR 397.9. This action is necessary in order to prevent duplication of rules *with RSPA's regulation on the same subject.* Final Rule published January 8, 1981 (46 FR 2126); originally scheduled to go into effect on February 2, 1982. *The RSPA rule is now undergoing priority review within the Department.*	Gerald J. Davis, (202) 426-9767	*Further action to be determined.*

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

AGENDA

FHWA — Federal Highway Administration

Nonsignificant Regulations—Continued

[Key to symbols: *New item. †Analysis or review being considered under Regulatory Flexibility Act. ●Regulation selected for priority review. *Italics:* New or changed information since last Agenda]

Title	Summary	Contact	Earliest expected decision date
Toxic Gases in Truck Cabs (Docket No. MC-80).	This regulation would set maximum toxic gas levels in truck cabs. ANPRM published January 1978 (43 FR 120). NPRM published June 18, 1979 (44 FR 34992). No further action is anticipated within the next 12 months. (49 CFR pt. 392).	Gerald J. Davis, (202) 426-9767	Further action to be determined.
Ambient Temperature in Heavy Duty Truck Cabs (Docket No. MC-81).	This regulation would set maximum permissible ambient temperatures in truck cabs. ANPRM published on February 8, 1978 (43 FR 5397). No further action is anticipated within the next 12 months. (49 CFR pt. 399).	Gerald J. Davis, (202) 426-9767	Further action to be determined.
Review: Compliance with Motor Carrier Noise Standards.	The FHWA is considering amending the noise emission standards to add a new minimum distance of 31 feet from which to measure highway noise. FHWA is also considering eliminating the correction factor which allowed a variance for noise tests taken at hard sites, e.g., asphalt, compared to those taken at soft sites, e.g., grassy areas. NPRM published April 3, 1980 (45 FR 22120).	Gerald J. Davis, (202) 426-9767	Further action to be determined.
Review: Qualification of Drivers.....	The FHWA is considering revising the regulation which provides that no waiver for handicapped drivers will be granted to drivers of buses or trucks transporting hazardous materials. Request for comments was published on June 12, 1980 (45 FR 39672). (49 CFR 391.49).	Gerald J. Davis, (202) 426-9767	Further action to be determined.
Assignment of Motor Carrier Safety Ratings (Docket No. MC-88).	The Federal Highway Administration is responsible for determining and reporting to the ICC a safety rating for each carrier applicant seeking operating authority from the ICC. This regulation formalizes current procedures. NPRM published November 23, 1979 (44 FR 67193). (49 CFR pt. 385).	James Jeglum, (202) 426-1724	Further action to be determined.
Rear Vision Mirrors (Docket MC-80).	This amendment would serve to clarify the rule change published May 1, 1979, and was developed in response to a rulemaking petition. NPRM published on October 9, 1980 (45 FR 67107). No further action is anticipated within the next 12 months. (49 CFR 393).	Gerald J. Davis, (202) 426-9767	Further action to be determined.
Review: Inspection, Repair, and Maintenance—Inspection Requirements for Leased Vehicles.	This proposed revision to an existing regulation would exempt commonly controlled motor vehicles from the inspection procedure for vehicles leased less than 30 days. This proposal was developed in response to a rulemaking petition. NPRM published on October 23, 1980 (45 FR 70288). No further action is anticipated within the next 6 months. (49 CFR 396).	Gerald J. Davis, (202) 426-9767	Further action to be determined.
Review: Disqualifying Offenses, Drugs.	The FHWA is considering amending the Disqualification of Drivers regulation (49 CFR 391.15) by reviewing and enlarging that group of substances and drugs whose use by drivers operating commercial motor vehicles, is forbidden and is considered a disqualifying offense. NPRM published on November 24, 1980 (45 FR 77466). No further action is anticipated within the next 12 months. (49 CFR pt. 391).	Gerald J. Davis, (202) 426-9767	Further action to be determined.
Review: Exemption from Preparing Driver's Daily Logs for Operations of Less Than 10 Hours (Docket No. MC-70-2).	This regulation would propose to exempt certain drivers from preparing the driver's log when they operate less than 10 hours. ANPRM published on November 9, 1978 (43 FR 58418). NPRM published on December 15, 1980 (45 FR 82291). (49 CFR pt. 395). *Further action to be taken in conjunction with Drivers' Log rulemaking action (See "Significant Regulations: Other" portion of FHWA's portion of the Agenda.).*	Gerald J. Davis, (202) 426-9767	*To be withdrawn.*

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

AGENDA

FHWA

Federal Highway Administration

Nonsignificant Regulations—Continued

[Key to symbols: *New item. †Analysis or review being considered under Regulatory Flexibility Act. ●Regulation selected for priority review. *Italics:* New or changed information since last Agenda]

Title	Summary	Contact	Earliest expected decision date
Review: The Use of 4-Way Flashers on Slow Moving Vehicles.	This action will consider changing existing regulations to allow the use of 4-way flashers to warn of potential hazards, and was developed in response to a rulemaking petition. NPRM published on December 11, 1980 (45 FR 81621). No action is anticipated on this change within the next 12 months.	Gerald J. Davis, (202) 426-9767	Further action to be determined.

Routine and Frequent Nonsignificant Regulations

Title	Summary	Contact	Earliest expected decision date
	ENGINEERING AND TRAFFIC OPERATIONS		
Manual on Uniform Traffic Control Devices.	6	J. C. Partlow, (202) 426-0411, Robert E. Conner, (202) 426-0411	*October 1981-September 1982.*
	RIGHT-OF-WAY AND ENVIRONMENT		
Relocation Assistance—Moving Payments—Moving Expense Schedules.	2	Robert Moore, (202) 426-0116	January 1982-*July 1982.*
	FEDERAL MOTOR CARRIER SAFETY REGULATIONS		
Miscellaneous Amendments—Federal Motor Carrier Safety Regulations.	1	Gerald J. Davis (202) 426-9767	*April 1982.*

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

AGENDA

NHTSA National Highway Traffic Safety Administration

[Key to symbols: *New item. †Analysis or review being considered under Regulatory Flexibility Act. ●Regulation selected for priority review. *Italics:* New or changed information since last Agenda]

Title	Summary	Contact	Earliest expected decision date
	INFORMATION NOTICE *The National Highway Traffic Safety Administration (NHTSA) has reordered the items that appeared in the last Agenda in order to improve the usefulness of the Agenda for those who follow the NHTSA's programs. Within the categories of "Significant: Major," "Significant: Other," and "Nonsignificant," proposals and regulations in this Agenda are subdivided into three subject areas. Within each of the subject areas, the entries are listed, where possible, in order of CFR section being amended or established. Entries for which a CFR section has not been identified are listed at the end of each subject area in the order in which they have been added to the Agenda.* *The first subject area is "Federal Motor Vehicle Safety Standards." The largest number of entries are in this area. These entries are listed by order of the safety standard being amended or established, since those numbers correspond to CFR section numbers. In addition to facilitating quick location of an entry, this reordering also keeps rulemaking activities affecting the same safety standard together within the Agenda.* *The second subject area is "Fuel Economy Standards and Exemptions." The third subject area is "Regulations Other Than Safety Standards and Fuel Economy Standards/Exemptions".*		

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

AGENDA

NHTSA National Highway Traffic Safety Administration

Significant Regulations: Major

[Key to symbols: *New item. †Analysis or review being considered under Regulatory Flexibility Act. ●Regulation selected for priority review. *Italics:* New or changed information since last Agenda]

Title	Summary	Contact	Earliest expected decision date
	FEDERAL MOTOR VEHICLE SAFETY STANDARDS		
†Multipiece Rims on Trucks and Buses. (Docket No. 71-19).	**A. Description:** NHTSA has examined the need to issue a performance requirement for multipiece rims because of their potential for explosive separation. *Action to be withdrawn because it would result in substantial costs with minimum benefits since occupational hazards in service facilities for commercial tires have come under regulations of OSHA.* **B. Why Significant:** This rulemaking is considered significant because of the level of interest shown by users and manufacturers of these rims, and because of the cost impacts. **C. Analysis:** Regulatory Impact Analysis/Regulatory Flexibility Analysis. **D. Need:** Balance the safety hazards associated with the use of these rims against the added costs of using safer single-piece rims or improved multipiece rims, *with consideration for the benefits from existing occupational safety regulations.* **E. Legal Basis:** National Traffic and Motor Vehicle Safety Act of 1966, as amended. **F. Chronology:** ANPRM issued March 5, 1979 (44 FR 12072). **G. Citation:** 49 CFR 571.120	A. Mallians, (202) 426-0842	*Notice of Termination October 1981.*
†Heavy Duty Vehicle Brake Systems (Formerly Truck and Trailer Brake Systems) *(Docket No. 79-03).*	**A. Description:** *Would establish a new brake standard for all trucks, buses and trailers with a Gross Vehicle Weight Rating (GVWR) over 10,000 pounds. This standard would replace Standard No. 121, Air Brake Systems, and that portion of Standard No. 105, Hydraulic Brake Systems, that applies to vehicles with a GVWR over 10,000 pounds. It would also establish new requirements for heavy trailers having other than air-actuated brakes. In developing the standard, the agency will consider compatibility with international regulations. Research programs in support of this new standard and possible future upgradings of the standard will investigate such long-term advanced braking system concepts as automatic brake adjustors, load-sensing proportioning valves, air driers, and retarders for heavy trucks, buses and trailers.* **B. Why Significant:** This rule is considered significant because of the level of public and Congressional interest. **C. Analysis:** Regulatory Impact Analysis/Regulatory Flexibility Analysis. **D. Need:** *To prevent and reduce the severity of accidents involving heavy vehicles by providing increased accident avoidance capability.* **E. Legal Basis:** National Traffic and Motor Vehicle Safety Act of 1966, as amended. **F. Chronology:** *Two ANPRM's have been issued related to this rulemaking. The first was published February 15, 1979 (44 FR 9783). The second was published February 28, 1980 (45 FR 13155).* **G. Citation:** 49 CFR 571.121, 49 CFR 571.105	A. Mallians, (202) 426-0842	Research underway.

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

AGENDA

NHTSA National Highway Traffic Safety Administration

Significant Regulations: Major—Continued

[Key to symbols: *New item. †Analysis or review being considered under Regulatory Flexibility Act. ●Regulation selected for priority review. *Italics:* New or changed information since last Agenda]

Title	Summary	Contact	Earliest expected decision date
Occupant Crash Protection *(Docket No. 74-14).*	**A. Description:** *Delays* for one year the effective date of the first phase of automatic restraint requirements of Safety Standard No. 208. **B. Why Significant:** The rule is considered significant because of the impact on the automobile industry. **C. Analysis:** Regulatory Impact Analysis..... **D. Need:** To take into account changed economic circumstances and reduced production plans for large cars since the Standard was adopted in 1977. **E. Legal Basis:** National Traffic and Motor Vehicle Safety Act of 1966, as amended, 15 U.S.C. 1392, 1407. **F. Chronology:** *NPRM published February 12, 1981 (46 FR 12039). Final rule published April 9, 1981 (46 FR 21172).* **G. Citation:** 49 CFR pt. 571.208.....	Mike Finkelstein, (202) 426-0842	*Action complete.*
*Occupant Crash Protection *(Docket No. 74-14).*	**A. Description:** Proposes alternatives to the effective dates for the automatic restraint requirements or a rescission of those requirements. **B. Why Significant:** The rule is considered significant because of the impact on the automobile industry, and the significant level of public and congressional interest. **C. Analysis:** Regulatory Impact Analysis..... **D. Need:** To take into account changed circumstances since the Standard was adopted in 1977. **E. Legal Basis:** National Traffic and Motor Vehicle Safety Act of 1966, as amended, 15 U.S.C. 1392, 1407. **F. Chronology:** NPRM published April 9, 1981 (46 FR 21205). Comment period closed May 26, 1981. Public meetings held August 5 and 6, 1981. **G. Citation:** 49 CFR pt. 571.208.....	Mike Finkelstein, (202) 426-0842	Final Rule October 1981.
Low Tire Pressure Warning Devices *(Docket No. 81-05).*	**A. Description:** Would require new cars and light trucks to be equipped with devices to show the driver that the inflation pressure is low in one or more of the tires. *Action withdrawn because NHTSA believes the objectives of this rulemaking can better be addressed as a consumer information issue. NHTSA will continue research in this area.* **B. Why Significant:** The rule is considered significant because of the potential costs. **C. Analysis:** Regulatory Impact Analysis..... **D. Need:** To reduce the number of accidents caused by underinflated tires. **E. Legal Basis:** National Traffic and Motor Vehicle Safety Act of 1966, as amended. **F. Chronology:** ANPRM published January 26, 1981. (46 FR 8062). *Notice of termination published August 31, 1981 (46 FR 43721).* **G. Citation:** 49 CFR pt. 571.....	A. Malliaris, (202) 426-0842	*Withdrawn.*

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

AGENDA

NHTSA National Highway Traffic Safety Administration

Significant Regulations: Major—Continued

[Key to symbols: *New item. †Analysis or review being considered under Regulatory Flexibility Act. ●Regulation selected for priority review. *Italics:* New or changed information since last Agenda]

Title	Summary	Contact	Earliest expected decision date
	FUEL ECONOMY STANDARDS AND EXEMPTIONS		
†Passenger Automobile and Light Truck Fuel Economy Rulemaking. *(Docket No. FE-80-01).*	**A. Description:** Analysis to determine whether and what fuel economy standards should be established for the time frame beyond MY 1985. *Action withdrawn because NHTSA believes strong market demand for fuel-efficient vehicles will continue and thereby make rulemaking unnecessary in this area.* **B. Why Significant:** The rule is considered significant because of the impact on the automotive industry, the public, and energy consumption. **C. Analysis:** Regulatory Impact Analysis/Regulatory Flexibility Analysis. **D. Need:** Conservation of petroleum. **E. Legal Basis:** Motor Vehicle Information and Cost Savings Act, as amended, 15 U.S.C. 2002, as amended, 15 U.S.C. 2002, Sec. 502(a)(4). **F. Chronology:** ANPRM published January 26, 1981. (46 FR 8056). *Notice withdrawing ANPRM published April 16, 1981 (46 FR 22243).* **G. Citation:** *49 CFR Parts 531 and 533.*	Richard Strombotne, (202) 426-0846	*Action withdrawn.*
	REGULATIONS OTHER THAN SAFETY STANDARDS AND FUEL ECONOMY STANDARDS/EXEMPTIONS		
Bumper Standard *(Docket No. 73-19).*	**A. Description:** *NHTSA has performed an evaluation of the bumper standard in terms of costs and benefits. In 1979 NHTSA issued a report that concluded that the existing standard was justified. Based on the new evaluation of the bumper standard, published in April 1981, NHTSA will propose to amend the bumper standard to reduce or eliminate the impact speed requirements while retaining the bumper height requirements.* **B. Why Significant:** This rulemaking is considered significant because of the level of interest shown by Congress and bumper manufacturers, and because of the cost impacts to consumers. **C. Analysis:** Regulatory *Impact Analysis.* **D. Need:** *To reassess various regulatory options to achieve the most cost-effective requirements.* **E. Legal Basis:** National Traffic and Motor Vehicle Safety Act of 1966, as amended, and Motor Vehicle Information and Cost Savings Act, as amended. **F. Chronology:** ANPRM *published* 3/1/79. (44 FR 11569) *Report published June 1979. New evaluation published April 1981.* **G. Citation:** 49 CFR pt. 581.	Michael Brownlee, (202) 426-1740	*NPRM September/October 1981.*
†Crashworthiness Ratings (Docket No. 79-17).	**A. Description:** Would require manufacturers to disseminate crashworthiness performance information concerning their cars to the public. **B. Why Significant:** This rulemaking is considered significant because of the impact on manufacturers, the interest shown by consumers, and the potential significant effects on the automotive marketplace.	Michael Brownlee, (202) 426-1740	Further action to be determined.

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

AGENDA

NHTSA **National Highway Traffic Safety Administration**

Significant Regulations: Major—Continued

[Key to symbols: *New item. †Analysis or review being considered under Regulatory Flexibility Act. ●Regulation selected for priority review. *Italics:* New or changed information since last Agenda]

Title	Summary	Contact	Earliest expected decision date
	C. Analysis: Regulatory Impact Analysis/Regulatory Flexibility Analysis. **D. Need:** To provide consumers with comparative information on the crashworthiness performance of new car models. **E. Legal Basis:** National Traffic and Motor Vehicle Safety Act of 1966, as amended, and Motor Vehicle Information and Cost Savings Act, as amended, 15 U.S.C. 1401, Section 1,12(d); 15 U.S.C. 1941, Section 201(d). **F. Chronology:** NPRM published January 22, 1981 (46 FR 7025). *Comment due date extended to October 22, 1981 by notice published April 2, 1981 (46 FR 19947).* **G. Citation:** 49 CFR Ch. 5		
*Highway Safety Programs; Determination of Effectiveness. Docket No. 81-12.	**A. Description:** NHTSA and FHWA are involved in a joint rulemaking to determine those highway safety programs that are the most effective in reducing accidents, injuries and deaths. The objective is to replace the current Highway Safety Program. **B. Why Significant:** This rule may be significant because of the amount of Federal assistance provided to states under this program. Significance being evaluated. **C. Analysis:** To be determined **D. Need:** This action is required by section 1107(d) of the Budget Reconciliation Act of 1981. **E. Legal Basis:** Section 1107(d) of the Budget Reconciliation Act of 1981. **F. Chronology:** ANPRM published August 31, 1981 (46 FR 43692). NPRM expected November 1981. Final rule expected April 1982. The effective date is expected to be October 1, 1982. **G. Citation:** 23 CFR Part 1205	Chuck Livingston, (202) 426-0837	NPRM November 1981.

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

AGENDA

NHTSA National Highway Traffic Safety Administration

Significant Regulations: Other

[Key to symbols: *New item. †Analysis or review being considered under Regulatory Flexibility Act. ●Regulation selected for priority review. *Italics:* New or changed information since last Agenda]

Title	Summary	Contact	Earliest expected decision date
	FEDERAL MOTOR VEHICLE SAFETY STANDARDS		
†Air Brake Systems	**A. Description:** Would reinstate the 60 mph stopping distance requirement in standard No. 121, without a no wheel lock-up requirement, to replace the one invalidated by the Ninth Circuit Court of Appeals decision: PACCAR, INC. v. NHTSA, 573 F 2d 632. This will be an interim action while research and analysis is underway to develop requirements for a new *brake standard.* **B. Why Significant:** The rule is considered significant because of the level of public and Congressional interest. **C. Analysis:** Regulatory Evaluation/Regulatory Flexibility Analysis. **D. Need:** To prevent degradation of current braking performance as a result of the Court's action while research and analysis is underway to support a new *brake standard.* **E. Legal Basis:** National Traffic and Motor Vehicle Safety Act of 1966, as amended. **F. Chronology:** None yet **G. Citation:** 49 CFR 571.121	A. Malliaris, (202) 426-0842	*Further action to be determined.*
†Heavy Duty Vehicle Brake Systems (Docket No. 79-03). (Formerly Air Brake Systems).	**A. Description:** Would establish a new Air Brake Standard (No. 130) for trucks, buses, and trailers over 10,000 pounds gross vehicle weight rating, to replace Air Brake Standard No. 121. This new standard will include requirements for hydraulically braked heavy trucks and buses. **B. Why Significant:** The rule is considered significant because of the level of public and Congressional interest. **C. Analysis:** Regulatory Evaluation/Regulatory Flexibility Analysis. **D. Need:** To correct the inadequacies in Standard No. 121 resulting from many revisions and Court action, and to include hydraulically braked heavy trucks and buses not previously included. **E. Legal Basis:** National Traffic and Motor Vehicle Safety Act of 1966, as amended. **F. Chronology:** ANPRM issued 2/15/79. (44 FR 9783). Comment period closed 4/16/79. Research is being conducted. **G. Citation:** 49 CFR 571.121	A. Malliaris, (202) 426-0842	*Combined with entry under Significant Regulations: Major entitled "Heavy Duty Vehicle Brake Systems."*
	REGULATIONS OTHER THAN SAFETY STANDARDS AND FUEL ECONOMY STANDARDS/EXEMPTIONS		
Confidential Business Information (Docket No. 78-10).	**A. Description:** Codifies existing method of processing confidential information from manufacturers. **B. Why Significant:** This rule is considered significant because of the controversial nature of confidential business information. **C. Analysis:** Regulatory Evaluation	Frank Berndt, (202) 426-9511	*Undergoing review pursuant to Executive Order 12291 and petition for reconsideration.*

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

AGENDA

NHTSA **National Highway Traffic Safety Administration**

Significant Regulations: Other—Continued

[Key to symbols: *New item. †Analysis or review being considered under Regulatory Flexibility Act. ●Regulation selected for priority review. *Italics:* New or changed information since last Agenda]

Title	Summary	Contact	Earliest expected decision date
	D. Need: To assure the manufacturer a more predictable process of information gathering and to streamline and speed up NHTSA use of data. **E. Legal Basis:** National Traffic and Motor Vehicle Safety Act of 1966, as amended, and the Motor Vehicle Information and Cost Savings Act, as amended, 15 U.S.C. 1381; 15 U.S.C. 2002. **F Chronology:** NPRM issued 5/25/78. (43 FR 22412). FR published January 8, 1981 (46 FR 2049), *originally* scheduled to go into effect on April 9, 1981, subject to review under Executive Order 12291. *Notice deferring effective date to August 7, 1981, in order to allow NHTSA sufficient time to review and consider a petition for reconsideration published April 13, 1981 (46 FR 21617). Notice further deferring effective date to November 6, 1981, published August 10, 1981 (46 FR 40513).* **G. Citation:** 49 CFR pt. 512		

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

AGENDA

NHTSA National Highway Traffic Safety Administration

Nonsignificant Regulations

[Key to symbols: *New item. †Analysis or review being considered under Regulatory Flexibility Act. ●Regulation selected for priority review. *Italics:* New or changed information since last Agenda]

Title	Summary	Contact	Earliest expected decision date
	FEDERAL MOTOR VEHICLE SAFETY STANDARDS		
Controls & Displays (Docket No. 1-18).	Would amend the standard to include several symbols adopted by the International Standards Organization (ISO). (49 CFR 571.101).	A. Malliaris, (202) 426-0842	Further action to be determined.
Controls and displays *(Docket No. 1-18).*	Would amend standard 101 to allow use of alternative color for highbeam telltale. (49 CFR 571.101) NPRM published October 30, 1980 (45 FR 71832).	A. Malliaris, (202) 426-0842	FR 1981.
Hydraulic Brake Systems (Docket No. 70-27).	Extends the applicability of FMVSS *105* from passenger cars and school buses to cover on a general basis, multipurpose passenger vehicles, buses, and trucks with a Gross Vehicle Weight Rating (GVWR) of 10,000 lbs. or less. *Also extends* the standard on a limited basis to trucks, buses, and MPVs with a GVWR of more than 10,000 lbs. NPRM issued 10/18/79 (44 FR 60113). Final Rule published January 2, 1981 (46 FR 55); scheduled to go into effect on September 1, *1983*, subject to review under Executive Order 12291. (49 CFR *571.105*).	A. Malliaris, (202) 426-0842	*Undergoing review pursuant to Executive Order 12291 and petition for reconsideration.*
Rear Lighting and Signalling *(Docket No. 81-02).*	Would establish requirement for a high mounted brake light. NPRM published January 8, 1981 (46 FR 2132). (49 CFR 571.108).	A. Malliaris, (202) 426-0842	Further action to be determined.
†Commercial Vehicle Conspicuity *(Docket No. 80-9).*	Would improve the conspicuity of commercial vehicles by establishing in FMVSS 108 performance requirements for the total lighting and marking system of commercial vehicles (excluding headlights). ANPRM *published* May 27, 1980 (45 FR 35405) (49 CFR 571.108).	A. Malliaris, (202) 426-0842	Further action to be determined.
Lamps, Reflective Devices, and Associated Equipment.	This proposal would *have required* the headlights and taillights of motorcycles to be illuminated at all times when the engine is running. This action resulted from a granted rulemaking petition. *Notice of termination published June 25, 1981 (46 FR 32899).* (49 CFR 571.108).	A. Malliaris, (202) 426-0842	Withdrawn.
Lamps, Reflective Devices, and Associated Equipment.	This proposal would remove the dimensional specifications for headlamp retaining rings. This action results from a granted rulemaking petition. (49 CFR 571.108).	A. Malliaris, (202) 426-0842	NPRM 1981.
Lamps, Reflective Devices, and Associated Equipment.	This proposal for a technical modification to FMVSS 108 would require that rear lamp reflex reflector tests be changed to require a 10 instead of a 7 inch test diameter size. The action results from a granted rulemaking petition (49 CFR 571.108).	A. Malliaris, (202) 426-0842	NPRM 1981.
Lamps, Reflective Devices, and Associated Equipment.	This notice for comments *was* for a possible technical modification to FMVSS 108 to have special tests for waterproof boat trailer lights. This action *resulted* from a granted rulemaking petition (49 CFR 571.108). Notice for comments published July 3, 1980 (45 FR 45334). *Notice of termination published June 25, 1981 (46 FR 32899).*	A. Malliaris, (202) 426-0842	Withdrawn.
Lamps, Reflective Devices, and Associated Equipment.	This notice for comments is for a possible amendment to FMVSS No. 108 to modify headlamp configurations and for a possible addition or tests for plastic headlamps (49 CFR 571.108).	A. Malliaris, (202) 426-0842	Further action to be determined.
New Pneumatic Tires *(Docket No. 80-14).*	Amendment would delete Appendix A (Tire Tables) of FMVSS 109 to ease introduction of new tire concepts and to add criteria to insure compatibility of new concepts with existing tire types. NPRM published August 28, 1980. (45 FR 57466) (49 CFR 571.109).	A. Malliaris, (202) 426-0842	FR 1981.

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

AGENDA

NHTSA

National Highway Traffic Safety Administration

Nonsignificant Regulations—Continued

[Key to symbols: *New item. †Analysis or review being considered under Regulatory Flexibility Act. ●Regulation selected for priority review. *Italics:* New or changed information since last Agenda]

Title	Summary	Contact	Earliest expected decision date
New Pneumatic Tires	Amendment to FMVSS 110 would specify a minimum tire reserve load. *NHTSA has decided not to act in this area* (49 CFR 571.110).	A. Malliaris, (202) 426-0842	Action terminated.
Rear View Mirrors (Docket No. 71-3a).	This proposal would amend FMVSS 111 by establishing requirement for passenger cars to: a) reduce the blind areas by upgrading mirror visibility using improved compliance testing procedures, b) upgrade occupant protection requirements and add pedestrian protection requirements using shatter resistant and breakaway or foldaway tests, c) set specifications for day-night reflectance requirements to reduce headlight glare, d) set specifications for convex mirror quality and use, and e) minimize obstruction of the forward view by establishing mirror location specifications. NPRM issued 11/6/78. (43 FR 51657). (49 CFR 571.111).	A. Malliaris, (202) 426-0842	Further action to be determined.
Rear View Mirrors	Would require rearview mirrors in vans equipped with rear windows. NPRM issued December 31, 1979. (44 FR 77224). Comments received February 14, 1980. *The agency's decision to terminate this rulemaking is explained in a notice published August 31, 1981 (46 FR 43687)* (49 CFR 571.111).	A. Malliaris, (202) 426-0842	Withdrawn.
Rearview Mirror Systems *(Docket No. 71-3a).*	Would amend FMVSS No. 111 to improve mirror systems for trucks, buses and multipurpose passenger vehicles with a GVWR of 10,000 pounds or less. NPRM published November 6, 1978 (43 FR 51657). (49 CFR 571.111).	A. Malliaris, (202) 426-0842	Further action to be determined.
†Rearview Mirror Systems *(Docket No. 71-3a)*:	Would amend FMVSS No. 111 to improve mirror systems for trucks, buses and multipurpose passenger vehicles with a GVWR over 10,000 pounds. NPRM published November 6, 1978 (43 FR 51657). (49 CFR 571.111).	A. Malliaris, (202) 426-0842	Further action to be determined.
Theft Protection (Docket No. 1-21).	*Would have amended* the performance requirements of the existing standard for passenger cars to prevent the inadvertent activation of the steering wheel lock while the vehicle is in motion *and extended* all requirements of the amended standard to light trucks and vans. *In response to petitions for reconsideration, the agency deleted the new provisions for passenger cars and exempted walk-in vans from all requirements of the standard and open-body type vehicles with readily removable or no doors from the key-in-ignition warning requirements.* NPRM issued 5/1/78 (43 FR 18577). Final Rule published December 29, 1980 (45 FR 86450). *Response to petitions for reconsideration published June 22, 1981 (46 FR 32251). The effective date for light trucks and vans is September 1, 1983.* (49 CFR 571.114).	A. Malliaris, (202) 426-0842	*Standard modified.*
*Federal Vehicle Identification Number.	Would change Federal Vehicle Identification Number requirement from a Federal Motor Vehicle Safety Standard to an administrative regulation. (49 CFR 571.115).	A. Malliaris, (202) 426-0842	NPRM *October* 1981.
Tire Selection and Rims Non-Passenger Cars. *(Docket No. 80-16).*	These technical amendments would clarify existing requirements or resolve minor specific technical problems. (49 CFR 571.120). NPRM published October 30, 1980 (45 FR 71834).	A. Malliaris, (202) 426-0842	*Final rule 1981.*
*Air Brake Systems (Docket No. 79-03).	Would delete the requirement in Standard No. 121 for a separate reservoir capable of releasing parking brakes. NPRM published July 23, 1981 (46 FR 37952).	A. Malliaris, (202) 426-0842	Final Rule November 1981.

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

AGENDA

NHTSA **National Highway Traffic Safety Administration**

Nonsignificant Regulations—Continued

[Key to symbols: *New item. †Analysis or review being considered under Regulatory Flexibility Act. ●Regulation selected for priority review. *Italics:* New or changed information since last Agenda]

Title	Summary	Contact	Earliest expected decision date
*Speedometers and Odometers (Docket No. 76-06).	Standard No. 127 requires that speedometers be graduated in both MPH and KM/H and that they display speeds of no more than 85 MPH and 140 KM/H. Those requirements are in effect. The standard also requires odometers to be tamper-resistant and indicate whether or not a car has been driven over 100 thousand miles. Because there appear to be no direct safety benefits associated with the standard and in view of the potential for consumer savings, NHTSA will propose to rescind the standard. In the interim, NHTSA has issued a final rule delaying the effective date of the odometer requirements from September 1, 1981, to September 1, 1982. That final rule was published on May 7, 1981 (46 FR 25463).	A. Mallians, (202) 426-0842	NPRM October 1981.
Fields of Direct View (Docket No. 70-7).	*Would have established* requirements (for passenger cars) for the maximum allowable size of obstructions in the field of view of drivers, and the luminous transmittance of glazing. NPRM *published* 11/6/78. (43 FR 51677). Final Rule published January 2, 1981. (46 FR 40); (49 CFR 71.128); *was* scheduled to go into effect on September 1, 1984. *Notice revoking standard in response to petitions for reconsideration published June 22, 1981 (46 FR 32254). In response to a petition for reconsideration of the revocation, an action entitled Reconsideration of Agency Action; Notice of Petitions for Reconsideration and opportunity to comment thereon was published September 21, 1981 (46 FR 46604).*	A. Mallians, (202) 426-0842	*Revocation of standard undergoing reconsideration.*
Fields of Direct View *(Docket No. 70-7).*	Would *have addressed* blind spots in driver's direct fields of view for trucks, buses and multipurpose passenger vehicles with a GVWR of 10,000 pounds or less. NPRM published November 6, 1978 (43 FR 51677). *Notice of termination published July 16, 1981 (46 FR 36873).* (49 CFR 571.128).	A. Mallians, (202) 426-0842	*Withdrawn.*
†Fields of Direct View *(Docket No. 70-7).*	Would *have addressed* blind spots in driver's direct fields of view for trucks, buses and multipurpose passenger vehicles with a GVWR over 10,000 pounds. NPRM published November 6, 1978 (43 FR 51677). *Notice of termination published July 16, 1981 (46 FR 36873),* (49 CFR 571.128).	A. Mallians, (202) 426-0842	*Withdrawn.*
Impact Protection for the Driver from the Steering Control System.	This technical amendment would revise the test requirements of FMVSS 203 to permit force loads in excess of 2,500 pounds for a cumulative period not to exceed 3 milliseconds. (49 CFR 571.203).	A. Mallians, (202) 426-0842	*Action complete.*
†Steering Control Rearward Displacement.	Would extend the applicability of the Standard from vehicles with an unloaded weight of 4,000 pounds to vehicles with an unloaded weight of 5,500 pounds. (49 CFR 571.204).	A. Mallians, (202) 426-0842	Further action to be determined.
Glazing Materials *(Docket No. 71-1).*	This technical amendment would delete the abrasion resistance requirements for certain types of glazing used on side windows of light trucks and vans. NPRM issued 9/27/79. (44 FR 55610). *Final rule published August 31, 1981 (46 FR 43687).* (49 CFR 571.205).	A. Mallians, (202) 426-0842	*Action complete.*
Glazing Materials	Would update FMVSS 205 by referring to latest edition of companion commercial standard (ANS Z-26), thereby permitting use of modern materials.	A. Mallians, (202) 426-0842	NPRM 1981.
†Glazing Materials *(Docket No. 81-04).*	Would amend FMVSS No. 205 to adopt less stringent requirements for glass-plastic glazing materials. ANPRM published January 26, 1981 (46 FR 8067).	A. Mallians, (202) 426-0842	Further action to be determined.

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

AGENDA

NHTSA **National Highway Traffic Safety Administration**

Nonsignificant Regulations—Continued

[Key to symbols: *New item. †Analysis or review being considered under Regulatory Flexibility Act. ●Regulation selected for priority review. *Italics:* New or changed information since last Agenda]

Title	Summary	Contact	Earliest expected decision date
Door Locks and Door Retention Components.	This amendment would *have clarified* existing test procedures and *extended* the applicability of FMVSS 206 such that present side door requirements cover transverse rear doors. *NHTSA has decided not to act in this area* (49 CFR 571.206).	A. Malliaris, (202) 426-0842	*Action terminated.*
Seat Belt Assemblies (Docket No. 74-14).	*To improve* seat belt comfort, convenience, reliability and effectiveness by prescribing parameters for performance of seat belt assemblies. (49 CFR 571.208). NPRM issued 12/20/79 (44 FR 77210). Final Rule published January 8, 1981. (46 FR 2064); *scheduled to go into effect on September 1, 1982, subject to review under Executive Order 12291. NHTSA plans to respond to petitions for reconsideration by modifying various requirements and deferring the effective date of the requirements by one year.*	A. Malliaris, (202) 426-0842	*Rulemaking to modify November 1981.*
Seat Belt Assemblies *(Docket No. 80-12).*	Amends FMVSS 209 to exempt load limiting belts used with automatic restraint systems from elongation requirements. NPRM published August 4, 1980. (45 FR 51626). Final Rule, published January *12*, 1981. (46 FR 2618); scheduled to go into effect on September 1, 1982, subject to review under Executive Order 12291. (49 CFR 571.209).	A. Malliaris, (202) 426-0842	Undergoing Executive Order 12291 review.
Seat Belt Assemblies *(Docket No. 80-06).*	Would amend FMVSS 209 to modify resistance to light test procedures. NPRM *published* 6/1/80 (45 FR 29102).	A. Malliaris, (202) 426-0842	FR 1981.
Seat Belt Assemblies	Would amend Standard 209 by citing the current American Society of Testing Materials' (ASTM) specifications. (49 CFR 571.209).	A. Malliaris, (202) 426-0842	NPRM 1981.
Child Restraint Tether Anchorages. *(Docket No. 80-18).*	Would require anchorages for use with child restraint systems equipped with a top tether strap. NPRM published December 11, 1980 (45 FR 81625) (49 CFR 571.210).	A. Malliaris, (202) 426-0842	Further action to be determined.
†Side Door Strength *(Docket No. 79-04).*	Would upgrade FMVSS 214 requirements for passenger cars and extend the upgraded standard to light trucks, vans and MPVs. ANPRM *published* 12/6/79. (44 FR 70204). Public meeting held in Washington on January 31 and February 1, 1980. *FMVSS 214 is undergoing priority review under Executive Order 12291. See entry in Review List entitled "Side Impact Protection"*	A. Malliaris, (202) 426-0842	Further action to be determined.
†Motorcycle Helmets	The proposal would extend the applicability of FMVSS 218 to large and small helmets, thus covering all size helmets. The Standard currently covers only those helmets which use a size "C" headform for compliance testing to the standard.	A. Malliaris, (202) 426-0842	Further action to be determined.
School Bus Body Joint Strength	Would amend FMVSS 221 to modify the exempt status of maintenance access panels.	A. Malliaris, (202) 426-0842	Further action to be determined.
School Bus Seat Spacing (Docket No. 73-03).	Would amend 49 CFR 571.222 to permit increased school bus seat spacing.	A. Malliaris, (202) 426-0842	NPRM 1981.
Fuel System Integrity (Docket No. 73-20).	Would establish specific performance requirements in Safety Standard No. 301-75 for non-metallic fuel tanks (plastic tanks) used in motor vehicles. ANPRM issued 8/2/79. (44 FR 33441). Further action postponed indefinitely pending further analysis. Notice of termination published July 21, 1981 (46 FR 38392).	A. Malliaris, (202) 426-0842	Withdrawn.
Brake System Inspectability	Would *have required* vehicle modifications in order to inspect for certain levels of brake degradation in accordance with proposed test procedures and criteria for measurement. *NHTSA has decided not to act in this area.*	A. Malliaris, (202) 426-0842	Action terminated.

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

AGENDA

NHTSA **National Highway Traffic Safety Administration**

Nonsignificant Regulations—Continued

[Key to symbols: *New item. †Analysis or review being considered under Regulatory Flexibility Act. ●Regulation selected for priority review. *Italics:* New or changed information since last Agenda]

Title	Summary	Contact	Earliest expected decision date
†Battery Explosions	Would *have established* performance requirements and labeling of batteries to reduce the incidence of battery explosions while jump starting. *Notice of termination published August 31, 1981 (46 FR 43718).* (49 CFR 571).	A. Malfians, (202) 426-0842	*Withdrawn.*
Truck Rear Underride Protection *(Docket No. 1-11).*	Would require protective devices to reduce vehicle penetration under the rear-ends of heavy trucks and trailers (without resulting in overly severe forces being transmitted to restrained and unrestrained occupants in vehicles that crash into the devices). NPRM published January 8, 1981. (46 FR 2136). (49 CFR 571).	A. Malfians, (202) 426-0842	Further action to be determined.
Vehicle Speed Control (Docket No. 79-06).	Trailways Bus Company petitioned for an FMVSS to require road speed governors for all commercial vehicles. A request for comments was published in the Federal Register on 3/19/79 with a closing date of 8/17/79. (44 FR 16461). Further Agency action will await results from long range research.	A. Malfians, (202) 426-0842	*To be withdrawn.*
†Flammability of School Bus Interior Materials.	Would utilize guidelines prescribed by UMTA to define flammability characteristics of School Bus Interior Materials.	A. Malfians, (202) 426-0842	Further action to be determined.
†Pedestrian Protection *(Docket No. 78-19).*	Would reduce adult pedestrian leg injuries and child injuries through modification of the bumper area. NPRM published January 22, 1981. (46 FR 7015). Comment closing date *was* May 22, 1981. (49 CFR 571).	A. Malfians, (202) 426-0842	Further action to be determined.
FUEL ECONOMY STANDARDS AND EXEMPTIONS			
Exemption from and Establishment of Fuel Economy Standards (Docket No. LVM 77-01).	Analysis of petition for exemption from 1979 and 1980 standards and setting of alternative standards for Avanti Motor Corp. NPRM published January 19, 1981 (46 FR 5022). *Final rule published May 4, 1981 (46 FR 24952)* (49 CFR pt. 525).	R. Strombotne, (202) 426-0846	*Action complete.*
Exemption from and Establishment of Fuel Economy Standards (Docket No. LVM 77-02).	Analysis of petition for exemption from 1979 and 1980 standards and setting of alternative standards for Rolls-Royce Motors, Inc. NPRM published October 9, 1980 (45 FR 67108). *Final rule published June 4, 1981 (46 FR 29944)* (49 CFR pt. 525).	R. Strombotne, (202) 426-0846	*Action complete.*
Exemption from and Establishment of Fuel Economy Standards (Docket No. LVM 77-05).	Analysis of petition for exemption from 1979 and 1980 standards and setting of alternative standards for Excaliber Automobile Corp. NPRM published July 31, 1980 (45 FR 50840). *Final rule published March 23, 1981 (46 FR 18038)* (49 CFR pt. 525).	R. Strombotne, (202) 426-0846	*Action complete.*
Exemption from and Establishment of Fuel Economy Standard. *(Docket No. LVM 77-07).*	Analysis of petition for exemption from 1979 and 1980 standards and setting of alternative standards for Maserati, S.p.A. NPRM published December 22, 1980 (45 FR 84103). *Final rule published March 26, 1981 (46 FR 18721)* (49 CFR pt. 525).	R. Strombotne, (202) 426-0846	*Action complete.*
†Fuel Economy Exemptions: Exemption from and Establishment of Fuel Economy Standards.	Would establish a single alternate average fuel economy standard for all LVMs for MY 1981 thru 1985 (49 CFR pt. 525).	R. Strombotne, (202) 426-0846	Further action to be determined.
REGULATIONS OTHER THAN SAFETY STANDARDS AND FUEL ECONOMY STANDARDS/EXEMPTIONS			
*Fuel Economy Reporting Requirements.	Would reduce the fuel economy reporting requirements manufacturers must comply with since some of those requirements are either duplicative or unnecessary for NHTSA's monitoring responsibilities. (49 CFR Part 537).	S. Wood, (202) 426-2992	NPRM *October* 1981.

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

AGENDA

NHTSA — National Highway Traffic Safety Administration

Nonsignificant Regulations—Continued

[Key to symbols: *New item. †Analysis or review being considered under Regulatory Flexibility Act. ●Regulation selected for priority review. *Italics:* New or changed information since last Agenda]

Title	Summary	Contact	Earliest expected decision date
Anthropomorphic Test Dummies	Would provide performance criteria for the adult surrogate dummies which would be required in dynamic testing of vehicles if Standard 214, Side Door Strength, is upgraded. (49 CFR Part 572).	A. Malliaris, (202) 426-0842	Further action to be determined.
Tire Identification and Recordkeeping. *(Docket No. 80-20).*	Would require ID on outward facing sidewall of motor vehicle tires. NPRM published December 15, 1980. (45 FR 82293). (49 CFR pt. 574).	A. Malliaris, (202) 426-0842	Further action to be determined.
*Consumer Information Reporting Requirements.	Would permit modification of pre-introduction submissions of performance data on new vehicle models at any time up to 30 days prior to model introduction. This amendment would create an exception to the requirement that pre-introduction submissions be made 90 days prior to model introduction, which becomes effective on June 1, 1982. NPRM published August 10, 1981 (46 FR 40541) (49 CFR 575.6).	Michael Brownlee, (202) 426-1740	Final Rule November 1981.
*Consumer Information—Tire Reserve Load.	Would delete tire reserve load information from consumer information requirements. NPRM issued September 17, 1981. Expected publication date: September 24, 1981. (49 CFR 575.102).	Michael Brownlee, (202) 426-1740	Final Rule 1982.
Uniform Tire Quality Grading *(Docket No. 25).*	*Amends* the Uniform Tire Quality Grading Standards to permit *tire grades to be molded on the tire sidewall beginning at any time up to six months after introduction of a new tire line.* Also *extends* the deadline for conversion to a new tread label format. NPRM published January 26, 1981 (46 FR 8063). *Final rule published August 17, 1981 (46 FR 41514).* (49 CFR Part 575).	Michael Brownlee, (202) 426-1740	*Action complete.*
Uniform Tire Quality Grading *(Docket No. 25).*	Would amend the Uniform Tire Quality Grading Standards to prescribe a standardized process for translating treadwear and traction test results into tire grades. Also would expand the numerical increments used to denote treadwear grades. NPRM published February 2, 1981. (46 FR 10429) (49 CFR Part 575).	Michael Brownlee, (202) 426-1740	Further action to be determined.
Uniform Tire Quality Grading	Would include rolling resistance for tires as a substitute for top temperature resistance grade in the Uniform Tire Quality Grading Standards. (49 CFR Part 575).	Michael Brownlee, (202) 426-1740	Further action to be determined.
*Uniform Tire Quality Grading	Would amend the Uniform Tire Quality Grading Standards to simplify the requirements. (49 CFR 575.104).	Michael Brownlee, (202) 426-1740	ANPRM 1981.
Consumer Information—Wet Stopping Distance.	Would develop a new rule for consumer information if tests indicate that there are significant differences in wet stopping distances among different models of cars on asphalt or concrete road surfaces. (49 CFR 575.105).	Michael Brownlee, (202) 426-1740	Further action to be determined.
Highway Safety Plan	Would revise Volume 102, Highway Safety Plan, of the Highway Safety Program Manual to clarify confusing provisions, to eliminate redundancies, to establish program priorities, to improve management and financial processes, and to reflect the increased role mandated for the central state highway safety agencies. (23 U.S.C. 402).	Chuck Livingston, (202) 426-0837	NPRM 1981.
†Vehicle Classification—Compact Vans/Station Wagons.	Would invite comment on possible amendments to the safety and fuel economy regulations, with respect to the manner in which compact vans/station wagons and certain other vehicles are classified.	S. Wood, (202) 426-2992	Further action to be determined.
†Inclusion of Alcohol Fuels in Fuel Economy Program.	Would include vehicles which operate on alcohol fuels in the automotive fuel economy program.	R. Strombotne, (202) 426-0846	Further action to be determined.

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

AGENDA

FRA **Federal Railroad Administration**

Significant Regulations: Major

[Key to symbols: *New item. †Analysis or review being considered under Regulatory Flexibility Act. ●Regulation selected for priority review. *Italics:* New or changed information since last Agenda]

Title	Summary	Contact	Earliest expected decision date
†Review: Power Brake Rules	**A. Description:** Outgrowth of regulatory review in general safety inquiry and the Department's priority review of costly and controversial regulations. Revision and updating of current requirements. **B. Why Significant:** *Annual effect on the economy of $100 million or more.* **C. Analysis:** *Regulatory Impact Analysis/Regulatory Flexibility Analysis.* **D. Need:** *Because of changes in railroad operations and technological advances, the rules need to be revised to make them consonant with the present railroad operating environment and to provide more flexibility in achieving safety and operating efficiency.* **E. Legal Basis:** *The Safety Appliance Acts (45 U.S.C. 9).* **F. Chronology:** *General Safety Inquiry announced May 8, 1978 (43 FR 19696). Public hearings were held September 13 and 14, 1978.* **G. Citation:** *49 CFR Part 232.*	Edward F. Conway, Jr., (202) 426-8836	October 1981.

Significant Regulations: Other

Title	Summary	Contact	Earliest expected decision date
Strobe Lights on Locomotives (Docket No. RSGC-2).	**A. Description:** Lighted warning devices that include strobe lights have been shown to be more readily visible than normal lighting devices. FRA is considering requiring the installation of strobe lights on locomotives. **B. Why Significant:** Degree of controversy reflected by response to ANPRM. **C. Analysis:** Regulatory Evaluation. **D. Need:** Grade crossing accidents represent the single largest group of railroad related fatalities each year. Available data indicate that the conspicuity of locomotives may be a factor in many of these accidents. Limited research with one railroad has indicated that equipping locomotives with strobe lights will improve their conspicuity and may lead to a reduction in these accident statistics. **E. Legal Basis:** The Federal Railroad Safety Act of 1970 (45 U.S.C. 431); Locomotive Inspection Act (45 U.S.C. 22 et seq.). **F. Chronology:** The ANPRM was published March 7, 1978 (43 FR 9328). NPRM was published June 18, 1979 (44 FR 34982). **G. Citation:** Will be 49 CFR pt. 222.	Steve Urman, (202) 426-9178	FR *October 1981.*

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

AGENDA

FRA — Federal Railroad Administration

Nonsignificant Regulations

[Key to symbols: *New item. †Analysis or review being considered under Regulatory Flexibility Act. ●Regulation selected for priority review. *Italics:* New or changed information since last Agenda]

Title	Summary	Contact	Earliest expected decision date
Railroad Bridge and Tunnel Safety Inquiry.	The Safety Inquiry will examine the present condition of railroad bridges and tunnels. Options for assuring proper rating of bridges and the inspection and maintenance of bridges and tunnels will be considered. *Withdrawn based upon preliminary analysis of costs and lack of accident data.*	William R. Paxton, (202) 426-0912	*Withdrawn.*
Railroad Noise Emission Compliance Regulations (Docket No. RNE-1).	The proposed rule would amend FRA railroad noise emission compliance regulations to reflect EPA Standards for fixed railroad facilities that were published on January 4, 1980; 45 FR 1252 (49 CFR pt. 210).	Steve Urman, (202) 426-9178	NPRM December 1981.
Safety Standards for Cabooses (Docket No. RSC-76-6).	The proposed rule would seek to establish comprehensive safety standards for cabooses.	Robert E. Abbott, (202) 426-9186	Further action to be determined.
Rail Services Assistance to States Under Section 5 of the DOT Act (FRA Economic Docket No. 4).	This action would amend 49 CFR pt. 266 to implement proposals offered by the grantees at a recent public meeting, and to make changes necessitated by the enactment of the Local Rail Services Assistance Act of 1978. Interim regulations published on August 30, 1979 (44 FR 51128). FRA is currently working with interested parties to implement comments and suggestions.	Jo Anne McGowan, (202) 426-1677	*Further action to be determined.*
Review: Track Safety Regulations.	Outgrowth of regulatory review in general safety inquiry. Revision and updating of current requirements (49 CFR pt. 213). NPRM published September 6, 1979 (44 FR 52104). *Withdrawal of proposed rule published June 25, 1981 (46 FR 32898).*	William R. Paxton, (202) 426-0912	*Withdrawn.*
Review: Safety Appliance Standards.	Outgrowth of regulatory review in general safety inquiry. Revised standards for new and existing equipment (49 CFR pt. 231).	Ralph R. Smith, (202) 426-9187	January 1982.
†**Review:** Power Brake Rules.....	Outgrowth of regulatory review in general safety inquiry and the Department's priority review of costly and controversial regulations. Revision and updating of current requirements (49 CFR pt. 232). *This entry has been moved to the "Significant Regulations: Major" portion of the FRA Agenda.*	Edward F Conway, Jr., (202) 426-8836	*October* 1981.
Review: Signal and Train Control Regulations.	Outgrowth of regulatory review in general safety inquiry. Revision and updating of current requirements of Parts 235 and 236.	S. H. Stotts, (202) 426-0912	December 1982.
Amendments to Regulations Implementing Section 905 of the 4R Act.	This action would amend 49 CFR Part 265 to make changes necessitated by the promulgation of the Department of Transportation's comprehensive Minority Business Enterprise regulation (49 CFR Part 23). Part 265 will be revised to omit those provisions now covered in Part 23.	*Rufus Watson,* (202) 472-5311	*October* 1981.
Railroad Passenger Equipment Safety Standards (Docket No. RSP-1).	Development of initial passenger equipment safety standards mandated by Section 202 of the Federal Railroad Safety Act of 1970, as amended by P.L. 96-423.	R. Mowatt-Larssen, (202) 426-0924	*Safety Inquiry November* 1981.
Amendments to State Participation Regulations.	Revise State Participation Regulations to reflect the broader scope of participation authorized by Section 206 of the Federal Railroad Safety Act of 1970, as amended by P.L. 96-423. *NPRM published June 25, 1981 (46 FR 32888).*	Dan Inabinett, (202) 426-9252	*FR September* 1981.

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

AGENDA

FRA — Federal Railroad Administration

Nonsignificant Regulations—Continued

[Key to symbols: *New item. †Analysis or review being considered under Regulatory Flexibility Act. ●Regulation selected for priority review. *Italics:* New or changed information since last Agenda]

Title	Summary	Contact	Earliest expected decision date
†*Special Safety Inquiry	FRA has initiated a Railroad Safety Inquiry to obtain information from the public to assist in evaluating and improving its safety regulatory program as it applies to "small railroads". The inquiry will also assist in meeting the goals of the Regulatory Flexibility Act by obtaining data that will assist in defining the economic impact of existing rules on small railroads. A series of public hearings has been scheduled. The hearings notice was published August 3, 1981 (46 FR 39461).	R. Mowatt-Larssen, (202) 426-0924	Further action to be determined.
†*Rules of Practice	This proposed rule would amend 49 CFR Part 211 to respond to the provisions of the Regulatory Flexibility Act of 1980 by defining the criteria used by FRA in determining whether any regulatory proposal or final rule will have a significant economic impact on a substantial number of small entities.	Lawrence I. Wagner, (202) 426-8836	NPRM September 1981.

UMTA — Urban Mass Transportation Administration

Significant Regulations: Major

Title	Summary	Contact	Earliest expected decision date
†*"Buy America" Requirements of Surface Transportation Assistance Act of 1978.	**A. Description:** This rulemaking proposes amendments to the existing Buy America Requirements. The amendments would permit subcomponents manufactured in the United States that receive Customs Bureau tariff exemptions to retain their domestic identity for purposes of determination of origin under the Buy America Requirements. A definition of "final assembly" is also proposed. **B. Why Significant:** There is substantial public interest concerning these regulations because of their impact in urban mass transportation projects. **C. Analysis:** Regulatory Impact Analysis/Regulatory Flexibility Analysis. **D. Need:** These regulations implement section 401 of the Surface Transportation Assistance Act of 1978. **E. Legal Basis:** 49 U.S.C. 1602 note; P.L. 95-599, Section 401. **F. Chronology:** The NPRM was published on January 19, 1981 (46 F.R. 5815). Comments on alternative approaches *were* invited until April 20, 1981. *UMTA extended the comment period until May 20, 1981 (46 FR 23501). This NPRM is under Departmental review along with the existing "Buy America" regulation. Further action on this NPRM will depend on the results of that review.* **G. Citation:** 49 CFR pt. 660	John Collins, (202) 426-1906	*Further action to be determined pending review of the existing "Buy America" regulation.*

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

AGENDA

UMTA — Urban Mass Transportation Administration

Significant Regulations: Other

[Key to symbols: *New item. †Analysis or review being considered under Regulatory Flexibility Act. ●Regulation selected for priority review. *Italics:* New or changed information since last Agenda]

Title	Summary	Contact	Earliest expected decision date
†Private Enterprise Participation in Federally-Assisted Programs.	**A. Description:** Pursuant to Sections 3(e) and 8(e) of the UMT Act, as amended, UMTA plans to publish procedures regarding the involvement of private mass transit operators in federally-assisted programs. The subject matter of this rulemaking will include consideration of private enterprise participation in paratransit programs. **B. Why Significant:** While these regulations would implement statutory requirements, this is a controversial issue for both the transit industry and private operators. **C. Analysis:** Regulatory Evaluation/Regulatory Flexibility Analysis. **D. Need:** To resolve an area of continuing controversy..... **E. Legal Basis:** Sections 3(e)(1) and (2), and Section 8(e) of the UMT Act, as amended. **F Chronology:** 8(e) was added to the Urban Mass Transportation Act by the Federal Public Transportation Act of 1978. NPRM to be prepared by *October* 1981. **G. Citation:** 49 CFR pt. 619.....	James Stratton, (202) 426-4060	NPRM *October* 1981.
Urban Transportation Planning Process/Transportation Improvement Program.	The regulation was being jointly developed by UMTA and FHWA and is summarized elsewhere in this agenda by the Federal Highway Administration. An NPRM was published on October 30, 1980 (45 FR 71990). The comment period closed on December 24, 1980. Final rule published on January 19, 1981 (46 FR 5702); originally scheduled to go into effect February 18, 1981. Effective date delayed until March 31, 1981 (46 FR 10706) for review under Executive Order 12291. *The effective date was further postponed until June 30, 1981 (46 FR 19233) and again until July 30, 1981 (46 FR 33513) to allow for additional review and revision. After extensive review, UMTA and the FHWA decided to withdraw the final rule and issued instead a final rule on July 30, 1981 (46 FR 40170). This final rule incorporates into the existing planning regulations (23 CFR 450 and 630; 49 CFR 613) only those provisions of the January 19, 1981, withdrawn final rule that are intended to: (1) reduce red tape and simplify administration of the planning process, especially for areas under 200,000 population; (2) incorporate recent legislative changes; and (3) clarify the purpose of Transportation System Management (TSM) and other aspects of the planning process. The docket for the withdrawn final rule has been closed.*	Bob Kirkland, (202) 426-4991, or Sam Zimmerman, (202) 426-2360; FHWA: Sam Rea, (202) 426-2961	*Action complete.*
"Buy America" Requirements of Surface Transportation Assistance Act of 1978.	**A. Description:** These regulations implement section 401 of the Surface Transportation Assistance Act of 1978, which provides, with exceptions, that funds authorized may not be obligated for urban mass transportation projects unless materials and supplies are of United States origin. These regulations were issued as a final rule but comments were solicited until February 15, 1979 and changes will be made based on the comments received. A separate NPRM has been issued addressing several issues raised during the comment period. **B. Why Significant:** There is substantial public interest concerning these regulations because of their impact in urban mass transportation projects. **C. Analysis:** Regulatory Evaluation.....	John Collins, (202) 426-1908	*Action complete.*

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

AGENDA

UMTA **Urban Mass Transportation Administration**

Significant Regulations: Other—Continued

[Key to symbols: *New item. †Analysis or review being considered under Regulatory Flexibility Act. ●Regulation selected for priority review. *Italics:* New or changed information since last Agenda]

Title	Summary	Contact	Earliest expected decision date
	D. Need: These regulations implement section 401 of the Surface Transportation Assistance Act of 1978. **E. Legal Basis:** 49 U.S.C. 1602 note; P.L. 95-599, Section 401. **F. Chronology:** The statute creating this provision was signed by the President on November 6, 1978 and required immediate implementation. The emergency final rule was published on December 6, 1978. (43 FR 57144) Comments were invited through February 15, 1979. Final rule published on January 19, 1981 (46 FR 5808); originally scheduled to go into effect on February 18, 1981. Effective date delayed until March 31, 1981 (46 FR 10706) for review under Executive Order 12291. *After extensive review, UMTA decided to permit this rule to become effective on March 31, 1981.* A separate NPRM was also issued on January 19, 1981 (46 FR 5815) and is summarized elsewhere in the UMTA agenda. *In addition, UMTA is conducting a review of the existing "Buy America" regulation.* **G. Citation:** 49 CFR pt. 660		
Regulation Implementing the Nondiscrimination Section of the Urban Mass Transportation Act.	**A. Description:** The proposed regulations would unify the civil rights regulations that recipients of funds under the Urban Mass Transportation Act must meet. **B. Why Significant:** Substantial public interest is anticipated. **C. Analysis:** Regulatory Evaluation **D. Need:** Regulations are needed to implement a new statutory provision which consolidates UMTA's authority to assure effective and uniform compliance with civil rights and equal employment opportunity requirements in a manner comparable to other agencies within the Department of Transportation. **E. Legal Basis:** Section 19 of the UMT Act (49 U.S.C. 1615). **F. Chronology:** Section 19 was added to the UMT Act in November 1978 by the Federal Public Transportation Act of 1978. *Further action on this item is dependent on action by the Department concerning revision of the DOT-wide Title VI regulation (49 CFR Part 21).* **G. Citation:** 49 CFR pt. 628	Charlene Thomas, (202) 426-6371	Further action to be determined.
Minority Business Enterprise Requirements—Transit Vehicle Manufacturers.	**A. Description:** The recently issued DOT Rulemaking Concerning Participation by Minority Business Enterprises (March 31, 1980, 45 FR 21172) contains a provision that transit vehicle manufacturers are required to have an UMTA-approved MBE program in order to be eligible to bid on UMTA-assisted transit vehicle procurements. *Since the Department is reviewing this regulation, UMTA guidelines will be formulated in conjunction with this larger effort and will be part of the revised rulemaking.* **B. Why Significant:** Substantial public interest is anticipated given the potential impact on transit vehicle manufacturers. **C. Analysis:** Regulatory Evaluation	Irvin Bromall, (202) 426-6371	Further action to be determined.

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

AGENDA

UMTA **Urban Mass Transportation Administration**

Significant Regulations: Other—Continued

[Key to symbols: *New item. †Analysis or review being considered under Regulatory Flexibility Act. *Italics:* New or changed information since last Agenda] ●Regulation selected for priority review.

Title	Summary	Contact	Earliest expected decision date
	D. Need: To implement the DOT MBE requirements for application to transit vehicle manufacturers. **E. Legal Basis:** 49 U.S.C. 1615; E.O. 11625 **F Chronology:** DOT NPRM issued on May 17, 1979 (44 FR 28928); DOT FR issued March 31, 1980 (45 FR 21172); *DOT issued an NPRM proposing revisions to the existing MBE rule (49 CFR pt. 23) on March 12, 1981 (46 FR 16282). The proposed revisions became final on April 27, 1981 (46 FR 23457). Further UMTA action on this item is dependent on policy decisions to be made by the Department in connection with its review of the entire MBE rule.* **G. Citation:** 49 CFR pt. 23		
Safety Information Reporting and Analysis System for Rail Transit Systems.	**A. Description:** UMTA is proposing regulations that would establish a requirement for periodic reporting of accidents and casualty information that occur in Rail Rapid Transit and Light Rail Transit operations. **B. Why Significant:** The proposed regulations could have a substantial impact on a major transportation safety problem. **C. Analysis:** Regulatory Evaluation **D. Need:** Information collected will be used to maintain cognizance of the status of rail transit safety, ascertain the need for improvements in rail transit safety, and establish research and development projects for safety improvements. **E. Legal Basis:** Sections 3 and 5 of the UMT Act, as amended, and Section 107 of the National Mass Transportation Assistance Act of 1974. **F Chronology:** *UMTA is determining whether a voluntary system will be adequate, suitable, and acceptable to the involved agencies and industry. This is consistent with UMTA's policy to reduce regulations and red tape.* **G. Citation:** 49 CFR pt. 632.	Lloyd Murphy, (202) 426-6588	*Further action to be determined.*
†Maintenance Requirements	**A. Description:** UMTA is considering a policy along with implementing regulations that would require each mass transit operator to maintain facilities and equipment purchased with UMTA funds consistent with practices necessary to adequately provide for safety, comfort, and preservation and expansion of transit service. *However, UMTA plans first to write the policy statement on maintenance and then to determine the need for regulations.* **B. Why Significant:** This proposal concerns a matter on which there may be substantial controversy and it initiates a substantial change in policy. **C. Analysis:** Regulatory Evaluation/Regulatory Flexibility Analysis. **D. Need:** There is a substantial Federal interest in assuring that maximum use is made of Federal money. The contemplated policy and regulations would: (a) increase performance and useful life of equipment and facilities; (b) minimize replacement costs; and (c) result in cost savings.	Charlotte Adams, (202) 472-6997	Further action to be determined.

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

AGENDA

UMTA **Urban Mass Transportation Administration**

Significant Regulations: Other—Continued

[Key to symbols: *New item. †Analysis or review being considered under Regulatory Flexibility Act. ●Regulation selected for priority review. *Italics:* New or changed information since last Agenda]

Title	Summary	Contact	Earliest expected decision date
	E. Legal Basis: Sections 3 and 5 of the UMT Act, as amended. **F. Chronology:** ANPRM issued on January 21, 1981 (46 FR 6334). *The comment period closed on May 22, 1981.* The final form of this undertaking will depend on *the analysis of the comments received on the ANPRM and UMTA's determination of the need for regulations once the policy statement on maintenance has been written.* **G. Citation:** 49 CFR pt. 638		
Bus Rehabilitation Program, UMTA Docket 80-A.	**A. Description:** Regulations to implement a policy in which UMTA will participate in the rehabilitation of older buses. The regulations set out the guidelines for eligibility and participation in the program. **B. Why Significant:** Substantial controversy was generated upon publication of the NPRM. **C. Analysis:** Regulatory Evaluation **D. Need:** To provide a national funding basis for a bus rehabilitation program and to ensure the prudent use and maximum effectiveness of Federal and local money. **E. Legal Basis:** Sections 3 and 5 of the UMT Act, as amended. **F. Chronology:** NPRM published February 11, 1980 (45 FR 9244). Comments were invited through May 2, 1980 (after an extension of the comment period). Based on the substantial controversy generated upon publication of the NPRM, this proposal was reclassified as a significant regulation. Final rule published on January 29, 1981 (46 FR 9862), originally scheduled to go into effect March 31, 1981. Effective date delayed until March 31, 1981 (46 FR 10706) for review under Executive Order 12291. *On March 30, 1981, UMTA further postponed the effective date for this rule until May 15, 1981 (46 FR 19235) and proposed to withdraw the rule and to substitute non-regulatory policy guidance for it (46 FR 19270). The comment period closed on April 15, 1981. All the comments received supported UMTA's proposal and UMTA withdrew this rule on May 14, 1981 (46 FR 26651). The non-regulatory guidance will be published in the Notice section of the Federal Register in the future.* **G. Citation:** 49 CFR pt. 640	Charlotte Adams, (202) *426-4033*	*Withdrawn.*
Air Quality Guidelines	This regulation was jointly developed by UMTA and FHWA and is summarized elsewhere in this agenda by the Federal Highway Administration. Interim final rule issued on January 19, 1981, and effective immediately (46 FR 8426; January 26, 1981). The closing date for comments on this final rule *was* July 27, 1981. This rule is subject to review under Executive Order 12291.	Jocelyn Karp, (202) 426-1906; or James Getzewich, (202) 426-4991; FHWA; Jesse R. Chaves, (202) 426-4836	Further action to be determined pending Executive Order 12291 review.
Exemption Procedures	**A. Description:** UMTA plans to publish procedures that would allow persons to petition for exemptions from existing UMTA regulations. **B. Why Significant:** The regulation would provide for the exemption from significant regulations. **C. Analysis:** Regulatory Evaluation	Jocelyn Karp, (202) 426-1906	NPRM *October* 1981.

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

AGENDA

UMTA — Urban Mass Transportation Administration

Significant Regulations: Other—Continued

[Key to symbols: *New item. †Analysis or review being considered under Regulatory Flexibility Act. ●Regulation selected for priority review: *Italics:* New or changed information since last Agenda]

Title	Summary	Contact	Earliest expected decision date
	D. Need: To provide a formal mechanism for the public to obtain exemptions. **E. Legal Basis:** Sections 3, 5, and 12(a) of the UMT Act of 1964 as amended (49 U.S.C. 1602, 1604 and 1608(a)). **F. Chronology:** NPRM to be prepared and issued by *October* 1981. **G. Citation:** 49 CFR pt. 602		

Nonsignificant Regulations

Title	Summary	Contact	Earliest expected decision date
†Charter Bus Regulations	These regulations provide more detailed information regarding the restrictions placed on charter bus operations in section 3(f) of the UMT Act, 49 U.S.C. 1601. UMTA received considerable comments as a result of an ANPRM dated December 29, 1976 (41 FR 56680) and a hearing held thereafter. ANPRM published on January 19, 1981 (46 FR 5394). The comment period closed on March 5, 1981. *Further action on this item depends on UMTA's current examination and evaluation of the role of private enterprise in the UMTA program* (49 CFR pt. 604).	Ernesto Fuentes, (202) 426-1906	*Further action to be determined.*
Innovative Techniques and Methods Set-Aside.	These regulations would prescribe policies and procedures for administering the grant programs for projects using innovative techniques and methods in the management and operation of public transportation services under Section 4(i) of the UMT Act, as amended. The NPRM was published on December 1, 1980 (45 FR 79669). The comment period closed on February 25, 1981. This is being withdrawn as a rulemaking document. Provisions of the NPRM will be used for guidance. The application instructions for this program will be issued by UMTA in the "Notice" section of the **Federal Register.** (49 CFR pt. 644).	Norm Ensrud, (202) 426-4984	*To be withdrawn.*
Miscellaneous Amendments—Organization, Functions, and Procedures.	These amendments will reflect modifications in the organization and distribution of functions as well as changes in the delegations of authority within the Urban Mass Transportation Administration. (49 CFR pt. 601).	*Mary Pat Stephenson,* (202) 426-4011	*Further action to be determined.*
Public Hearing Requirements	UMTA's regulations implement Section 5(i)(3) of the Urban Mass Transportation Act of 1964, as amended. This section requires a public hearing or an opportunity for a public hearing prior to increases in general levels of transit fares or substantial changes in service. A notice of proposed rulemaking was published on July 16, 1979 (44 FR 41272). Comments were invited through August 30, 1979. FR published April 17, 1980 (45 FR 26298) (49 CFR Part 635). The final rule invited comments through June 20, 1980 on UMTA's treatment of "substantial changes in service." Final rule published on January 19, 1981 (46 FR 5746), (49 CFR pt. 635A); originally scheduled to go into effect on February 18, 1981. Effective date postponed until March 31, 1981 (46 FR 10706) for review under Executive Order 12291. *After extensive review, UMTA decided to permit this rule to become effective on March 31, 1981.*	Charlotte Adams, (202) 472-6997	*Action complete.*

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

AGENDA

UMTA — Urban Mass Transportation Administration

Nonsignificant Regulations—Continued

[Key to symbols: *New item. †Analysis or review being considered under Regulatory Flexibility Act. ●Regulation selected for priority review. *Italics:* New or changed information since last agenda]

Title	Summary	Contact	Earliest expected decision date
Investigation of Safety Hazards in Urban Mass Transportation Systems.	These regulations would establish the policy and proceedings to be followed in the implementation of Section 107 of the National Mass Transportation Assistance Act of 1974, including the investigation of an unsafe condition, the requiring of a plan for correcting an unsafe condition, and the withholding of financial assistance until such a plan is approved or implemented. (49 CFR pt. 631).	*Tom Prendergast,* (202) 426-9545	Further action to be determined.
Standards and Procedures for Third Party Contracts.	These standards and procedures would provide guidance on third party contracting by recipients of Federal assistance from UMTA. They would implement OMB Circular A-102, Attachment B and Attachment O. A Notice of Proposed Rulemaking was published on September 20, 1979 (44 FR 54513). Comments were invited through November 15, 1979. The comment period was extended to January 3, 1980 in a notice published in the Federal Register on November 1, 1979 (44 FR 62918). (49 CFR pt. 666).	Arlan Eadie, (202) 426-2710	Further action to be determined.
Regulations Governing Formula Operating Assistance Grants to Urbanized Areas.	These regulations would streamline the policies and procedures governing the Operating Grant Program of Section 5 of the Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1604). Included in the regulations would be application procedures, general program requirements, and project management requirements. The closing date for comments was December 1, 1980 (49 CFR pt. 645). *UMTA has decided to withdraw this rulemaking and to issue it as non-regulatory policy guidance that will be published in the Notice section of the Federal Register.*	Candace Noonan, (202) 472-6997	*To be withdrawn.*
Maintenance of Effort Requirements.	These regulations would implement Section 5(f) of the Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1604(f), which deals with maintenance of effort by designated recipients of Federal mass transportation funds. The maintenance of effort requirement is imposed to ensure that state and local support and mass transportation non-farebox revenues will be maintained for provision of mass transportation services. The proposed regulations would implement 1978 legislative changes giving recipients of funds greater flexibility in meeting the requirements. A Notice of Proposed Rulemaking was published on August 27, 1979 (44 FR 50068). Comments were invited through October 11, 1979. *The provision in the UMT Act requiring maintenance of effort will not apply to funds appropriated for use after September 30, 1981. Therefore, UMTA has determined that there is no need for a regulation and has withdrawn this item.* (49 CFR Part 646).	Candace Noonan, (202) 472-6997	*To be withdrawn.*
Project Management Guidelines for Grantees.	These regulations would provide grantees with guidelines and procedures to be applied in administering UMTA grants, cooperative agreements, and loans. These guidelines are intended to assist grantees in meeting various grant management responsibilities and reporting requirements. NPRM published September 11, 1980 (45 FR 60306). *The comment period closed on December 8, 1980. UMTA has decided to withdraw this rulemaking activity and to issue it as non-regulatory guidance that will be published in the Notice section of the Federal Register* (49 CFR pt. 662).	Timothy Wolgast, (202) 426-4011	*To be withdrawn.*

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

AGENDA

UMTA — Urban Mass Transportation Administration

Nonsignificant Regulations—Continued

[Key to symbols: *New item. †Analysis or review being considered under Regulatory Flexibility Act. ●Regulation selected for priority review. *Italics:* New or changed information since last agenda]

Title	Summary	Contact	Earliest expected decision date
†Application Instructions for Capital Assistance Projects..	These regulations would provide program information and application instructions and procedures for capital assistance under Sections 3 and 5 of the Urban Mass Transportation Act of 1964, as amended, and for assistance for Interstate Substitution and Federal-Aid Urban Systems (FAUS) non-highway Public Mass Transit Projects under the Federal-Aid Highway Act of 1973. *UMTA has decided to withdraw this rulemaking activity and to issue it as non-regulatory policy guidance that will be published in the Notice section of the Federal Register.* (49 CFR pt. 643).	Charlotte Adams, (202) 472-6997	*Action Terminated.*
Stockpiling of Buses (UMTA Docket 80-B).	These regulations would provide guidance concerning the evaluation of requests by grantees for permission to stockpile older buses being replaced with UMTA assistance. NPRM published March 3, 1980 (45 FR 13994). Comments were invited through April 16, 1980. Final rule published on January 19, 1981 (46 FR 5480); originally scheduled to go into effect on February 18, 1981. Effective date postponed until March 31, 1981 (46 FR 10706) for review under Executive Order 12291. (49 CFR 639). *On March 30, 1981, UMTA further postponed the effective date for this rule until May 15, 1981 (46 FR 19235) and proposed to withdraw the rule and to substitute non-regulatory policy guidance for it (46 FR 19270). The comment period closed on April 15, 1981. All the comments supported UMTA's proposal and UMTA withdrew the rule on May 14, 1981 (46 FR 26651). The non-regulatory policy guidance will be published in the Notice section of the Federal Register in the future*	Charlotte Adams, (202) 472-6997	*Withdrawn.*
Delivery of Section 8 Funds to Small Urbanized Areas (Those with Populations Between 50,000 and 200,000).	The proposed policy would offer states two options in addition to the current way UMTA delivers planning funds for small urbanized areas. The first option would pass UMTA funds for small urbanized areas through the state and delegate to it certain management functions without the need for Metropolitan Planning Organization (MPO) concurrence. The second option, which could only be selected if the affected MPOs agree to it, would involve an agreement with FHWA whereby UMTA would fund large MPOs directly for both highway and transit planning and FHWA would fund smaller MPOs for both types of planning. *UMTA has decided to withdraw this rulemaking and to issue it as non-regulatory policy guidance that will be published in the Notice section of the Federal Register.*	James Getzewich, (202) 426-4991	*Action terminated.*
†Technology Introduction.....	These regulations would implement Section 3(a)(1)(C) of the UMT Act of 1964, as amended, by prescribing policies and procedures for administering the grant program for projects that would introduce new technology into public transportation. NPRM published on January 19, 1981 (46 FR 5832). The comment period closed on March 20, 1981. *UMTA has decided to withdraw this rulemaking activity and to issue it as non-regulatory policy guidance that will be published in the Notice section of the Federal Register. Until then, the January 19, 1981, NPRM should be used as guidance.*	Robert Haught, (202) 426-9545.	*To be withdrawn.*

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

AGENDA

UMTA — Urban Mass Transportation Administration

Nonsignificant Regulations—Continued

[Key to symbols: *New item. †Analysis or review being considered under Regulatory Flexibility Act. ●Regulation selected for priority review. *Italics:* New or changed information since last Agenda]

Title	Summary	Contact	Earliest expected decision date
Urban Initiatives Program	UMTA issued regulations governing its Urban Initiatives Program. The Urban Initiatives Program provides funding for mass transportation projects that enhance urban development. The regulations codify and clarify existing requirements and guidelines concerning the program. An NPRM was published on October 23, 1980 (45 FR 70412). Comments were received through December 8, 1980. A Final Rule was issued on January 19, 1981 (46 FR 5802), with an effective date of February 18, 1981. Effective date postponed until March 31, 1981 (46 FR 10706) for review under Executive Order 12291. *After extensive review, UMTA decided to withdraw this final rule on March 30, 1981 (46 FR 19237).*	Casimir Bonkowski, (202) 472-7037	*Withdrawn.*

SLSDC — St. Lawrence Seaway Development Corporation

Nonsignificant Regulations

Title	Summary	Contact	Earliest expected decision date
Operational Regulations	Periodic update of 33 CFR Part 401 operational regulations developed, for the most part, jointly with the Seaway Authority of Canada. Most recent Final Rule published August 7, 1980 (45 FR 52376).	Frederick A. Bush, (315) 764-3245	Next update *January 15, 1981.*
*Tariff of Tolls Amendment	Revision of 33 CFR Part 402 in accordance with statutory procedures 33 USC 988.	Robert D. Kraft, (202) 426-3574	September 15, 1981.

RSPA — Research and Special Programs Administration

Significant Regulations: Other

Title	Summary	Contact	Earliest expected decision date
Highway Routing of Radioactive Materials (Docket No. HM-164).	**A. Description:** This regulation establishes routing requirements for the highway carriage of radioactive materials. **B. Why Significant:** There is substantial public interest and controversy over the regulation and it will have a significant impact on the Federal Highway Administration. **C. Analysis:** Regulatory Evaluation **D. Need:** To provide a basis for deciding whether Federal routing requirements are necessary for the highway transportation of hazardous materials. **E. Legal Basis:** 49 U.S.C. 1803, 1804, 1808	*J. C. Allen, (202) 472-2726*	Undergoing Executive Order 12291 review.

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

AGENDA

RSPA **Research and Special Programs Administration**

Significant Regulations: Other—Continued

[Key to symbols: *New item. †Analysis or review being considered under Regulatory Flexibility Act. ●Regulation selected for priority review. *Italics:* New or changed information since last Agenda]

Title	Summary	Contact	Earliest expected decision date
	F Chronology: Administrative ruling on Federal pre-emption: Published a public notice and invitation to comment on Aug. 15, 1977 (42 FR 41202); Public hearing (New York) was held on Nov. 10, 1977 (42 FR 64487); Ruling published April 20, 1978 (42 FR 16945); Rulemaking: ANPRM issued Aug. 17, 1978 (43 FR 36492); Public hearing (Washington) was held on Nov. 29, 1978. NPRM issued January 31, 1980 (45 FR 7140). Published NPRM announcing dates and locations of five public hearings on March 6, 1980 (45 FR 14609). Two additional hearings announced May 15, 1980 (45 FR 32030). All hearings completed. FR published January 19, 1981 (46 FR 5298). Scheduled to go into effect February 1, 1982, but undergoing review under Executive Order 12291.		
	G. Citation: 49 CFR pt. 177		
Development of New Standards for Liquefied Natural Gas (LNG) Facilities (Docket No. OPSO-46).	**A. Description:** Comprehensive new standards for the siting, design, construction, operation, and maintenance of LNG facilities.	L. Furrow, (202) 426-2392	Undergoing Executive Order 12291 review.
	B. Why Significant: Considered significant due to substantial public interest and controversy, and due to potential danger of large-scale LNG spills.		
	C. Analysis: Regulatory Evaluation		
	D. Need: The concerns of Federal, State, and local agencies over LNG safety.		
	E. Legal Basis: 49 U.S.C. 1672		
	F Chronology: ANPRM published April 21, 1977 (42 FR 20076); NPRM (siting, design, and construction); published February 8, 1979 (44 FR 8142); NPRM (operation and maintenance); published February 11, 1980 (45 FR 9220); Final Rules (siting, design, and construction): Published February 11, 1980 (45 FR 9184). Effective March 15, 1980, except as noted. Final rules (operation and maintenance) published October 23, 1980 (45 FR 70390). Effective July 23, 1981, except as noted, subject to review under E.O. 12291. Petitions for reconsideration answered August 28, 1980 (45 FR 57402).		
	G. Citation: 49 CFR pt. 193 (new)		
Tank Car Safety Improvements: Specifications and Retrofit (Docket No. HM-175).	**A. Description:** This project would extend the puncture and thermal protection systems now required for DOT 112 and 114 tank cars to existing DOT 105 tank cars and to other newly constructed tank cars. (New construction of DOT 105 tank cars is addressed in Docket No. HM-174, Safety Improvement Program for DOT 105 Tank Cars.).	L. A. Peterson, (202) 426-0897	NPRM *November* 1981.
	B. Why Significant: There is substantial public interest in tank car safety and in retrofit issues.		
	C. Analysis: Regulatory Evaluation		
	D. Need: To determine the extent to which current thermal and puncture standards should be applied to the existing DOT 105 tank car fleet, and to other similarly used tank cars.		
	E. Legal Basis: 49 U.S.C. 1803, 1804, 1808		

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

AGENDA

RSPA **Research and Special Programs Administration**

Significant Regulations: Other—Continued

[Key to symbols: *New item. †Analysis or review being considered under Regulatory Flexibility Act. ●Regulation selected for priority review. *Italics:* New or changed information since last Agenda]

Title	Summary	Contact	Earliest expected decision date
	F. Chronology: ANPRM published July 21, 1980 (45 FR 48668); public comment period closed October 16, 1980.		

Nonsignificant Regulations

Title	Summary	Contact	Earliest expected decision date
Intermodal Portable Tanks (Docket No. HM-167).	Standards for new specifications for portable tanks and procedures for use of these portable tanks for certain hazardous materials. NPRM published Dec. 11, 1978 (43 FR 58050). (49 CFR 107.400-.407, 178.271, 178.272). FR published January 29, 1981 (46 FR 9880). *Executive Order 12291 Review completed. Correction published March 30, 1981 (46 FR 19236).* Effective May 1, 1981.	E. Altemos, (202) 426-0656	*Action complete.*
Review: Recodification of Radioactive Requirements (Docket No. HM-169).	Proposed consolidation, simplication and recodification of the existing requirements applicable to the transportation of radioactive materials to make them compatible with latest revised international standards as promulgated by the International Atomic Energy Agency. NPRM published Jan. 8, 1979 (44 FR 1852). (New pt. 127 to 49 CFR).	R. Rawl, (202) 426-2311	FR *October* 1981.
Safety Improvement Program for DOT 105 Tank Cars (Docket No. HM-174).	Changes current safety performance standards of DOT 105 tank cars (49 CFR pt. 179). NPRM concerning thermal standards for new tank cars, and coupler retrofit, published July 21, 1980 (45 FR 48671). FR published January 26, 1981 (46 FR 8005). Originally scheduled to go into effect March 1, 1981. Effective date delayed until March 31, 1981 (46 FR 10706) for review under E.O. 12291. *Correction published March 30, 1981. Petitions for reconsideration to be answered by May 31, 1981 following extensive review of materials submitted. Response to petitions for reconsideration and resulting amendments published August 24, 1981 (46 FR 42678).*	L. A. Peterson, (202) 426-0897	*Action complete.*
Cryogenic Liquids (Docket No. HM-115).	Proposed standards and procedures for the transportation of cryogenic liquids. (NPRM published Mar. 8, 1979). (44 FR 12826) (49 CFR 172.101, 173.316). Hearing (Washington, D.C.) held on April 17, 1979. Comment period extended to October 9, 1979 to permit further consideration of issues raised in hearing.	P. Seay, (202) 755-4906	FR *September* 1981.
Definition of a Flammable Solid (Project 118-71).	Consideration of new standards for classifying a material as a flammable solid. Previously part of Docket HM-118, which was terminated May 22, 1980 (45 FR 34560) to permit publication of ANPRM.	C. Schultz, (202) 426-2311	ANPRM *May* 1981.
Radiation Exposure for Transportation Workers (Project 263-78).	Consideration of methods which will reduce radiation exposure levels to transportation workers (New Sections). Proposal converted to ANPRM to permit development of basic data.	R. Rawl, (202) 426-2311	ANPRM *November* 1981.
Review: Reclassification of Operating Procedures For Motor Vehicles (Project 261-78).	Proposed simplification and recodification of the existing operating procedures for transportation of hazardous materials by motor vehicles as prescribed in Part 177. Development of driver training requirements (formerly Project 270-78). (49 CFR pt. 177).	J. Fulnecky, (202) 426-1700	NPRM July 1981.

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

AGENDA

RSPA **Research and Special Programs Administration**

Nonsignificant Regulations—Continued

[Key to symbols: *New item. †Analysis or review being considered under Regulatory Flexibility Act. ●Regulation selected for priority review. *Italics:* New or changed information since last agenda]

Title	Summary	Contact	Earliest expected decision date
Use of Interested Inspectors for Cylinder Inspections (Docket No. HM-74A).	Proposal would result in ending of "Interested" inspectors to perform inspections and testing of domestically manufactured low pressure gas cylinders (NPRM published Mar. 17, 1976 (44 FR 11179). (49 CFR pt. 178). This docket has been withdrawn for further study of justification.	H. Mitchell, (202) 426-2075	Further action to be determined.
Specification for 55-gallon Plastic Drum (Project 278-78).	Proposal to authorize use of 55-gallon capacity plastic drums with certain hazardous materials. (49 CFR pt. 178).	M. Gigliotti, (202) 755-4906	NPRM *December* 1981.
Consolidation and Revision of Requirements for the Carriage of Explosives by Vessel (Project 279-78).	Proposed consolidation and revision of requirements for the carriage of military and commercial explosives by vessel and adoption of United Nations scheme for classification and compatibility of explosives for the water mode. (49 CFR pt. 176).	K. Norris, (202) 426-1577	NPRM *April 1982.*
Oxidizing Materials Definition, Criteria and Proposed Regulations (Project 160-71).	Development of new standards for classifying a material as an oxidizing material. (49 CFR pt. 173).	C. Schultz, (202) 426-2311	ANPRM June 1981.
Consolidation of Specifications and Establishment of Performance Standards for Specification Bags (Docket No. HM-153).	Consolidation of specifications and development of performance standards for specification bags. *Present data insufficient for rulemaking.*	M. Gigliotti, (202) 755-4906	*Withdrawn for further review.*
Organic Peroxide Requirements (Project 186-72).	Proposed listing of and packaging requirements for organic peroxides. (49 CFR Parts 172, 173). May be combined with Project 160-71, Oxidizing Materials Definition, Criteria and Proposed Regulations. (49 CFR pt. 173).	C. Schultz, (202) 426-2311	ANPRM *December* 1981.
Aluminum Cylinder Specification (Docket No. HM-176).	Development of specifications for aluminum cylinders. (49 CFR pts. 173, 178). NPRM published August 14, 1980 (45 FR 54097).	A. Mallen, (202) 755-4906	FR *September* 1981.
Matches (Project 281-78)	Proposed revision and simplification of requirements concerning matches (49 CFR pts. 172, 173).	H. Mitchell, (202) 426-2075	NPRM *November* 1981.
Marking and Record Retention for Cylinders (Docket No. HM-172).	Proposed revision and clarification of cylinder marking requirements; deletion of approval for changes to owner markings, user markings, and serial numbers; deletion of submission requirements for cylinder test reports and substitute record retention requirement. NPRM published Feb. 14, 1980 (45 FR 9960). (49 CFR pts. 173, 178).	D. Henry, (202) 426-2075	FR *December* 1981.
Fusion Welding of Multi-Unit Tank Car Tanks (Project 252-77).	Proposed requirements to authorize fusion welding of multi-unit tank car tanks. (49 CFR pt. 178).	A. Mallen, (202) 755-4906	NPRM *December* 1981.
Etiologic Agents (Docket No. HM-142).	Proposed new standards and procedures for the transportation of etiologic (i.e. disease-causing) agents. (49 CFR pt. 173).	G. Cushmac, (202) 426-2311	NPRM *September* 1981.
Requirements for Reporting Gas Incidents (Docket No. OPS-49).	The *proposed* reporting forms provide additional and more appropriate information about gas safety problems and require reports from certain systems not now covered. NPRM issued June 5, 1978 (43 FR 24478). Comment period was extended to July 7, 1978 (43 FR 30590). Supplemental Notice to NPRM of June 5, 1978, published March 5, 1979. (44 FR 12070) (49 CFR pt. 191).	R. Langley, (202) 426-2392	FR November 1981.

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

AGENDA

RSPA — Research and Special Programs Administration

Nonsignificant Regulations—Continued

[Key to symbols: *New item. †Analysis or review being considered under Regulatory Flexibility Act. ●Regulation selected for priority review. *Italics:* New or changed information since last agenda]

Title	Summary	Contact	Earliest expected decision date
Design and Construction of Pipelines Carrying Highly Volatile Liquids (Docket No. PS-56A).	Operation standards for pipelines carrying highly volatile liquids. ANPRM published February 5, 1979, (44 FR 6961). This rule requires the addition of water to ammonia in pipelines. (49 CFR pt. 195). NPRM published February 7, 1980 (45 FR 8323). FR published January 2, 1981 (46 FR 39). Originally scheduled to go into effect February 2, 1981. Effective date delayed until March 31, 1981 (46 FR 10706) *and again until June 30, 1981 (46 FR 20556)* for review under E.O. 12291. *After completion of the review under E.O. 12291, the FR was revoked retroactive to June 29, 1981. FR published July 27, 1981 (46 FR 38357).*	F. Robinson, (202) 426-2392	*Action complete.*
Retention of Radiographic Film	Recordkeeping requirement for radiographic film would be revoked for hazardous liquid pipelines (49 CFR pt. 195).	F. Robinson, (202) 426-2392	NPRM *September* 1981.
Placing Longitudinal Weld Seams in Upper Pipe Half (PS-66).	Proposal would require location of longitudinal weld seams in the upper half of pipe during construction of hazardous liquid pipelines. ANPRM published March 27, 1980, (45 FR 20142). (49 CFR pt. 195).	F Robinson, (202) 426-2392	NPRM *October* 1981.
Heat Treatment of Hard Spots in Steel Pipe. (PS-58).	Allowable temperature for heat treating hard spots in steel pipe would be increased. NPRM published September 13, 1979, (44 FR 53185). (49 CFR pt. 192).	W. Dennis, (202) 426-2392	FR *October 1981.*
Qualifying Components for Use in Gas Pipelines. (PS-64).	General criteria would be proposed for qualifying the use of pipeline components other than the pipe itself. NPRM published March 3, 1980 (45 FR 13783). (49 CFR pt. 192).	L. Furrow, (202) 426-2392	FR *October* 1981.
Transportation of Natural and Other Gas by Pipeline (PS-57).	Requirements for procedures and instrumentation for use in monitoring gas for odorants would be proposed. NPRM published February 22, 1979 (44 FR 10604). (49 CFR pt. 192).	W. Dennis, (202) 426-2082	FR *September* 1981.
Leak Survey (PS-62)	Present leak survey requirements would be amended in accordance with practices necessary for safety. (49 CFR pt. 192). NPRM published December 13, 1979 (44 FR 72201).	W. Dennis, (202) 426-2392	FR *October* 1981.
Interior Piping (PS-67)	The adequacy of existing standards with regard to safety problems concerning interior piping would be examined and new standards may be proposed. ANPRM published April 3, 1980 (45 FR 22118). (49 CFR pt. 192).	R. Langley, (202) 426-2392	NPRM *November* 1981.
Procedures To Guard Against Blasting Effects in Gas Pipelines.	Proposed standards requiring gas pipeline operators to have procedures to protect facilities affected by blasting. (49 CFR pt. 192).	L. Furrow, (202) 426-2392	NPRM *September* 1981.
Location, Size, and Operating Pressure of Pipelines (PS-61).	Operators would be required to maintain maps and records to identify the location, size, and operating pressure of all pipelines. ANPRM published November 29, 1979 (44 FR 68493). (49 CFR pt. 192).	R. Langley, (202) 426-2392	*NPRM August 1981.*
Hot Taps in Gas Pipelines (PS-60).	Operators would be required to identify a pipeline by pressure monitoring or other means before performing a hot tap on it. (49 CFR pt. 192). NPRM published November 29, 1979 (44 FR 68491).	R. Langley, (202) 426-2392	FR *September* 1981.
Excavation Damage (PS-59)	Operators would be required to participate in a program to prevent excavation damage to underground pipelines (49 CFR pt. 192). NPRM published November 15, 1979 (44 FR 65792).	R. Simmons, (202) 426-2082	FR *August* 1981.
Reporting Abnormal Operations at LNG Facilities.	Requirements for reporting abnormal operations at LNG facilities would be proposed. (49 CFR pt. 193).	L. Furrow, (202) 426-2392	ANPRM *August* 1981.

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

AGENDA

RSPA — Research and Special Programs Administration

Nonsignificant Regulations—Continued

[Key to symbols: *New item. †Analysis or review being considered under Regulatory Flexibility Act. ●Regulation selected for priority review. *Italics:* New or changed information since last agenda]

Title	Summary	Contact	Earliest expected decision date
Review: Line Markers on Navigable Waterways for Pipelines (PS-69).	The required number, size, and location of line markers along navigable waterways, including definition of "navigable waters" would be made more appropriate. (49 CFR pt. 192). *ANPRM published June 22, 1981 (46 FR 32287).*	R. Simmons, (202) 426-2082	NPRM *November* 1981.
Cargo Tank Corrosion (Project 285-79).	Consideration of the effects of corrosion to the structural integrity of cargo tanks. Would establish a prescribed test for the degree of corrosion of cargo tanks (49 CFR pt. 178).	A. Mallen, (202) 755-4906	NPRM August 1981.
Miscellaneous Hazardous Materials Communications Regulations (Project 289-79).	Development of miscellaneous proposals dealing with the communications regulations such as odorization of gas and availability of shipping papers to emergency response personnel. (49 CFR pt. 172).	L. Metcalfe, (202) 426-0656	NPRM *May 1982.*
Transportation of Wet Electric Storage Batteries (Docket No. HM-173).	Would establish new standards for transportation of wet cell electric storage batteries, and for wet cell battery equipped wheelchairs on passenger-carrying aircraft. Separated from Docket No. HM-166 due to public interest. NPRM published May 21, 1979 (44 FR 29503). Meeting announcement and request for comment published Feb. 28, 1980 (45 FR 13153). (49 CFR pt. 173). Meetings held on April 3 (Washington, D.C.) and April 16, 1980 (Denver, Colorado). Due to public interest and comments, a second NPRM will be published.	E. Mazzullo, (202) 426-2075	NPRM April 1981.
Reports of Leaks, and Federal Safety Standards.	Addressee for written leak and annual reports to be changed. Requirements for filing inspection and maintenance plans to be deleted. (49 CFR pts. 191, 192). *FR published July 20, 1981 (46 FR 97250). Effective July 20, 1981.*	L. Furrow, (202) 426-2392	*Action complete.*
Transportation of Liquids by Pipeline.	Safety standards for hazardous liquid pipelines to be reissued to comport with the Hazardous Liquid Pipeline Safety Act of 1979 (49 CFR pt. 195). *FR published July 27, 1981 (46 FR 38357). Effective July 27, 1981.*	E. Robinson, (202) 426-2392	*Action complete.*
Transportation of Hazardous Materials on Trailer-On-Flatcar (Docket No. HM-177).	Would establish standards for TOFC operations. Hearing announcement and request for comment published January 26, 1981 (46 FR 8055). (49 CFR pt. 174). *Docket HM-177 was established to resolve the TOFC problem area that arose from HM-167. MTB will leave HM-177 open while the problem is being resolved.*	R. Barlow, (202) 755-4906	*Further action to be determined.*
Air Transportation of Limited Quantities of Low Level Radioactive Materials; Exemption Renewal. *(Docket No. UM-149-c).*	To extend the limited exemption in Part 175 that provides for air transport of limited quantities of radioactive materials having very low radiation levels. (49 CFR pts. 172, 175). *NPRM published April 9, 1981 (46 FR 21202). FR published April 30, 1981 (46 FR 24184).*	T. Allan, (202) 426-2075	*Action complete.*
*Shipping Papers for Limited Quantities (Docket No. HM-166).	Proposed deletion of limited quantity radioactive materials detailed shipping paper requirements and associated marking modification. ANPRM published December 8, 1980 (45 FR 80843).	R. Rawl, (202) 426-2311	NPRM September 1981.
*Radiation Level Specifications Pt. 173 (49 CFR 173.393(j)).	Proposed rewrite of 49 CFR 173.393 (i) and (j) for clarity and enforceability.	W. Carriker, (202) 426-2311	NPRM September 1981.
*Private Carriers Licensed to use Radioactive Materials.	Proposed exceptions for private carriers who also are licensed to use radioactive materials in the course of their businesses. (49 CFR Pts. 173 and 177).	W. Carriker, (202) 426-2311	NPRM January 1982.
*Specification Packages of Type B and Fissile Radioactive Materials.	Advance notice to address feasibility of continued use and needed modifications of certain radioactive materials package designs (49 CFR Pt. 173).	R. Rawl, (202) 426-2311	ANPRM December 1981
*Quality Assurance for Radioactive Materials Shippers.	Advance notice to solicit comments on the desirability of establishing quality assurance program requirements for all shippers of radioactive materials. (49 CFR Pt. 173).	R. Rawl, (202) 426-2311	ANPRM March 1982.

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

REVIEW LIST

RSPA — Research and Special Programs Administration

Routine and Frequent Nonsignificant Regulations

[Key to symbols: *New item. †Analysis or review being considered under Regulatory Flexibility Act. ●Regulation selected for priority review. *Italics:* New or changed information since last Agenda]

Title	Summary	Contact	Earliest expected decision date
Conversion of Individual Exemptions to Regulations of General Applicability (Docket No. HM-139).	NPRM approximately every four months; with FR targeted approximately two months thereafter.	D. Raines, (202) 472-2726	April 1981-April 1982. Most recent FR undergoing Executive Order 12291 review.
Minor Regulatory Adjustments to Regulations of General Applicability (Docket No. HM-166).	NPRM approximately every four months; with FR targeted approximately two months thereafter.	D. Raines, (202) 472-2726	April 1981-April 1982. Most recent FR undergoing Executive Order 12291 review.
Matter Incorporated by Reference (hazardous materials). (Docket No. HM-22).	NPRM every six months; with FR targeted two months thereafter.	*L. Metcalf,* (202) 426-2075	April 1981-April 1982. Most recent FR undergoing Executive Order 12291 review.
Withdrawal of Certain Delegations of Authority to the Bureau of Explosives (Docket No. HM-163).	Prior responsibilities delegated to the Bureau of Explosives would be withdrawn in series of rulemaking actions. NPRM every three months; with FR targeted two months thereafter. *FR published April 16, 1981 (46 FR 22194). Correction published April 27, 1981 (46 FR 23461).*	D. Raines, (202) 472-2726	April 1981-April 1982. Most recent FR undergoing Executive Order 12291 review.
Matter Incorporated by Reference (pipelines).	Documents incorporated by reference would be updated to later published editions. NPRM every year, with FR six months later. Most recent FR published February 2, 1981 (46 FR 10157). Originally scheduled to go into effect March 4, 1981. *Became effective March 31, 1981.*	R. Simmons, (202) 426-2082	April 1981-April 1982.

OST — Office of the Secretary

Regulations selected for review	Reasons for selection	Contact	Target date
†● Minority Business Enterprise (Financial Assistance Program) (49 CFR Part 23).	This rule requires DOT financial assistance recipients to establish affirmative action plans to increase the use of minority and women-owned businesses. The rule is very controversial and is the subject of several lawsuits. *Upon review, a decision was made to propose a comprehensive revision of this rule. (An interim amendment for the contract award provision has already been issued.) This project has been added to the OST portion of the Agenda. During the review of these regulations the impact of the regulation on "small entities" as defined in the Regulatory Flexibility Act has been considered..*	Robert Ashby, (202) 426-4723	*Review completed.*

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

REVIEW LIST

OST — Office of the Secretary

[Key to symbols: *New item. †Analysis or review being considered under Regulatory Flexibility Act. ●Regulation selected for priority review. *Italics:* New or changed information since last Agenda]

Regulations selected for review	Reasons for selection	Contact	Target date
†● Nondiscrimination on the Basis of Handicap (49 CFR Part 27).	This rule requires all DOT-assisted programs to become accessible to handicapped persons. While many parts of the rule are not controversial, the part pertaining to mass transit programs is potentially very costly and is strongly opposed by the transit industry. The House and Senate passed separate versions of legislation last session that would have reduced the perceived impact of this rule. DOT is currently reviewing this rule. *The Urban Mass Transportation Administration submitted a legislative proposal to relieve the burden placed upon transit authorities. A Federal Court of Appeals decision in May held that section 504 did not authorize the existing transit requirements. DOT published an interim final rule altering the transit portion of the rule and plans to publish an NPRM proposing changes for the entire rule. This portion has been added to the OST portion of the Agenda.*	Robert Ashby, (202) 426-4723	*Review completed.*

USCG — U.S. Coast Guard

Regulations selected for review	Reasons for selection	Contact	Target date
Charges for Duplicate Medals and Sales of Personal Property, Equipment or Services and Rental (33 CFR 1.26).	Length of time since last evaluated: changing economic factors. *No project being initiated at this time.*	Mr. A. Bell, (202) 426-1863	*Action complete.*
Agency regulations regarding the Coast Guard Reserve program (33 CFR pt. 8).	Length of time since last evaluated and need to reflect changed procedures. *No project being initiated at this time.*	Mr. Cotter, (202) 426-2350	*Action complete.*
Boating Safety: Equipment Requirement Personal Flotation Devices (33 CFR 175.15).	Length of time since last evaluated; Research and Development project initiated to determine need for carriage regulations revision.	LCDR Schmect, (202) 426-4176	*Action complete. Regulatory project to commence.*
Boats and Associated Equipment: Safe Powering (33 CFR pt. 183, subpart D).	Length of time since last evaluated; standards may not be effective for all boats to which these regulations apply. *No project to be initiated at this time.*	Mr. L. Gray, (202) 426-4027	*Action complete.*
Boats and Associated Equipment: Flotation Standards (33 CFR pt. 183).	Length of time since last evaluated; standards may be limited in applicability. *No project to be initiated at this time.*	Mr. L. Gray, (202) 426-4027	*Action complete.*
Licensing of Merchant Seamen	Reporting requirements associated with licensing may be a burden for the public. *Regulation project to be initiated.*	CAPT Hand, (202) 426-1500	*Action complete.*
Vessel Documentation	These regulations contain public reporting requirements which have been in effect for many years and should be reviewed. *Regulatory project (CGD 80-107) initiated.*	Mr. Yglesias, (202) 426-1494	*Action complete.*
Oil Transfer and Oil Pollution	These regulations may contain overlapping reporting requirements that could be eliminated. *The Coast Guard is undertaking a number of comprehensive regulatory reviews under the provisions of E.O. 12291 and the Regulatory Flexibility Act. As a result, this routine review will not be completed.*	CAPT Corbett, (202) 426-2010	*Withdrawn.*
● Puget Sound Vessel Traffic Service Rule (33 CFR Part 161, Subpart B; App. A).	This interim rule prohibits oil tankers weighing more than 125,000 dead weight tons (DWT) from entering Puget Sound. This interim rule took effect in 1978. The purpose of the regulation was to protect against environmental harm from oil or polluting material spills that result from vessel damage, destruction and loss. This interim rule has been extremely controversial. It is favored by environmentalists and opposed by oil industry and shipping groups. Presently, tests are being conducted by the Coast Guard, in the area, to determine the risks of tanker spillage.	Mr. D. *Ziegfield,* (202) *426-5116*	*September 1981.*

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

REVIEW LIST

USCG U.S. Coast Guard

[Key to symbols: *New item. †Analysis or review being considered under Regulatory Flexibility Act. ●Regulation selected for priority review. *Italics:* New or changed information since last agenda]

Regulations selected for review	Reasons for selection	Contact	Target date
● Marine Sanitation Devices on Vessels (33 CFR Part 159).	These regulations govern the design and construction of marine sanitation devices in accordance with the regulations and performance standards promulgated by the Environmental Protection Agency (EPA) under section 312 of the Federal Water Pollution Control Act. They also contain the procedures by which Coast Guard enforces its own and EPA standards pertaining to these devices. The purpose of the regulations is to eliminate the discharge of untreated sewage from vessels into the waters of the United States. This is one of the Coast Guard's most controversial regulations. The Coast Guard estimates the annual cost of the rule to be $100,000,000. The Coast Guard estimates the cost of retrofitting boats with these devices to be $1,000,000,000. The regulation is appropriate for review because of its cost and because of its unpopularity with boat owners. Any revision of the regulation, however, will require coordination with the EPA.	*LT Ives,* (202) *426-1927*	*December,* 1981.
● Documentation and Admeasurement of Vessels (46 CFR Subchapter G).	These regulations implement several very old vessel documentation laws. Those laws stipulate that commercial vessel owners must obtain documentation on their vessels from the Coast Guard. The implementing regulations are considered burdensome because they contain extremely heavy paperwork requirements. Until now, the annual public cost of documentation has been 750,000 person-hours of paperwork. However, the 96th Congress enacted legislation (P.L. 96-594) that will allow the Coast Guard to prescribe simplified documentation procedures that would eliminate a large portion of the paperwork requirements. This law will be effective on July 1, 1982.	Mr. J. Lewis, (202) 426-2192	*Review completed. NPRM to be issued, November 1981.*
● Pollution Prevention Regulations (33 CFR Part 157).	These regulations were promulgated pursuant to 46 U.S.C. 391a(7), (Port and Tanker Safety Act) (PTSA). The regulations require segregated ballast tanks, clean ballast tanks, and crude oil washing systems in various combinations for oil tankers. The purpose of the regulations is to prevent pollution. The PTSA also requires a regulation to be promulgated by January 1, 1986, that would require retrofitting of United States flag vessels of between 20-40,000 tons that are 15 years old or older with these pollution prevention systems. The Coast Guard initially calculates the cost will be $5-6 billion over a period of 20-30 years. These regulations should be reviewed because of their cost. Also there has been, in the past, some opposition from tank vessel owners. However, the PTSA is fairly specific in requiring certain pollution prevention systems and legislation may be needed.	Mr. J. Angelo, (202) 426-4432	*September 1981.*
● Vessel Reporting Requirements (33 CFR Part 161).	These regulations were also developed and promulgated pursuant to the PTSA. They require vessel owners to report their locations, arrivals and departures when carrying certain hazardous cargoes. The barge industry and certain boat owners in the past, have opposed these regulations. This regulation should be reviewed because of its controversy and impact on the barge and towing industry.	*LTJG Powers,* (202) *755-1354*	*September 1981.*
● Navigation Safety Regulations (33 CFR Part 164).	These regulations were promulgated pursuant to the PTSA (46 U.S.C. 391a). The implementing regulations require that commercial tank vessels carry dual radar systems and redundant (back-up) steering systems. The cost is estimated to be $50,000 per tank vessel on a one-time only basis. Again, the PTSA is fairly specific in its requirements, but a review is warranted because of controversiality with vessel owners and costs.	Mr. Tom *Falvey,* (202) *426-4958*	*September 1981.*

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

REVIEW LIST

USCG — U.S. Coast Guard

[Key to symbols: *New item. †Analysis or review being considered under Regulatory Flexibility Act. ●Regulation selected for priority review. *Italics:* New or changed information since last Agenda]

Regulations selected for review	Reasons for selection	Contact	Target date
†*Regulatory Flexibility Act Reviews.	In accordance with the Regulatory Flexibility Act (RFA) review plan published in the *Federal Register* of June 29, 1981 (46 FR 33404) the Coast Guard has deferred selecting any specific regulations for RFA review at this time. Instead, the Coast Guard is dividing its regulatory material into manageable units and determining which will require review under the RFA. Once the extent of the required RFA review is known, the Coast Guard will publish a specific review schedule.	Mr. Bruce Novak, (202) 426-1477	

FAA — Federal Aviation Administration

Regulations selected for review	Reasons for selection	Contact	Target date
●Rotorcraft Certification and Operating Rules (14 CFR Parts 27, 29, 91, and 127.	*This will include a review of new flight control and associated system airworthiness for rotorcraft. Previous notices covered the applicability of rotorcraft certification, instrument flight rules (IFR) certification, and the certification of anti-icing and deicing equipment. This review is based on a number of proposals discussed at the Rotorcraft Regulatory Review held December 10-14, 1979, in New Orleans, La., and the Rotorcraft regulatory Review Meeting held August 18-20, 1980, in Washington, DC.*	William J. Sullivan, (202) 755-8716	*January 1982.*
†●General Operating and Flight Rules (14 CFR Part 91).	*Part 91 is needed in order to prescribe the minimum safety standards for all classes of operators who operate within the aviation system. The legal basis for Part 91 is sections 313(a) and 601-610 of the Federal Aviation Act of 1958 (49 U.S.C. 1364(a) and 1421-1430) and Sec. 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)). This review is examining the need to reorganize and realign the air traffic and general operating rules to make them more understandable and easier to use. The present regulations reflect the many changes that have occurred in aviation since the first set of aviation regulations were promulgated almost 50 years ago. This review would reorganize the subparts, organize existing material into several new subparts, and utilize an improved numbering system to provide for the easier inclusion of future changes. Other improvements would be made by deleting redundancies, obsolete compliance dates, and making other minor changes. Phase I would recodify the regulation into 10 subparts to make it easier to use. This effort has basically been completed. In Phase II substantive changes would be made to each subpart to clarify the existing rules, simplify the language, delete obsolete rules, and consider proposals not included in other review programs. Additionally, Part 91 will be reviewed in accordance with Executive Order 12291 to reduce regulatory burdens on the public. The review plan will focus on Phase II and, to a large extent, will be dependent upon the results of the Phase I effort.*	William J. Sullivan, (202) 755-8716	*May 1982.*

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

REVIEW LIST

FAA — Federal Aviation Administration

[Key to symbols: *New item. †Analysis or review being considered under Regulatory Flexibility Act. ●Regulation selected for priority review. *Italics:* New or changed information since last Agenda]

Regulations selected for review	Reasons for selection	Contact	Target date
●Air Carrier Certification, Operating and Maintenance Rules (14 CFR Parts 121 and 135). *Elements of the review:* ●*Aircraft Requirements* ●*Manual Requirements* ●*Performance Limitations* ●*Airworthiness Requirements* ●*Instrument and Equipment Requirements* ●*Maintenance Requirements* ●*Airmen and Crewmember Requirements* ●*Training Programs* ●*Crewmember Qualifications* ●*Airplane Performance Operations Limitation* ●*Flight Time Limitations* ●*Flight Operations* ●*Dispatching and Flight Release Rules, Records, and Reports*	*To evolve a single air transportation regulation from Parts 121 (Air Carrier, Supplemental Air Carrier, and Commercial Operators of Large Aircraft) and 135 (Air Taxi Operators and Commercial Operators) which would embody aviation safety policy procedures rather than using several different regulations for this purpose. This would eliminate inconsistences within each rule which lends credence to the public complaint that the regulations too often are unduly complex, confusing, and difficult to understand. It would allow individual operators to conduct operations in the most efficient manner possible to meet established safety objectives and would reduce costs while retaining the highest level of safety.*	William J. Sullivan, (202) 755-8716	*March 1982.*
●Pilot Certification, Ground Instructor and Pilot School Rules (14 CFR Parts 61 and 141).	*Because of the expansion of the above reviews and due to resource constraints, action has been terminated on these reviews.*	William J. Sullivan, (202) 755-8716	*Action terminated.*
●Production and Quality Control System Rules (14 CFR Part 21).	....do	....do	*Action terminated.*
●Deregulation of Sport Aviation (14 CFR Parts 21 and 91).	....do	....do	*Action terminated.*
●Normal, Utility and Acrobatic Category Airworthiness Rules (14 CFR Part 23).	....do	....do	*Action terminated.*
●Repair Station Rules (14 CFR Part 145).	....do	....do	*Action terminated.*

FHWA — Federal Highway Administration

Regulations selected for review	Reasons for selection	Contact	Target date
	General Management and Administration		
State Internal Audit Responsibility (23 CFR pt. 12).	FHWA policy on minimization of redtape	Harvey Wood, (202) 426-0563	October 1981.
*Statement of Policy as to Administrative Action to be Taken in Instances of Irregularities (23 CFR Pt. 16).	The debarment policies of the FHWA are being reviewed to determine if revisions to their coverage and the specific administrative procedures employed are appropriate.	Hugh T. O'Reilly, (202) 426-0780	April 1982.
	Payment Procedures		
Bond Issue Projects (23 CFR pt. 140).	FHWA policy on minimization of redtape	J. E. Lewis, (202) 426-0562	April 1982.

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

REVIEW LIST

FHWA — Federal Highway Administration

[Key to symbols: *New item. †Analysis or review being considered under Regulatory Flexibility Act. ●Regulation selected for priority review. *Italics:* New or changed information since last agenda]

Regulations selected for review	Reasons for selection	Contact	Target date
	Civil Rights		
Construction Contract Equal Opportunity Compliance Procedures (23 CFR pt. 230, subpart D).	To revise and update policies and procedures and incorporate provisions of a Memorandum of Understanding between DOT/FHWA and the Department of Labor/Office of Federal Contract Compliance Programs relative to respective responsibilities under Executive Order 11246 and title 23. *This item is being withdrawn because it is incorporated in the priority review of 23 CFR Parts 200 and 230.*	Edward W. Morris, Jr., (202) 426-0471	*Action terminated.*
	Related agenda item on Review List—Engineering and Traffic Operations		
● Civil Rights Requirements (23 CFR Parts 200, 230).	These regulations carry out program and employment nondiscrimination requirements under Title VI of the Civil Rights Act of 1964, Executive Order 11246, and other authorities. These regulations have requirements that may overlap or duplicate other civil rights rules, and also contain a number of recordkeeping and reporting requirements that need scrutiny. An effort to consolidate some of the employment requirements of these rules with similar UMTA and FRA requirements has been underway for several months. Review of the portion of Part 230 dealing with contract compliance should be coordinated with the review of programs of the Office of Federal Contract Compliance (OFCCP) in the Department of Labor, since FHWA's requirements implement OFCCP requirements.	*Edward W. Morris, Jr., (202) 426-0471*	*October 1981.*
	Planning		
Public Road Mileage for Apportionment of Highway Safety Funds, Safer Off-System Roads Funds and Hazard Elimination Funds (23 CFR pt. 460).	To consider expansion of the existing regulation to include safer off system roads funds and hazard elimination funds; FHWA policy on minimization of redtape. *It is inappropriate to continue to consider expanding the existing regulation in light of anticipated congressional actions.*	D. W. Briggs, (202) 426-0199	Action terminated.
Appalachian Highway Procedures (23 CFR pt. 633, subpart B).	FHWA policy on minimization of redtape; recent legislative change; recent policy decisions by the Appalachian Regional Commission.	R. B. Puckett, (202) 426-0175	October 1981.
Federal-Aid Highway Systems (23 CFR pt. 470, subpart A).	FHWA policy on minimization of redtape, reflect amendments contained in the 1976 and 1978 Highway Acts. *In recognition of the Administration's present policy on highway systems, it is inappropriate to continue to consider system regulation changes.*	R. B. Puckett, (202) 426-0175	Action terminated.
	Engineering and Traffic Operations		
Required Contract Provisions—Federal-Aid Contracts (23 CFR pt. 633).	FHWA policy on minimization of redtape	K. L. Ziems, (202) 426-4847	*December* 1981.
Highway Construction Work to be Performed by Methods Other than Contract Awarded by Competitive Bidding (23 CFR pt. 635).	FHWA policy on minimization of redtape	K. L. Ziems, (202) 426-4847	*December* 1981.
Railroad Highway Projects (23 CFR pts. 140 and 646).	FHWA policy on minimization of redtape. *Review completed—see Nonsignificant portion of Agenda.*	J. A. Carney, (202) 426-0104	*Action complete.*
Authorization to Proceed to Physical Construction (23 CFR pt. 635).	FHWA policy on minimization of redtape	K. L. Ziems, (202) 426-4847	*December* 1981.
Advance Construction of Federal-Aid Projects (23 CFR pt. 630).	FHWA policy on minimization of redtape	K. C. Kippley, (202) 426-0673	October 1981.
Motorist Aid Systems (23 CFR pt. 655).	FHWA policy on minimization of redtape	Robert Harp, (202) 426-0411	October 1981.
Traffic Surveillance and Control (23 CFR pt. 655).	FHWA policy on minimization of redtape	Robert Harp, (202) 426-0411	October 1981.

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

REVIEW LIST

FHWA — Federal Highway Administration

[Key to symbols: *New item. †Analysis or review being considered under Regulatory Flexibility Act. ●Regulation selected for priority review. *Italics:* New or changed information since last agenda]

Regulations selected for review	Reasons for selection	Contact	Target date
Project Agreements (23 CFR pt. 630, subpart C).	FHWA policy on minimization of redtape	L. Pettigrew, (202) 426-0334	October 1981.
Water Supply and Sewage Treatment at Safety Rest Areas (23 CFR pt. 650, subpart E).	FHWA policy on minimization of redtape	Stanley R. Davis, (202) 472-7690	April 1982.
Equal Employment Opportunity on Federal-Aid Highway Construction Contracts (23 CFR pt. 230, Subpart A).	FHWA policy on minimization of redtape. *This item is being withdrawn because it is incorporated in the priority review of 23 CFR Parts 200 and 230.*	K. L. Ziems, (202) 426-4847	Action terminated.
Maximum Weight of Trucks on Interstate System Highway; Variable Load Suspension Axles; Dummy Axles; Interpretation and Application of the Bridge Formula (23 CFR pt. 657).	This regulation would provide guidance on the use of Variable Load Suspension Axles and Dummy Axles in the Bridge Formula, which is used to determine the maximum weight of motor vehicles permitted to use the Interstate System highway in accordance with 23 U.S.C. 127.	David Oliver, (202) 426-0825	April 1982.
● Design Standards for Highways (23 CFR Part 625).	This rule, by incorporating by reference a number of other FHWA rules and industry consensus standards, prescribes the technical requirements for highway construction. Some states have complained that these standards are too rigid, and would prefer to set their own design standards. FHWA has proposed to take an approach of this kind for standards for the rehabilitation, restoration and resurfacing of highways other than freeways. The review is needed to establish whether a more flexible approach of this kind is appropriate for new construction as well. *It should also be noted that the Presidential Task Force on Regulatory Relief has identified this rule for regulatory review.*	Alvin R. Cowan, (202) 426-0312	*October* 1981.
● Buy America (23 CFR 635, 410).	This regulation implements the requirements of the Surface Transportation Assistance Act of 1978 that requires that preference be given to items produced in the United States in FHWA funded projects. The regulation has been the subject of considerable criticism and controversy. The controversy centers on the extent that the domestic steel industry deserves the protection afforded it under the statute, whether sufficient domestic supplies exist and the increased costs resulting from using more expensive domestic products. The FHWA regulation is also the subject of pending litigation.	Ken Ziems, (202) 426-4847	*October* 1981.
	Right-of-Way and Environment		
Landscape and Roadside Development (23 CFR pt. 752).	Consolidation and simplificaton of policies and procedures relating to highway landscaping and plant establishment, safety rest areas and information centers and systems, scenic strips in connection with Federal-aid highway projects, joint use and joint development, and access for the handicapped at Interstate rest area facilities. Response to comments on interim final regulations published May 5, 1978 (43 FR 19390).	Ken Rickerson, (202) 426-0314	*December 1981.*
General Policy and Definitions (23 CFR pt. 710).	FHWA policy on minimization of redtape	Douglas A. Wubbels, (202) 426-0142	*April 1982.*
State Highway Department Responsibilities (23 CFR pt. 710).	FHWA policy on minimization of redtape	Douglas A. Wubbels, (202) 426-0142	*April 1982.*
Reimbursement Provisions (23 CFR pt. 710).	FHWA policy on minimization of redtape	Douglas A. Wubbels, (202) 426-0142	April 1982.
Civil Rights (23 CFR pt. 710)	FHWA policy on minimization of redtape	Douglas A. Wubbels, (202) 426-0142	April 1982.
The Real Property Acquisition Function-Policy (23 CFR pt. 712).	FHWA policy on minimization of redtape	*Richard Moeller,* (202) 426-0142	April 1982.

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

REVIEW LIST

FHWA — Federal Highway Administration

[Key to symbols: *New item. †Analysis or review being considered under Regulatory Flexibility Act. ●Regulation selected for priority review. *Italics:* New or changed information since last agenda]

Regulations selected for review	Reasons for selection	Contact	Target date
The Acquisition Function-General Provisions and Project Procedures (23 CFR pt. 712).	FHWA policy on minimization of redtape	*Richard Moeller,* (202) 426-0142	April 1982.
The Acquisition Function-General Provisions and Project Procedures-Functional Replacement of Real Property in Public Ownership (23 CFR pt. 712).	FHWA policy on minimization of redtape	*Richard Moeller,* (202) 426-0142	April 1982.
The Acquisition Function-Negotiations (23 CFR pt. 712).	FHWA policy on minimization of redtape	*Richard Moeller,* (202) 426-0142	April 1982.
The Acquisition Function-Administrative Settlements, Legal Settlements, and Court Awards (23 CFR pt. 712).	FHWA policy on minimization of redtape	*Richard Moeller,* (202) 426-0142	April 1982.
Appraisal and Appraisal Review Policy (23 CFR pt. 720).	FHWA policy on minimization of redtape	Gerald Kennedy, (202) 426-0142	April 1982.
Property Management (23 CFR pt. 713).	FHWA policy on minimization of redtape	*Richard Moeller,* (202) 426-0142	April 1982.
Disposal of Right-of-Way (23 CFR pt. 713).	FHWA policy on minimization of redtape	*Richard Moeller,* (202) 426-0142	April 1982.
Junkyard Control and Abatement (23 CFR pt. 751).	FHWA policy on minimization of redtape	*Myron Laible,* (202) 246-0021	April 1982.
Relocation Assistance—General (23 CFR pt. 740).	FHWA policy on minimization of redtape	Robert Moore, (202) 426-0116	April 1982.
Relocation Assistance—Relocation Services (23 CFR pt. 740).	FHWA policy on minimization of redtape	*Gerald Starkweather, (202) 426-0117*	April 1982.
Relocation Assistance—Moving Payments (23 CFR pt. 740).	FHWA policy on minimization of redtape	*Gerald Starkweather, (202) 426-0117*	April 1982.
Relocation Assistance—Replacement Housing Payments (23 CFR pt. 740).	FHWA policy on minimization of redtape	*Gerald Starkweather, (202) 426-0117*	April 1982.
Relocation Assistance—Mobile Homes (23 CFR pt. 740).	FHWA policy on minimization of redtape	Robert Moore, (202) 426-0116	April 1982.
Relocation Assistance—Replacement Housing As Last Resort (23 CFR pt. 740).	FHWA policy on minimization of redtape	Robert Moore, (202) 426-0116	April 1982.
Land Service Facilities (23 CFR pt. 712).	FHWA policy on minimization of redtape	*Richard Moeller,* (202) 426-0142	April 1982.
Right-of-Way Revolving Fund (23 CFR pt. 712).	FHWA policy on minimization of redtape	*Richard Moeller,* (202) 426-0142	April 1982.
Management of Airspace (23 CFR pt. 713).	FHWA policy on minimization of redtape	*Richard Moeller,* (202) 426-0142	April 1982.
Mitigation of Environmental Impacts to Privately Owned Wetlands (23 CFR pt. 777).	Response to comments received on interim final rule published July 31, 1980 (45 FR 50728).	Charles DesJardins, (202) 426-9173	April 1982.
On-Premise Signs (23 CFR pt. 750).	FHWA policy on minimization of redtape	*Myron Laible,* (202) 245-0021	April 1982.

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

REVIEW LIST

FHWA

Federal Highway Administration

[Key to symbols: *New item. †Analysis or review being considered under Regulatory Flexibility Act. ●Regulation selected for priority review. *Italics:* New or changed information since last agenda]

Regulations selected for review	Reasons for selection	Contact	Target date
● Guidelines for the Development of Environmental Action Plans (23 CFR part 795).	This regulation requires FHWA recipients to write "action plans" describing how they will take environmental impacts into account and meet the other administrative requirements in the environmental area. Given newer and more specific rules concerning meeting environmental requirements and the relationship of environmental matters to transportation planning, it is questionable whether the action plan requirement is needed in its present form. The review is needed to determine whether the administrative burden imposed on grant recipients by this regulation can be eliminated as superfluous.	*Robert Bae,* (202) 426-1033	*October* 1981.
● Air Quality Guidelines/Environmental Impact Procedures (23 CFR part 770, 771).	These rules set forth procedures that implement, respectively, a DOT-EPA interagency agreement pursuant to the Clean Air Act amendments of 1977 and the 1978 Council on Environmental Quality (CEQ) regulations. In each case, DOT had little discretion to move beyond the agreement or the CEQ rules, and DOT could do little on its own to change the rules. The relevant part of the 1977 Clean Air Act amendments and the CEQ rules themselves are controversial and implementation of the DOT rules in Air Act amendments or CEQ regulations are warranted. Any changes will have to be made jointly with EPA, CEQ, and other interested agencies. *Future revisions to this rule will be considered based upon the results of the priority review of air quality requirements and a review of comments submitted to the docket.*	*FHWA:* Leon N. Larson (Environmental Impact Procedures) (202) 426-0351 *Jesse Chaves,* (Air Quality) (202) 426-4836 UMTA: Abbe Marner, (202) 472-7100	*October* 1981.
	Public Transportation		
Non-Urbanized Area Public Transportation (23 CFR pt. 825).	Update and simplify current procedures; respond to comments received on regulations published on December 13, 1978 (43 FR 58308).	FHWA Sheldon G. Strickland, (202) 426-0153 UMTA Kay Regan, (202) 472-7037	October 1981.
	Federal Motor Carrier Safety Regulations		
Disqualification of Drivers (traffic records) (49 CFR pt. 391, subpart B).	Consideration is being given to a proposal that would require the disqualification of Interstate truck and bus drivers based on the driver's traffic or accident record.	Gerald J. Davis, (202) 426-9767	*March 1982.*
The General Part of the Federal Motor Carrier Safety Regulations (FMCSR) (49 CFR pt. 390).	FHWA policy on minimization of redtape; to improve and simplify the regulations.	Gerald J. Davis, (202) 426-9767	*April 1982.*
The Need for First-Aid Kits on Buses (49 CFR pt. 393).	FHWA policy on minimization of redtape; determine the need to continue requiring first-aid kits on Interstate buses.	Gerald J. Davis, (202) 426-9767	*January 1982.*
Rear End Underride Protection (49 CFR pt. 393).	Improve rear end protection on heavy motor vehicles in conjunction with action taken by the National Highway Traffic Safety Administration on January 18, 1981.	Gerald J. Davis, (202) 426-9767	*April 1982.*
Selection of Motor Carriers for Survey (49 CFR pt. 385).	Publish criteria for selection of carriers for safety and hazardous materials surveys in response to a rulemaking petition.	*James Jeglum, (202) 426-1724*	October 1981.
Transportation of Migrant Workers (49 CFR pt. 398).	Improve procedures for ensuring safe transportation of migrant workers in interstate commerce.	Gerald J. Davis, (202) 426-9767	April 1982.
Retail Fertilizer Distribution Exemption (49 CFR pt. 390).	Exempt certain fertilizer distribution operations from the Federal Motor Carrier Safety Regulations in response to a rulemaking petition.	Gerald J. Davis, (202) 426-9767	

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

REVIEW LIST

FHWA — Federal Highway Administration

[Key to symbols: *New item. †Analysis or review being considered under Regulatory Flexibility Act. ●Regulation selected for priority review. *Italics:* New or changed information since last Agenda]

Regulations selected for review	Reasons for selection	Contact	Target date
†● Hours of Service (49 CFR Part 395).	This regulation, little changed from its original version published 40 years ago by the ICC, limits the number of hours interstate truck drivers can drive and be on duty in a given day or week. Its rationale is that long hours mean tired drivers, and that tired drivers are more likely to be in accidents. The principal monitoring and enforcement device for this rule is the "driver's log," in which drivers record their activities. FHWA has been gathering data on the relationship between driver fatigue and accidents, and on the economic impact of changing the rule, pursuant to a 7½ year-old rulemaking petition from a drivers' group to further restrict hours of service. Litigation involving this regulation is also pending. A review is needed to focus on the safety justification for the present limitation, economic effects of relaxing present requirements, and, most importantly, finding a less burdensome, more cost-effective enforcement mechanism than the driver's log. *This review also analyzed the impacts on small entities in accordance with the Regulatory Flexibility Act. The legal basis for this regulation is 49 U.S.C., 304 and 1655.*	Gerald J. Davis, (202) 426-9767	*October 1981.*
● Commercial Vehicle Inspection, Repair, and Maintenance (49 CFR part 396).	This regulation requires regular inspections of commercial vehicles for mechanical and other defects and calls for the preparation of various reports. The rule's rationale is to require operators to give sufficient attention to maintenance of their vehicles, since sloppy maintenance can cause accidents. The rule was controversial when it was promulgated in 1979. One focus of a review would be on ways of reducing recordkeeping and reporting requirements. *This review also analyzed the impacts on small entities in accordance with the Regulatory Flexibility Act. The legal basis for this regulation is 49 U.S.C., 304 and 1655.*	Gerald J. Davis, (202) 426-9767	*October 1981.*
†*Notification, Reporting, and Recording of Accidents (49 CFR Part 394).	This regulation establishes duties of motor carriers to make reports and keep records of accidents which occur during their operations. This regulation is needed to implement section 204(a) of the Interstate Commerce Act as amended (49 U.S.C. 304), relating to motor carrier safety concerned with accident reduction. (49 U.S.C. 304, 320, 1655). This review is being conducted in accordance with the Regulatory Flexibility Act.	Gerald Davis, (202) 426.9767	october 1982.

NHTSA — National Highway Traffic Safety Administration

Regulations selected for review	Reasons for selection	Contact	Target date
Side Door Strength (49 CFR 571.214).	Public Interest	Frank Ephraim, (202) 426-1574	Evaluation Report published 8/30/79. *Revised Report, 1981.* (44 FR 50878).
Exterior Protection (49 CFR 571.215 and 49 CFR pt. 581).	Cost and Public Interest	Frank Ephraim, (202) 426-1574	*Evaluation Report published April 1981.*
Fuel system Integrity (49 CFR 571.301).	Cost, Safety Benefits and Public Interest	Frank Ephraim, (202) 426-1574	*1982.*
School Bus Seating System (49 CFR 571.222).	Public Interest	Frank Ephraim, (202) 426-1574	*1982.*
Hydraulic Brakes (49 CFR 571.105).	Cost and Safety Benefits	Frank Ephraim, (202) 426-1574	1981.
Lamps, Reflective Devices and Associated Equipment (49 CFR 571.108).	Cost, Safety Benefits	Frank Ephraim, (202) 426-1574	1981.

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

REVIEW LIST

NHTSA National Highway Traffic Safety Administration

[Key to symbols: *New item. †Analysis or review being considered under Regulatory Flexibility Act. ●Regulation selected for priority review. *Italics:* New or changed information since last agenda]

Regulations selected for review	Reasons for selection	Contact	Target date
Head Restraints (49 CFR 571.202).	Costs	Frank Ephraim, (202) 426-1574	1981.
Seating Systems (49 CFR 571.207).	Costs	Frank Ephraim, (202) 426-1574	*1983.*
Child Seating Systems (49 CFR 571.213).	Public Interest	Frank Ephraim, (202) 426-1574	*1983.*
Occupant Protection (49 CFR 571.208).	Cost, Safety Benefits and Public Interest	Frank Ephraim, (202) 426-1574	*To be determined.*
Impact Protection for the Driver from the Steering Control System (49 CFR 571.203) and Steering Control Rearward Displacement (49 CFR 571.204).	Safety Benefits	Frank Ephraim, (202) 426-1574	Evaluation Report published January 26, 1981 (46 FR 8066).
Windshield Glazing Materials (49 CFR 571.205).	Costs, Safety Benefits	Frank Ephraim, (202) 426-1574	1981.
Windshield Mounting (49 CFR 571.212).	Costs, Safety Benefits	Frank Ephraim, (202) 426-1574	1981.
● Passenger Car Fuel Economy (49 CFR Part 531).	This regulation sets fleet fuel economy standards for model years 1982-84. It was costly and controversial. The estimated capital cost to the auto industry to fully implement the rule was $2,050 million with an average added cost per vehicle of $95. (But most of these capital costs have already been incurred.) NHTSA estimates that over the life of the affected vehicles 39 billion gallons of gasoline ($319 per car) will be saved. *NHTSA's review determined that this regulation is no longer controversial since manufacturers plan to exceed the standards as a result of strong market demand for fuel efficient vehicles.*	Ellen Kranidas, (202) 426-1600	*Review completed.*
● Light Truck Fuel Economy (49 CFR Part 533).	These regulations require light truck manufacturers to meet minimum annual standards for fleet fuel economy for model years 1982-85. They were costly and have also been controversial. To meet the standards it is estimated that the industry will have to spend $4,800 million with an additional average cost per vehicle of $169; however, most of the industry costs would probably result even without a standard due to market forces. NHTSA estimates that over the life of the affected vehicles 11.2 billion gallons of gasoline ($1,770 per truck) will be saved. *NHTSA's review determined that this regulation is no longer controversial since manufacturers plan to exceed the standards as a result of strong market demand for fuel efficient vehicles.*	Ellen Kranidas, (202) 426-1600	*Review completed.*
● Automatic Occupant Protection (49 CFR 571.208).	This regulation is controversial and costly. If the regulation is implemented as currently planned, the capital costs and recurring costs to the auto industry are estimated to be several hundred million dollars. *NHTSA has published an NPRM that proposes to modify or rescind this regulation. See entry under Significant Regulations: Major entitled "Occupant Impact Protection"*	Ellen Kranidas, (202) 426-1600	*Review completed. Rulemaking underway.*
● Bumper Standard (49 CFR 571.215 and 581).	The current requirement that passenger car bumpers withstand impacts at speeds up to 5 mph has been controversial. It has been the focus of a number of legislative hearings. Industry objections include cost and concerns about added weight and fuel consumption. Recurring costs of up to *$650* million have been associated with the rule. *NHTSA plans to propose modifications to the standard's requirements. See entry under Significant Regulations: Other, entitled "Bumper Standard".*	*Ellen Kranidas, (202) 426-1600*	*Review completed. Action to publish evaluation report complete. NPRM in this area September/October 1981.*
● Air Brake Systems (49 CFR 571.121).	*Some of this standard, i.e., the 60 mph stopping distance and antilock requirements, was withdrawn as a result of a 1978 court decision. The rest of the rule is under continuing review, but not as part of the priority review process.*	Frank Ephraim, (202) 426-1576	*Review completed.*

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

REVIEW LIST

NHTSA National Highway Traffic Safety Administration

[Key to symbols: *New item. ‡Analysis or review being considered under Regulatory Flexibility Act. ●Regulation selected for priority review. *Italics:* New or changed information since last Agenda]

Regulations selected for review	Reasons for selection	Contact	Target date
● Uniform Tire Quality (49 CFR 571.104).	The regulations in question require manufacturers to grade tires for tread wear, traction, and temperature. They are controversial. The manufacturers claim that the grading system is not reliable and therefore potentially misleading and confusing. *NHTSA plans to propose modifications to the regulations' requirements. See entry under Nonsignificant Regulations entitled "Uniform Tire Quality Grading"*	Frank Ephraim, (202) 426-1574	Review completed. Rulemaking to modify. 1981.
● Head Restraints (49 CFR 571.202).	This regulation, which was promulgated in 1969, is designed to reduce the frequency and severity of neck injuries in passenger car accidents. It is estimated that the rule requires a recurring investment of $130 million (an additional cost of $19 per vehicle). A review of the rule is currently under way.	Frank Ephraim, (202) 426-1574	1981.
● Side Impact Protection (49 CFR 571.214).	This regulation provides minimum standards for side door crash resistence for passenger cars under static test conditions. NHTSA estimates that the standard saves 2,800 lives and averts 7,000 injuries a year. A recurring cost of $300 million (an additional cost of $38 per vehicle) is associated with the requirement. An initial review of this regulation, originally promulgated in 1974, was completed in 1979.	Frank Ephraim, (202) 426-1574	1981.
● Light Truck Hydraulic Brakes (49 CFR 571.105).	This regulation applies requirements similar to passenger car standards for minimum stopping distances and parking brakes to light trucks and vans. Total costs for complying with the requirements of the standard will be $10.2 million. *In response to petitions for reconsideration, NHTSA plans to modify this regulation's requirements.*	Ellen Kranidas, (202) 426-1600	*Review completed. Rulemaking to modify. 1981.*
● Seat Belt Comfort and Convenience (49 CFR 571.208).	This regulation will provide for several changes in seat belt construction that are intended to increase usage. It is controversial but the costs are limited. *In response to petitions for reconsideration, NHTSA plans to modify this regulation's requirements. See entry under Nonsignificant Regulations entitled "Seatbelt Assemblies"*	Ellen Kranidas, (202) 426-1600	*Review completed. Rulemaking to modify. November 1981.*
● Fields of Direct View (Docket No. 70-7).	*This regulation would have provided minimal requirements of visibility from automobiles, including requirements for the size of passenger car pillars blocking forward and rear views, the forward field of vision, and light transmittance through auto windows. Based on information submitted in petitions for reconsideration, the agency revoked the standard because of the minor and unquantifiable safety benefits, the failure of the extended effective date to avoid affecting a significant number of models and imposing substantial costs, and the opportunity to address several standard No. 128 objectives through rearview mirror rulemaking. See entry under Nonsignificant Regulations entitled "Fields of Direct View"*	Ellen Kranidas, (202) 426-1600	*Review completed. Standard revoked June 1981. Revocation of standard undergoing reconsideration.*
● Theft Protection (49 CFR 571.114).	*This regulation would have amended the existing standard for passenger cars to prevent the inadvertent activation of the steering wheel lock while the vehicle is in motion and extended all requirements of the amended standard to trucks and vans. In response to petitions for reconsideration, the agency deleted the new provisions for passenger cars and exempted walk-in vans from all requirements and open-body type vehicles with readily removable or no doors from the key-in-ignition warning requirements. See entry under Nonsignificant Regulations entitled "Theft Protection"*	Ellen Kranidas, (202) 426-1600	*Review complete. Standard modified June 1981.*

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

REVIEW LIST

NHTSA **National Highway Traffic Safety Administration**

[Key to symbols: *New item. †Analysis or review being considered under Regulatory Flexibility Act. ●Regulation selected for priority review. *Italics:* New or changed information since last agenda]

Regulations selected for review	Reasons for selection	Contact	Target date
†*Occupant Crash Protection (49 CFR 571.208).	This regulation specifies performance requirements for the protection of vehicle occupants in crashes. The purpose of the regulation is to reduce the number of deaths and the severity of injuries to vehicle occupants. This safety standard was established under sections 103 and 119 of the National Traffic and Motor Vehicle Safety Act of 1966. A review has determined that the existing rule will have minimal effects on small entities, and therefore a Regulatory Flexibility Analysis (RFA) is not required for either the existing rule or the current rulemaking action. See entry under Significant Regulations: Major entitled "Occupant Impact Protection"	Ellen Kranidas, (202) 426-1600	Review completed. RFA not required.
†*Bumper Standard (49 CFR 581).	This regulation establishes requirements for the impact resistance of vehicles in low speed front and rear collisions. The purpose of the regulation is to reduce physical damage to the front and rear ends of passenger motor vehicles from low speed collisions. This standard was established under the Motor Vehicle Information and Cost Savings Act of 1972.	Ellen Kranidas, (202) 426-1600	*September/October 1981.*
†*Fields of Direct View (49 CFR 571.128).	This standard has been revoked and therefore no RFA is required. See entry under Nonsignificant Regulations entitled "Fields of Direct View".	Ellen Kranidas, (202) 426-1600	Review withdrawn. Standard revoked June 1981. Revocation of standard undergoing reconsideration.
†*Tire Identification and Record Keeping (49 CFR 574).	Sets forth the method by which manufacturers, brand name owners, and retreaders identify motor vehicle tires and maintain and report records of tire purchases. Its purpose is to facilitate notification to purchasers of defective or nonconforming tires, pursuant to section 113 of the National Traffic and Motor Vehicle Safety Act.	Ellen Kranidas, (202) 426-1600	October 1981.
†*Speedometers and Odometers (49 CFR 571.127).	Establishes requirements for the installation of speedometers and odometers in motor vehicles, limits the speed which can be indicated on a speedometer; and requires that odometers be tamper-resistant. An NPRM is being prepared to rescind the standard. See entry under Nonsignificant Regulations entitled "Speedometers and Odometers.".	Ellen Kranidas, (202) 426-1600	October 1981.
†*Theft Protection (49 CFR 571.114).	Specifies requirements for passenger car theft protection to reduce the incidence of accidents resulting from unauthorized use, pursuant to sections 103 and 119 of the National Traffic and Motor Vehicle Safety Act.	Ellen Kranidas, (202) 426-1600	October 1981.
†*Tire Selection and Rims (49 CFR 571.110).	Specified requirements for passenger car tire selection to prevent tire overloading pursuant to sections 103 and 119 of the National Traffic and Motor Vehicle Safety Act.	Ellen Kranidas, (202) 426-1600	October 1981.
†*Uniform Tire Quality Grading System (49 CFR 575.104).	Requires motor vehicle and tire manufacturers and tire brand name owners to provide information indicating the relative performance of passenger car tires in the areas of treadwear, traction, and temperature resistance. Its purpose is to aid the consumer in making an informed choice in the purchase of passenger car tires, pursuant to section 203 of the National Traffic and Motor Vehicle Safety Act.	Ellen Kranidas, (202) 426-1600	December 1981.
†*Side Door Strength (49 CFR 571.214).	Specifies strength requirements for side doors of a passenger car to minimize the safety hazard caused by intrusion into the passenger compartment in a side impact accident, pursuant to sections 103 and 119 of the National Traffic and Motor Vehicle Safety Act.	Ellen Kranidas, (202) 426-1600	December 1981.
†*Child Restraint Systems (49 CFR 571.213).	Specifies requirements for child restraint systems used in motor vehicles. Its purpose is to reduce the number of children killed or injured in motor vehicle crashes, pursuant to sections 103 and 119 of the National Traffic and Motor Vehicle Safety Act.	Ellen Kranidas, (202) 426-1600	March 1982.

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

REVIEW LIST

NHTSA — National Highway Traffic Safety Administration

[Key to symbols: *New item. †Analysis or review being considered under Regulatory Flexibility Act. ●Regulation selected for priority review. *Italics:* New or changed information since last Agenda]

Regulations selected for review	Reasons for selection	Contact	Target date
†*Lamps, Reflective Devices and Associated Equipment (49 CFR 571.108).	Specifies requirements for original and replacement lamps, reflective devices, and associated equipment necessary for signaling and for the safe operation of motor vehicles during darkness and other conditions of reduced visibility, pursuant to sections 103 and 119 of the National Traffic and Motor Vehicle Safety Act.	Ellen Kranidas, (202) 426-1600	March 1982.
†*Fuel System Integrity (49 CFR 571.301).	Specifies requirements for the integrity of motor vehicle fuel systems. The purpose of the regulation is to reduce deaths and injuries occurring from fires that result from fuel spillage during and after motor vehicle crashes, pursuant to sections 103 and 119 of the National Traffic and Motor Vehicle Safety Act.	Ellen Kranidas, (202) 426-1600	March 1982.
†*School Bus Passenger Seating and Crash Protection (49 CFR 571.222).	Establishes occupant protection requirements for school bus passenger seating and restraining barriers. Its purpose is to reduce the number of deaths and the severity of injuries that result from the impact of school bus occupants against structures within the vehicle during crashes and sudden driving maneuvers, pursuant to sections 103 and 119 of the National Traffic and Motor Vehicle Safety Act.	Ellen Kranidas, (202) 426-1600	June 1982.
†*Hydraulic Brake Systems (49 CFR 571.105).	Specifies requirements for hydraulic brakes and associated parking brake systems. The purpose of the regulation is to insure safe braking performance under normal and emergency conditions, pursuant to sections 103 and 119 of the National Traffic and Motor Vehicle Safety Act.	Ellen Kranidas, (202) 426-1600	June 1982.
†*Head Restraints (49 CFR 571.202).	Specifies requirements for passenger car head restraints to reduce the frequency and severity of neck injuries in rear-end and other collisions pursuant to sections 103 and 119 of the National Traffic and Motor Vehicle Safety Act.	Ellen Kranidas, (202) 426-1600	June 1982.

UMTA — Urban Mass Transportation Administration

Regulations selected for review	Reasons for selection	Contact	Target date
*Public Transportation to Non-Urbanized Areas.	Update and simplify current procedures; respond to comments received on the regulations published on December 13, 1978 (43 FR 58308).	*UMTA:* Kay Regan, (202) 472-7037 *FHWA: Sheldon G. Strickland, (202) 426-0153*	October 1981.
†*Charter Bus Regulations	Continuing controversy. *Information required by the Regulatory Flexibility Act is found in entry under Non-Significant Regulations.*	Ernesto Fuentes, (202) 426-1906	*Further action to be determined.*
*Public Hearing Requirements for Section 5(i)(3) of the UMT Act of 1964, as amended.	Continuing controversy	Charlotte Adams, (202) 472-6997	*Further action to be determined.*
†● Buy America Regulations (49 CFR Part 660).	This regulation implements the requirements of the Surface Transportation Assistance Act of 1978 that requires that preference be given to items produced in the United States in UMTA funded projects. The regulation has been subject to considerable controversy centering on the extent that domestic industry should be protected and the increased costs resulting from using more expensive domestic products. UMTA believes this regulation can increase the cost of capital purchases up to 10%. (UMTA currently has a $2 billion capital grant program.) *Legal basis for this regulation is found in 49 U.S.C. 1602 note; P.L. 95-599, Section 401.*	John J. Collins, (202) 426-1906	*January 1982.*

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

REVIEW LIST

UMTA — Urban Mass Transportation Administration

[Key to symbols: *New item. †Analysis or review being considered under Regulatory Flexibility Act. ●Regulation selected for priority review. *Italics:* New or changed information since last Agenda]

Regulations selected for review	Reasons for selection	Contact	Target date
*Claims Under the Federal Claims Collection Act (49 CFR pt. 603).	UMTA policy to streamline the grant process and reduce red tape.	Colleen Weule, (202) 426-1936	June 1982.
†*School Bus Operations (49 CFR pt. 605).	UMTA is reviewing this regulation as part of its overall effort to examine and evaluate the role of private enterprise in the UMTA program. The regulation is needed to provide guidelines under which recipients of UMTA funds can conduct school bus operations. This requirement is to implement Section 3(g) of the Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1601).	Ernesto Fuentes, (202) 426-1906	June 1982.
*Transportation for Elderly and Handicapped (49 CFR pt. 609).	UMTA is reviewing this regulation in conjunction with the Department's review of the DOT regulation on Nondiscrimination on the Basis of Handicap (49 CFR pt. 27). DOT issued an interim final rule on this topic on July 20, 1981 (46 FR 37488). The comment period closed on September 18, 1981.	Mary Anderson, (202) 426-4055	November 1981.
*Environmental Impact and Related Procedures (49 CFR pt. 622).	UMTA policy to streamline the grant process and reduce red tape. This is a joint UMTA/FHWA regulation.	Abbe Marner, (202) 472-7100	October 1981.
*Uniform System of Accounts and Records and Reporting System (49 CFR pt. 630).	UMTA policy to reduce red tape, and to improve the effectiveness and increase the timeliness of information gathering and dissemination.	Donald Chapman, (202) 426-9157	June 1982.

FRA — Federal Railroad Administration

Regulations selected for review	Reasons for selection	Contact	Target date
Reducing Reporting and Recordkeeping Burdens (49 CFR Parts 228, 258, 260, and 268.	FRA has selected the following regulations to be reviewed to determine whether the substantial reporting and recordkeeping burdens they impose on the public, including small businesses, can be decreased or eliminated.		December 1981.
	Part 228—Hours of Service for Railroad Employees	Part 228—Mr. Lawrence I. Wagner, (202) 426-8836	
	Part 258—Regulations Governing Section 505 of the Railroad Revitalization and Regulatory Reform Act of 1976, as amended.	Parts 258, 260, and 268—Mr. Lawrence A. Friedman, (202) 426-7737	
	Part 260—Regulations Governing Section 511 of the Railroad Revitalization and Regulatory Reform Act of 1976, as amended.		
	Part 268—Merger and Consolidation Procedures		
● Power Brake Rules (49 CFR Part 232).	The present rules prescribe a series of operational air brake inspections and tests as well as a series of single car inspection, testing and repair requirements that are performed in shops and on repair tracks. Except for the addition of section 232.19 in 1972 to accommodate run-through trains operated by more than one railroad, the Power Brake Rules have not been changed since they were issued in 1958. Because of subsequent changes in railroad operations and technological advances, a major restructuring of these rules to make them consonant with the present railroad operating environment and to provide more flexibility in achieving safety and operating efficiency is needed. FRA roughly estimates the current requirements could cost the railroad industry more than $100 million each year.	Edward F. Conway, (202) 426-8836	*September* 1981.

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

REVIEW LIST

FRA — Federal Railroad Administration

[Key to symbols: *New item. †Analysis or review being considered under Regulatory Flexibility Act. ●Regulation selected for priority review. *Italics:* New or changed information since last Agenda]

Regulations selected for review	Reasons for selection	Contact	Target date
● Regulations on Hours of Service of Railroad Employees (49 CFR Part 228).	The Hours of Service Act prescribes the maximum hours that certain railroad employees, such as train crew members, train dispatchers, tower operators and signal maintainers, may remain on duty within any 24-hour period. The Act sets out employee working conditions and defines "time on duty" and "designated terminals." 49 CFR Part 228 contains regulations necessary to implement the Act.	J. Thomas Furphy, (202) 426-8256	*Further action to be determined.*
● Movement of Defective Cars	The Safety Appliance Act (49 U.S.C. 13) imposes unduly severe statutory restrictions on the movement of individual cars with defective safety appliances (e.g., handholds, ladders, sill steps, uncoupling levers) and defective brakes. For example, cars with these defects may only be moved for purposes of repair to the nearest repair point on the same railroad that discovered the defect. Many of these statutory requirements are counterproductive from the standpoint of safety and increase accident possibilities. They also result in considerable delays for shippers and expense to the railroad industry. Elimination of these statutory requirements would enable cars with these defects to be handled in the same manner as cars with other defects now covered in 49 CFR Part 215. Amendments to these statutory requirements may necessitate regulatory revisions. FRA roughly estimates that these statutory requirements could cost the railroads more than $25 million each year.	J. Thomas Furphy, (202) 426-8285	*Further action to be determined.*
†*Regulatory Flexibility Act Reviews.	In accordance with the Regulatory Flexibility Act (RFA) review plan published in the *Federal Register* on June 30, 1981 (46 FR 33693), FRA has not selected any specific regulations for RFA review at this time. Instead, FRA has established a plan to develop regulatory definitions of the criteria used in the RFA for the selection of regulations to be reviewed. A notice was published in the *Federal Register* on August 3, 1981 (46 FR 39461) initiating a safety inquiry to evaluate the effectiveness of the safety regulatory program as it applies to small railroads.	Lawrence I. Wagner, (202) 426-8836	

RSPA — Research and Special Programs Administration

Regulations selected for review	Reasons for selection	Contact	Target date
Shippers-General Requirements for Shipments and Packagings (49 CFR pt. 173) (includes the following items):			
Charcoal (49 CFR 173.162)	Due to inquiries requesting an interpretation of this section and to eliminate the possibility of noncompliance based on a misunderstanding of the requirements, it was thought there was a need to simplify and clarify present standards. *No further review contemplated at this time.*	*T. Allen, (202) 426-2075*	*Action Terminated.*
Flammable Solid; Definitions Criteria (49 CFR 173.150).	Inquiries; lack of objective regulatory standard. See Definition of a Flammable Solid (Project 118-71).	*M. Morris, (202) 426-2075*	*May* 1981.
Toxic Materials; Definitions, Criteria, and Proposed Regulations (49 CFR 173.326, 173.343).	Need for quantitative criteria	*G. Cushmac, (202) 426-2311*	*December* 1981.
Hydrostatic Testing (49 CFR pt. 195, subpart E).	*Examine* need to clarify present standards as indicated by extent of interpretation. *No rulemaking action found warranted.*	F Robinson, (202) 426-2392	*Review completed.*
Welding Requirements (49 CFR pt. 195, subpart D).	Present requirements to be examined in light of changes in technology. *No further review contemplated at this time.*	B. Gloe, (202) 426-2082	*Action Terminated.*

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

REVIEW LIST

RSPA — Research and Special Programs Administration

[Key to symbols: *New item. ‡Analysis or review being considered under Regulatory Flexibility Act. ●Regulation selected for priority review. *Italics:* New or changed information since last agenda]

Regulations selected for review	Reasons for selection	Contact	Target date
Petroleum Gas Systems (49 CFR pt. 192).	This review has been merged into the Master Meter and LPG Distribution Systems review.		
Master Meter and LPG Distribution Systems (49 CFR pt. 192).	*Examine* need to simplify current standards for small systems such as master meter systems. *No rulemaking action found warranted.*	R. Langley, (202) 426-2082	*Review completed.*
● Highway Routing of Radioactive Materials (HM-164).	The Department recently issued—to become effective February 1, 1982—a regulation establishing a Federal system for selecting routes for truck carriage of radioactive materials. Basically, interstate highways, and beltways around urbanized areas, where available, must be used. States, after consultation with affected local governments, may designate substitutes for interstate highway segments, if the substitutes are safer. State and local laws inconsistent with the Federal system will be preempted. This aspect of the regulation generated a great deal of controversy.	J. C. Allen, (202) 472-2726	*September 1981.*
● Monitoring of External Corrosion Control (49 CFR 192.465(a)).	Gas pipeline operators currently are required annually to check the performance of cathodic protection systems which serve to control metal corrosion and extend the useful life of pipelines. This is costly for gas mains under city streets in close proximity to other underground utilities. It is also controversial because some in the industry contend that it is not possible to get valid performance data under conditions which exist in cities; hence, there is no return on the expense of complying with the regulation. The Department is conducting a study to verify this regulation's testing techniques. Annual compliance costs for this regulation are approximately $80 million.	*P. Cory, (202) 426-2082*	*March 1982.*
● Line Markers for Mains and Transmission Lines (49 CFR 192.707(a) *and 195.410*).	These regulations require markers to be placed at each crossing of a navigable waterway by a pipeline. However, benefits from the regulation may be questionable because some navigable waterways do not carry commercial traffic. Costs associated with the rule are high (installation cost of $100 million for all navigable waterways) because the signs, to be effective, must be large. *ANPRM published June 22, 1981 (46 FR 32287).*	R. Simmons, (202) 426-2392	*October* 1981.
● Repair and Removal of Defects (49 CFR 192.245 and 195.232).	These rules, which specify what repairs are permitted on defective pipe welds, may be more restrictive than required for safety. Less stringent repair methods have been shown to be safe under most conditions. Changing the rules to allow some repairs of defective welds, rather than total removal, could save industry about $20 million per year.	W. Gloe, (202) 426-2082	*September* 1981.
● Data Collection and Reporting: *Gas Pipeline Reporting* (49 CFR Part 191).	The pipeline industry questions the usefulness to government and industry of the reports of leaks required by these regulations. While any safety enforcement program requires recordkeeping in order to operate, it is possible to be more specific, and therefore less burdensome, in identifying problems for which reporting and recordkeeping are useful. Annual costs of the current regulation are more than $6 million. *Data Collection and Reporting: Liquid Pipeline Nondestructive Weld Tests (49 FR 195.234(g)) appears as a separate Review List entry.*	*G. Levin, (202) 472-1024*	*October* 1981.
● Regulation of Paint (49 CFR 173.128).	Regulations applicable to small quantity paint containers may impose a greater burden on paint shippers than is necessary to promote safety. In 1980, reporting requirements for incidents involving carriers of paint were reduced. The next step is to address the more basic question of the best regulatory framework for transportation of this flammable liquid. Savings to the paint industry could exceed $1 million annually.	A. I. Roberts, (202) 426-0656	*Review completed—NPRM to be issued.*
*● Data Collection and Reporting: Liquid Pipeline Nondestructive. Weld Tests (49 CFR 195.234(g)).	This rule requires that radiographic film of weld tests be kept three years. Retention may not be needed for accident investigation or test verification; there are large administrative costs. Annual costs are about $1 million.	F Robinson, (202) 426-2392	*September* 1981.

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

REVIEW LIST

RSPA — Research and Special Programs Administration

[Key to symbols: *New item. †Analysis or review being considered under Regulatory Flexibility Act. ●Regulation selected for priority review. *Italics:* New or changed information since last agenda]

Regulations selected for review	Reasons for selection	Contact	Target date
†*Review of packaging manufacturing regulations. (49 CFR pt. 178).	Inquiry will be made into the adoption of performance oriented standards consistent with those contained in United Nations Recommendations for small packagings. These regulations are needed to provide for the manufacture of packaging suitable for the safe transportation of hazardous materials. (Authority 49 U.S.C. 1803, 1804 and 1808).	Tom Charlton, 426-0656	1981.
†*Part 191	Review of regulations pertaining to transportation of natural and other gas by pipeline; report of leaks is being initiated. These reporting regulations are needed to ensure the safe transportation of gas by pipelines. (Authority 49 U.S.C. 1671 *et seq.*).	Mel Judah, 426-2392	1981-1985.
†*Review of Regulations Pertaining to Transportation of Liquids by Pipeline. (Part 195, Subparts A-D).	Regulations pertaining to accident reporting, design requirements, and construction is being initiated. These reporting, design and construction regulations are needed to ensure the safe transportation of liquid hazardous materials and petroleum products by pipeline. (Authority 49 U.S.C. 831 through 835.).	Mel Judah, 426-2392	1981-1985.

Appendix A—Instructions for Obtaining Copies of Regulatory Documents

United States Coast Guard (USCG)

Persons who desire to obtain a copy of any regulatory document to be issued by the USCG that is listed in this Agenda should communicate with the contact person listed with the regulation either by telephone or by letter to the contact person at the following address: (Name of contact person) United States Coast Guard, 2100 Second Street SW., Washington, D.C. 20593.

Federal Aviation Administration (FAA)

The FAA has a mailing list system for Notices and Advance Notices of Proposed Rulemaking (NPRMs and ANPRMs). Persons interested in obtaining future copies of all of those documents to be issued by the FAA or only of those concerning certain parts of the Federal Aviation Regulations should request a copy of Advisory Circular No. 11-2, which describes the application procedure, by calling 202-426-8058 or by writing to: Federal Aviation Administration, Office of Public Affairs. Attention: Public Information Center, APA-430, 800 Independence Avenue, SW., Washington, D.C. 20591.

Federal Highway Administration (FHWA)

The FHWA maintains a consumer mailing list for individuals and agencies wishing to routinely receive Federal-aid highway related rulemaking actions. Persons may selectively choose to receive rulemaking materials in a number of separately identified program categories from the Code of Federal Regulations, Title 23. Those wishing to take advantage of the FHWA consumer mailing list may obtain additional information by writing to: Consumer Affairs Representative, Office of Public Affairs, Room 4206, Federal Highway Administration, 400 7th Street, SW., Washington, D.C. 20590.

Persons who desire to obtain a copy of any regulatory document to be issued by the FHWA that is listed in this Agenda should communicate with the contact person listed with the regulation either by telephone or by letter to the contact person at the following address: (Name of contact person), Federal Highway Adminstration, 400 7th Street, SW., Washington, D.C. 20590.

Federal Railroad Administration (FRA)

Persons who desire to obtain a copy of any regulatory document to be issued by the FRA that is listed in this Agenda should communicate with the contact person listed with the regulation either by telephone or by letter to the contact person at the following address: (Name of contact person), Federal Railroad Administration, 400 7th Street, SW., Washington, D.C. 20590.

National Highway Traffic Safety Administration (NHTSA)

Persons who desire to obtain a copy of any other regulatory document to be issued by the NHTSA that is listed in this Agenda should communicate with the contact person listed with the regulation either by telephone or by letter to the contact person at the following address: (Name of contact person), National Highway Traffic Safety Administration, 400 7th Street, SW., Washington, D.C. 20590, (202) 426-0679.

Urban Mass Transportation Administration (UMTA)

Persons who desire to obtain a copy of any regulatory document to be issued by UMTA that is listed in this Agenda should communicate with the contact person listed with the regulation either by telephone or by letter to the contact person at the following address: (Name of contact person), Urban Mass Transit Administration, 400 7th Street, SW., Washington, D.C. 20590, (202) 426-1909.

Saint Lawrence Seaway Development Corporation (SLSDC)

Persons who desire to obtain a copy of any regulatory document to be issued by SLSDC that is listed in this Agenda should communicate with the contact person listed with the regulation either by telephone or by letter to the contact person at the appropriate address specified below: For contact persons with (202), telephone area code: (name of contact person), Saint Lawrence Seaway Development Corporation, 800 Independence Avenue, SW., Washington, D.C. 20591. For contact persons with (315) telephone area code: (name of contact person), Saint Lawrence Seaway Development Corporation, P.O. Box 520, Massena, New York 13662.

Research and Special Programs Administration (RSPA)

Persons wishing to be placed on mailing lists for regulatory documents to be issued by RSPA should contact: Mrs. Sandra Cureton, Information Services Division, DMT-43, 400 7th Street, SW., Washington, D.C. 20590.

Office of the Secretary (OST)

Persons desiring to receive future copies of the Regulations Agenda should submit their request to: Assistant General Counsel for Regulation and Enforcement, C-50, Office of the General

Counsel, Department of Transportation, Washington, D.C. 20590, (202) 426-4723.

Persons who have an interest in specific regulatory documents to be issued by the Office of the Secretary should forward requests for copies of those documents to the same address. These requests should fully identify the document desired.

Appendix B—General Rulemaking Contact Persons

The following is a list of persons who can be contacted within the Department for general information concerning the rulemaking process within the various operating administrations.

USCG—Bruce Novak, Marine Safety Council, USCG Headquarters Building, Room *4402*, 2100 Second Street, S.W., Washington, D.C. 20593. Telephone: 202/426-1477

FAA—Edward Faberman, Office of Chief Counsel, Regulation and Enforcement Division, 800 Independence Ave., S.W., Room 915G, Washington, D.C. 20591. Telephone: 202/426-3644.

FHWA—Thomas P Holian, Office of the Chief Counsel, 400 7th Street, S.W., Room 4223, Washington, D.C. 20590. Telephone: 202/426-0761.

FRA—Mike Haley, Office of Chief Counsel, 400 7th Street, S.W., Room 8211, Washington, D.C. 20590. Telephone: *202/426-0767*

NHTSA—Roger Tilton, Office of Chief Counsel, 400 7th Street, S.W., Room 5219, Washington, D.C. 20590. Telephone: 202/426-9511.

UMTA—Doug Gold, Office of Chief Counsel, 400 7th Street, S.W., Room 9320, Washington, D.C. 20590. Telephone: 202/426-1906.

SLSDC—Bob Kraft, Office of Chief Counsel, 800 Independence Ave., S.W., Room 814, Washington, D.C. 20591. Telephone: 202/426-3574.

RSPA—Doug Crockett, Office of Chief Counsel, 400 7th Street, S.W., Room 8420, Washington, D.C. 20590. Telephone: 202/755-4972.

OST—Neil Eisner, Office of Regulation and Enforcement, 400 7th Street, S.W., Room 10421, Washington, D.C. 20590. Telephone: 202/426-4723.

Appendix C—Public Rulemaking Dockets

The following is a list of Rule Docket locations for the various operating administrations where the public may review regulatory dockets and hand deliver comments on advance notices and notices of proposed rulemaking:

USCG—Marine Safety Council, 2100 2nd Street, S.W., Room *4402*. Washington, D.C. 20593. Working Hours: 7:00-5:00 [Monday-Thursday].

FAA—Rules Docket, Office of Chief Counsel, Regulation and Enforcement Division, 800 Independence Ave., S.W., Room 915G, Washington, D.C. 20591. Working Hours: 8:30-5:00.

FHWA—Docket Room, 400 7th Street, S.W., Room 4205, [Federal Motor Carrier Safety Regulations in Room 3404] Washington, D.C. 20590. Working Hours: 7:45-4:15.

FRA—Docket Clerk, 400 7th Street, S.W., Room 8211, Washington, D.C. 20590. Working Hours: 8:30-5:00.

NHTSA—Docket Room, 400 7th Street, S.W., Room 5108, Washington, D.C. 20590. Working Hours: 7:45-4:15.

UMTA—Docket Clerk, 400 7th Street, S.W., Room 9320, Washington, D.C. 20590. Working Hours: 8:30-5:00.

SLSDC—800 Independence Ave., S.W., Room 814, Washington, D.C. 20591. Working Hours: 8:30-5:00.

RSPA—Docket Branch, 400 7th Street, S.W., Room 8426, Washington, D.C. 20590. Working Hours: 8:30-5:00.

OST—Docket Clerk, 400 7th Street, S.W., Room 10421, Washington, D.C. 20590. Working Hours: 9:00-5:30.

Appendix D

Innovative Regulatory Techniques

As explained in the preamble, the public's views are solicited with respect to the Department's regulatory programs where innovative regulatory techniques can be applied effectively to reduce the burden on regulated entities or to reduce governmental costs. The following are descriptions of particular techniques that have shown promise throughout the federal government.

Enhance Competition

An agency seeks to achieve a valid regulatory goal through generally increasing its sensitivity to market structure by for example, removing barriers to and constraints on competition.

Marketable Rights

In place of detailed government controls, an agency limits private-sector rights to engage in a specific activity or to use scarce resources, but allows private parties to exchange, trade, or sell these rights. The agency maintains overall control while letting the affected parties arrange the detailed allocation of rights in the free market.

Economic Incentives

An agency provides economic incentives that are supplements or alternatives to government standards and regulations by structuring fees or

subsidies to encourage the private sector to achieve regulatory goals. Incentives replace rigidly enforced regulatory standards.

Performance Standards

An agency replaces design standards which specify strict means of compliance with more general standards based on overall performance levels. Firms or businesses are free to find the most efficient way of complying with the standards.

Information Disclosure

An agency requires that users or consumers be provided with information choices among competing goods and services and be free to choose on the basis of that information. The agency may provide information directly to the public (e.g., uniform tire quality grading standards).

Voluntary Standard Setting

An agency supplements or substitutes direct Federal regulation with voluntary standards developed and enforced by the regulated sectors.

Compliance Reform

An agency replaces or supplements government compliance monitoring and enforcement with other mechanisms, such as third-party monitoring, supervised self-certification, and economically-based penalties (e.g., third party inspection of emergency equipment aboard ships).

Tiering

An agency takes into account the size and nature of regulated organizations when it develops or revises its regulations (e.g., certain FAA, RSPA, and NHTSA exemptions).

[FR Doc. 81-28227 Filed 9-30-81; 8:45 am]
BILLING CODE 4910-62-M

federal register

Thursday
October 1, 1981

Part IV

Department of Health and Human Services

Health Care Financing Administration

Medicaid Program; Freedom of Choice; Waivers of and Exceptions to State Plan Requirements

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 431 and 440

Medicaid Program; Freedom of Choice: Waivers of and Exceptions to State Plan Requirements

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Interim final rule with comment period.

SUMMARY: This regulation implements section 2175 of the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97-35). It revises in several ways the current requirements regarding a Medicaid beneficiary's right to choose among participating providers of covered items or services:

(1) A State will not be found out of compliance with otherwise applicable requirements if it enters into certain arrangements to purchase laboratory services or medical devices through competitive bids, or if, under certain circumstances, it restricts for a reasonable period of time a specific beneficiary's choice of providers or the participation of a specific provider.

(2) States may also request the Secretary to waive statutory requirements, as necessary, in order to:

(a) implement a primary care case management system,

(b) allow a locality to act as a central broker in aiding beneficiaries to select among competing health care plans,

(c) share with beneficiaries, through provision of additional services, savings resulting from beneficiary use of more cost effective medical care, and

(d) restrict beneficiaries to receive services (other than in emergency circumstances) only from efficient and cost-effective providers or practitioners.

The purpose of these regulations is to provide States with increased flexibility in administering their Medicaid programs, in order that they may increase the efficiency and effectiveness of the delivery of health care services, and reduce their costs.

DATES: These regulations are effective October 1, 1981, except for reporting requirements that have not yet been approved by OMB. See Supplementary Information. We are publishing final regulations, rather than a notice of proposed rulemaking, for reasons given below in the section entitled "Waiver of Proposed Rulemaking". However, we will consider any comments mailed on or before December 30, 1981 and will revise these regulations if necessary.

ADDRESS: Address comments in writing to: Administrator, Department of Health and Human Services, Health Care Financing Administration, P.O. Box 17076, Baltimore, Maryland 21235.

If you prefer, you may deliver your comments to Room 309-G, Hubert H. Humphrey Building, 200 Independence Ave., SW., Washington, D.C., or to Room 789, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

In commenting, please refer to BPP-181-FC. Agencies and organizations are requested to submit comments in duplicate.

Comments will be available for public inspection, beginning approximately two weeks after publication, in Room 309-G of the Department's office at 200 Independence Ave., SW., Washington, D.C. 20201 on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (202-245-7890).

Because of the large number of comments we receive, we cannot acknowledge or respond to them individually. However, if as a result of comments, we believe that changes are needed in these regulations, we will publish the changes in the Federal Register and respond to the comments in the preamble of that document.

FOR FURTHER INFORMATION CONTACT: Stanley Katz, (301) 594-9595.

SUPPLEMENTARY INFORMATION:

I. General

In order to permit States the flexibility necessary to achieve greater efficiency and cost-effectiveness in the delivery of health care services to the Medicaid beneficiary population, Congress included several provisions in the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97-35; August 13, 1981). Among these provisions is section 2175, which, in part, establishes a new section 1915 of title XIX, and which is implemented by these regulations.

In developing these regulations, we have tried to afford States the greatest possible flexibility and opportunity for innovation in administering their Medicaid programs, consistent with the statutory requirements. We have therefore decided to minimize Federal prescription of definitions and procedures in implementation of these provisions. We do not intend to use the Secretary's waiver authority to impose new restrictions on the States, or to compel them to meet unnecessary and burdensome regulatory requirements in order to receive or qualify for waivers. Instead, we will permit each State to determine its own program content and administration, consistent with the law. We will impose no requirements or criteria for waiver approval or compliance determinations beyond those specified in the statute.

II. Exceptions to Freedom of Choice Requirements (Section 1915(a))

Our current regulations implementing the freedom of choice requirements of section 1902(a)(23) of the Social Security Act are at 42 CFR 431.51. Under amendments to the statute made in 1972 and 1977, we have already allowed exceptions to these requirements (as well as requirements on Statewideness and comparability of services) when a State Medicaid agency contracts with an organization, such as a health maintenance organization (HMO), to provide services to beneficiaries on a prepayment basis (Pub. L. 92-603), or because the State Medicaid plan provides for payment for rural health clinic (RHC) services only if those services are provided by an RHC (Pub. L. 95-210). These new amendments provide for exceptions in additional cases.

When the statutory exceptions for prepayment organizations and RHCs were incorporated as part of Section 1902(a)(23), we treated them as State plan requirements, and they were administered and enforced as such. However, the new section 1915(a) is not framed as a State plan requirement. The statutory language of section 1915(a) merely states that these provisions are practices for which States will not be found out of compliance with specified statutory State plan requirements, even though the practices may deviate from those requirements. Moreover, unlike section 1915(b), which is explicitly a waiver provision, section 1915(a), does not call for formal waivers of plan requirements by the Secretary before these practices can be implemented.

However, it is necessary for us to be accurately informed of how States are administering their Medicaid programs, and to determine if their operations are actually in compliance with the statute. Moreover, paragraph 1915(a)(1)(B) requires a positive Secretarial finding in order for a State to adopt a competitive bidding process. We believe these purposes can be achieved best by having a State notify us early in its implementing process of program changes under section 1915(a). This early report would not be a request for approval, since the State would not be precluded from beginning implementation pending review of its report. However, we believe that such a mechanism will permit us to pass along to the States, through our review of their

reports, the benefit of the experience of the other States and to provide them as much technical assistance as possible.

Therefore, we have decided to require States to report to HCFA regarding program changes under section 1915(a) no later than the end of the calendar quarter in which a State first implements these changes. (In the case of a State entering into competitive or other arrangements concerning laboratory services or medical devices, the report would have to be submitted, and a positive finding made, before the arrangements could be implemented.) We have authority to require such a report under section 1902(a)(6) of the Act, which provides that the State agency will make reports, in the form and including the information, as required by the Secretary.

We believe that these reports will provide the information required for Federal program management and create an optimal atmosphere for the exercise of State flexibility with accountability.

A. Prepayment Organizations and Rural Health Clinics

Section 1915(a)(1)(A) merely repeats requirements that Pub. L. 97-35 transferred from section 1902(a)(23) of title XIX to this new section. Implementation of an exception under section 1915(a)(1)(A) by furnishing services through an HMO, prepaid health plan, or RHC, will not require a report under the new regulations.

B. Competitive Arrangements

Section 1915(a)(1)(B) provides that a State will not be found out of compliance with the freedom of choice requirements of the Social Security Act solely because the State, or any political subdivision of the State, has entered into arrangements to purchase, through a competitive bidding process or otherwise, certain laboratory services (including X-ray) and medical devices. The laboratory services covered by this provision are specified in section 1905(a)(3) of the Act and defined at 42 CFR 440.30. Medical devices means items such as durable medical equipment, home health appliances, eyeglasses, hearing aids, or prosthetics that are covered under the State's Medicaid program.

C. Lock-in of Beneficiaries Who Overutilize Services

Section 1915(a)(2)(A) provides for exceptions to the freedom of choice requirements to allow a State to "lock-in" chronic overutilizers of services to a single physician or limited group of providers for a reasonable period of time. Congress has required that these beneficiaries be given notice and an opportunity for a hearing, and that in no event should emergency services from any participating provider be denied the beneficiary. Under the new regulations at 42 CFR 431.51 and 431.54, when a State implements these restrictions, it must submit a report to us. The general requirements of this report are set forth at § 431.51(d).

As stated at § 431.51(d), this report is to address the various key terms of the statute. The format of the report and the specific interpretation of these terms are up to the State.

D. Lock-out of Providers Who Abuse the Medicaid Programs

Section 1915(a)(2)(B) allows exceptions to the freedom of choice requirements for States to restrict, for a reasonable period of time, the participation of providers in their Medicaid programs. This restriction could be imposed, if, after notice and opportunity for hearing, the State determines that the provider, in a significant number or proportion of cases, provided services to beneficiaries when such services were not medically necessary or of a quality not meeting professionally recognized standards of health care. Congress added this provision because it was concerned that some providers may furnish unnecessary services in order to maximize reimbursement under title XIX, or may provide poor quality care, and wanted to enable States to penalize those providers (H.R. Rep. No. 97-158, II, 310).

E. Conditions Applicable When Freedom of Choice Is Restricted

As indicated in its Committee reports, Congress believed that access to quality health care for beneficiaries is essential (H.R. Rep. No. 97-158, II, 310; H.R. Rep. No. 97-208, 964). We are requiring that the State, in its exception report, provide an explanation of how these statutory requirements will be met (see § 431.54(e)).

III. Waiver of Other Medicaid Requirements (Section 1915(b))

States are required to design and manage their Medicaid programs in accordance with various statutory requirements that define the scope and nature of health care services for which Federal matching funds are available. While these requirements generally serve to assure that beneficiaries have adequate access to quality care, they sometimes restrict a State's ability to manage its Medicaid program in the most efficient and effective manner.

A. Requests for Waivers

States may now request the Secretary to waive these statutory and regulatory requirements. In making such a request, a State must submit a written description of the waiver proposal. This must include at least:

A clear and specific description of the purpose of the waiver, in terms of statutorily permitted goals;

Identification of the specific statutory requirements that must be waived to allow the proposed program changes;

An explanation of the expected cost-effectiveness and efficiency of the program changes, such as the extent to which total Medicaid outlays for the State will be less with the waiver, without sacrificing beneficiary access to quality care;

An assessment of how the waiver will affect beneficiary access to services of adequate quality; and

A showing that the impact of the waiver on beneficiaries will not be inconsistent with Federal Medicaid program objectives.

We expect, in most instances, to be able to respond to a State's waiver request on the basis of its own assessments, and supporting analyses, that the proposal satisfies the statutory requirements and the procedural requirements of the new regulations at 42 CFR 431.55. When necessary, we will request further information from a State in order to determine whether the request complies with the statute.

B. Restriction of Beneficiaries to Selected Cost-Effective Providers

Section 1915(b)(4) provides for waivers allowing States to restrict beneficaries' freedom of choice to certain providers who:

Undertake to provide the covered care or medical services needed; and

Comply with State plan standards for reimbursement, quality, and utilization.

States may qualify for these waivers only if:

Their applicable State standards are consistent with access, quality, and efficient and economic provision of covered care and services; and

The restrictions they impose do not discriminate among classes of providers on grounds unrelated to their demonstrated effectiveness and efficiency in providing those services.

C. Conditions Applicable to all Section 1915(b) Waivers

Section 1915(d) (added as section 1915(c) by section 2175 and redesignated by section 2176) provides that waivers approved under section 1915(b) may extend for no more than two years,

unless the State requests continuation of the waiver. Unless the Secretary denies a State's request for continuation of a waiver within 90 days of its submission to the Secretary, the requested continuation shall be deemed granted. (A similar 90 day provision applies to the initial request for a waiver, as explained below.)

Section 1915(e) (added as section 1915(d) by section 2175, and redesignated by section 2176) requires the Secretary to monitor the implementation of waivers granted under section 1915 to assure that the requirements for those waivers are being met. After notice and opportunity for a hearing, the Secretary must terminate waiver if he or she finds noncompliance has occurred. This section also requires the Secretary to report to Congress, no later than September 30, 1984, on waivers granted under section 1915.

Section 1915(f), added by section 2177 of the Omnibus Reconciliation Act, provides that a request submitted to the Secretary by a State for a proposed State plan or plan amendment under title XIX, or a waiver of a title XIX requirement, shall be deemed granted unless the Secretary, within 90 days after the date of its submission to the Secretary, either denies the request in writing or informs the State agency in writing of any additional information that is needed to make a final determination on the request. After the date the Secretary receives the additional information, the request shall be deemed granted unless the Secretary, within 90 days, denies the request.

Sections 1915 (a), (b), (d), and (e) were effective with enactment, on August 13, 1981. Section 1915(f) will be effective 90 days after enactment, on November 11, 1981. However, we must note that the primary effect of this delay in effective date is to enable the Department to make provisions for those plans and plan amendments pending HCFA review before enactment. Waivers requested under section 1915(b) between August 13, 1981 and November 11, 1981 will be deemed granted 90 days from the date of submission, unless they are denied in writing or further information is requested.

Some sections of these regulations are affected by statutory provisions that are implemented by other regulations documents also being published at this time. It would be confusing to present the same section with different wording in different documents (by making, in each document, only the particular changes called for by the statutory provisions implemented by that document). In order to avoid this problem, the sections affected by more than one provision are presented in each document with all the changes required by each of the provisions of law that affect them. However, each of the changes is explained only once, in the preamble of the regulations document that implements the provision which required that particular change.

Waiver of Proposed Rulemaking and of 30-Day Delay in Effect

The provisions of section 2175 of Pub. L. 97-35 that are being implemented by these regulations were effective on enactment. Although Congress recognized that the Secretary could begin to grant waivers before these regulations are issued, it urged that we issue them as quickly as possible, so that States will receive guidance concerning the standards the Secretary will apply in approving and disapproving waiver requests. In order to have regulations in place, as close as possible to the effective date of the law, we must publish these regulations in final form.

These regulations will allow the States substantial flexibility to achieve cost savings in administering their Medicare programs. Therefore, we believe that publication of a notice of proposed rulemaking is unnecessary and contrary to the public interest. We also believe that it is important to the States to have these rules effective as soon as possible, so as to expedite the approval of waivers under them, and that no compelling purpose would be served by delaying the effective date beyond the date of publication. We therefore find good cause to waive both notice of proposed rulemaking and our normal 30-day delay in effective date. We will, however, consider any comments on this rule that are mailed by the date specified above in the "Dates" section and make any further changes that may be necessary.

Executive Order 12291

Under the terms of the Executive Order 12291, a "major" rule is one which is "likely to result" in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, government agencies, or geographic regions; or significant adverse effects on competition, employment or productivity. If a rule is "major", a "regulatory impact analysis" must be prepared.

The Department is uncertain as to whether or not this rule is "likely" to have an economic impact of $100 million or more (the other threshold criteria will not be met). Nothing in this rule required cost-saving actions, and the States are free to use any of a number of other methods to achieve required Medicaid savings, such as reductions in covered services or eligibility. We note that many actions States might take under Section 1915 do not depend on this regulation, and are not therefore a "result" of this regulation, but of the statute itself. The potential for substantial cost savings is contingent upon State actions. In either case, there is no present basis for an impact analysis to be other than an exercise in speculation as to actions which the States may decide later to take.

Under these circumstances, we have decided not to classify this rule as "major" at this time. However, we specifically invite public comment on this question. If we decide to reclassify the rule as major, a regulatory impact analysis will be prepared to accompany the final rule.

Regulatory Flexibility Act

The Regulatory Flexibility Act requires preparation of a "regulatory flexibility analysis" in cases in which a rule will have a "significant impact on a substantial number of small entities." "Small entities" include most hospitals, laboratories, doctors, and other medical care providers. Some of the actions that States might take under Section 1915 would impact small entities. However, for reasons given above, it is unlikely that a substantial number would be impacted significantly by this regulation, and we so certify. This statement may be reconsidered based on public comment and actual State actions, as described above.

Paperwork Reduction Act of 1980

Sections 431.51, and 431.55 of this regulation contain reporting requirements subject to the Paperwork Reduction Act (Pub. L. 96-511) which have not been approved by the Office of Management and Budget (OMB). The reporting is not required until OMB approval has been obtained. HCFA will publish a notice in the Federal Register when approval has been obtained, indicating the effective date of the reporting.

PART 431—STATE ORGANIZATION AND GENERAL ADMINISTRATION

* * * * *

42 CFR Part 431 is amended as follows:

1. In Part 431, the table of contents of Subpart B is amended by adding new §§ 431.54 and 431.55 to read as follows:

Subpart B—Administrative Requirements: General Program Services

* * * * *

Sec.
431.54 Exceptions to certain State plan requirements.
431.55 Waiver of other Medicaid requirements.

* * * * *

2. The authority citation for Part 431 reads as follows:

Authority: Sec. 1102 of the Social Security Act, (42 U.S.C. 1302).

3. Section 431.50 is amended by revising paragraphs (a) and (c) to read as follows:

§ 431.50 Statewide operation.

(a) *Basis and purpose.* This section implements section 1902(a)(1) of the Act, which requires a State plan to be in effect throughout the State, and section 1915, which permits certain exceptions.

* * * * *

(c) *Exceptions.* The requirements of paragraph (b) of this section do not apply with respect to:

(1) Services offered by comprehensive health services organizations (see § 440.250(g) of this subchapter);

(2) Services offered by rural health clinics (see § 440.20(b) of this subchapter);

(3) Arrangements to purchase medical services or laboratory and X-ray services (as defined in § 440.30 of this subchapter) through a competitive bidding process or otherwise, under § 431.54(d);

(4) Lock-in or lock-out restrictions under § 431.54(e) and (f); or

(5) Services offered under a waiver with respect to home and community based services (§ 440.180 of this subchapter).

4. Section 431.51 is revised to read as follows:

§ 431.51 Free choice of providers.

(a) *Basis and purpose.* This section implements section 1902(a)(23) of the Act, which provides that recipients may obtain services from any qualified Medicaid provider, and section 1915 of the Act, which provides that a State shall not be found out of compliance with section 1902(a)(23) solely by reason of certain specified allowable restrictions of this free choice (see paragraph (c) of this section and § 431.54) and which authorizes the Secretary to waive the requirements of section 1902(a)(23), and other provisions of the Act, in certain circumstances (see § 431.55).

(b) *State plan requirement.* Except as provided in paragraph (c) of this section, a State plan (except in Puerto Rico, the Virgin Islands, and Guam) must provide that any recipient may obtain Medicaid services from any institution, agency, pharmacy, person, or organization that is qualified to perform the services, including an organization that provides these services or arranges for their availability on a prepayment basis.

(c) *Limitations on applicability.* Paragraph (b) of this section does not prohibit the agency from—

(1) Establishing the fees it will pay providers for Medicaid services;

(2) Setting reasonable standards relating to the qualifications of providers; or

(3) Restricting the free choice of providers in accordance with one or more of the exceptions provided for under § 431.54, or under a waiver as provided for under § 431.55.

(d) *Reporting requirement.* If a State implements a project under one of the exceptions allowed under § 431.54 (d), (e) or (f), it must provide a report to HCFA that describes how the project meets the statutory requirements for an exception under section 1915(a) of the Act. The report must be submitted by the end of the quarter in which the State implements the project, except that the report must be submitted prior to instituting the project in the case of an exception under § 431.54(d), for which the Secretary must make certain findings before the project may be initiated.

5. A new § 431.54 is added to read as follows:

§ 431.54 Exceptions to certain State plan requirements.

(a) *Basis and purpose.* This section implements section 1915(a) of the Act, which provides that a State shall not be deemed to be out of compliance with the requirements of sections 1902(a) (1), (10), or (23) of the Act solely by reason of certain specified allowable exceptions, as set forth in this section.

(b) *Services on a prepayment basis.* If the Medicaid agency contracts on a prepayment basis with an organization that provides services additional to those offered under the State plan, the agency may restrict the provision of the additional services to recipients who live in the area served by the organization and wish to obtain services from it.

(c) *Rural health clinic services.* The State Medicaid agency may require in its State plan that payment will be made for rural health clinic services only if those services are provided by a rural health clinic.

(b) *Competitive bidding or other arrangements.* The Medicaid agency may enter into arrangements to purchase medical devices or laboratory and X-ray tests (as defined in § 440.30) through a competitive bidding process or otherwise, if the State assures in the report required § 431.51(d), and the Secretary finds that adequate services or devices are available to recipients under the arrangements. In addition, the State must assure and the Secretary must find that:

(1) Laboratory services purchased under such arrangements are provided through laboratories that meet the requirements of Part 405, Subpart J or Part 405, Subpart M of this chapter.

(2) Any laboratory for which a State purchases services under this section has no more than 75 percent of its charges based on services to beneficiaries or recipients of Medicaid or Medicare.

(e) *Lock-in of recipients who over-utilize Medicaid services.* If a Medicaid agency finds that a recipient has utilized Medicaid services or items at a frequency or amount that is not medically necessary, as determined in accordance with utilization guidelines established by the State, the agency may restrict that recipient for a reasonable period of time to obtain Medicaid services or items only from designated providers, provided that:

(1) The agency gives the recipient notice and opportunity for a hearing (in accordance with procedures established by the agency) before such restrictions are imposed.

(2) The agency assures that the recipient has reasonable access (taking into account geographic location and reasonable travel time) to Medicaid services of adequate quality.

(f) *Lock-out of providers.* If a Medicaid agency finds that a provider of items or services under the State plan has abused the Medicaid program, the agency may restrict the provider, through suspension or otherwise, from participating in the Medicaid program for a reasonable period of time, provided that:

(1) Before imposing any restriction, the agency gives the provider notice and opportunity for a hearing, in accordance with procedures established by the agency.

(2) The agency shows, before so restricting a provider, that in a significant number or proportion of cases, the provider has:

(i) Provided Medicaid items or services at a frequency or amount not medically necessary, as determined in accordance with utilization guidelines established by the agency; or

(ii) Provided Medicaid items or services of a quality that does not meet

professionally recognized standards of health care.

(3) The agency assures that recipients do not lose reasonable access to services of adequate quality as a result of such restrictions.

(4) The agency gives general notice to the public of the restriction, its basis, and its duration.

6. A new § 431.55 is added to read as follows:

§ 431.55 Waiver of other Medicaid requirements.

(a) *Basis and purpose.* This section implements section 1915(b) of the Act, which authorizes the Secretary to waive the requirements of sections 1902 and 1903(m) of the Act to the extent he or she finds proposed improvements in the provision of services under Medicaid to be cost-effective, efficient, and consistent with the objectives of the Medicaid program. This section also implements sections 1915 (d), (e), and (f) of the Act, which govern how such waivers are to be approved, continued, monitored, and terminated.

(b) *General requirements.* (1) In applying for a waiver to implement an approvable project under paragraphs (c), (d), (e), or (f) of this section, a Medicaid agency must document:

(i) The cost-effectiveness of the project;

(ii) The effect on recipients regarding access to care and quality of services; and

(iii) The projected impact of the program.

(2) No waiver under this section may be granted for a period longer than 2 years, unless the agency requests a continuation of the waiver.

(3) HCFA will monitor the implementation of waivers granted under this section to assure that requirements for such waivers are being met.

(i) Where monitoring demonstrates evidence that the agency is not in compliance with the requirements for a waiver under this section, the agency shall be given notice and opportunity for a hearing.

(ii) If, after a hearing, HCFA finds an agency to be out of compliance with the requirements of a waiver, that waiver shall be terminated, and the agency shall be given a specified date by which it must demonstrate that it meets the applicable requirements of sections 1902 and 1903(m) of the Act.

(c) *Case-management system.* Waivers of appropriate requirements of sections 1902 and 1903(m) of the Act may be authorized for a State to implement a case-management system or specialty physician services arrangements which restricts the provider from or through whom a recipient can obtain primary care services (other than in emergency circumstances); provided that—

(1) Such restrictions do not substantially impair access to such services of adequate quality where medically necessary.

(2) Under a case-management system, the agency assures that a specific person or agency will be responsible for locating, coordinating, and monitoring Medicaid services in behalf of a recipient.

(d) *Locality as central broker.* Waivers of appropriate requirements of sections 1902 and 1903(m) of the Act may be authorized for a State to allow a locality to act as a central broker in assisting individuals (eligible for medical assistance under this title) in selecting among competing health care plans.

(e) *Sharing of cost savings.* Waivers of appropriate requirements of sections 1902 and 1903(m) of the Act may be authorized for a State to share (through provision of additional services) with recipients of medical assistance under the State plan cost savings resulting from use by the recipient of more cost-effective medical care.

(f) *Restriction of freedom of choice.* Waivers of appropriate requirements of sections 1902 and 1903(m) of the Act may be authorized for States to restrict recipients to obtaining services from a provider or providers that have demonstrated effectiveness and efficiency in providing those services; Provided, That—

(1) An agency may qualify for such a waiver only if—

(i) Its applicable State standards are consistent with access, quality, efficiency, and economic provision of covered care and services; and

(ii) The restrictions it imposes do not discriminate among classes of providers on grounds unrelated to their demonstrated effectiveness and efficiency in providing those services.

(2) The agency restricts recipients to obtain services only from qualified providers or practitioners that:

(i) Undertake to provide the covered care or medical services needed; and

(ii) Comply with State plan standards for reimbursement, quality, and utilization.

(3) The agency must assure that such restriction does not hamper or deter access to emergency services for affected recipients.

PART 440—SERVICES: GENERAL PROVISIONS

42 CFR Part 440 is amended as follows:

1. The authority citation for Part 440 reads as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

2. Section 440.200 is revised to read as follows:

§ 440.200 Basis, purpose, and scope.

(a) This subpart implements—

(1) Section 1902(a)(10), regarding comparability of services for groups of recipients, and the amount, duration, and scope of services described in 1905(a) of the Act that the State plan must provide for recipients;

(2) Section 1902(a)(22)(D), which provides for standards and methods to assure quality of services;

(3) Section 1907 on observance of religious beliefs; and

(4) Section 1915 on exceptions to section 1902(a)(10) and waivers of other requirements of section 1902 of the Act.

(b) The requirements and limits of this subpart apply for all services defined in Subpart A of this part.

Section 440.250 is amended by adding new paragraphs (h), (i), (j), and (k) to read as follows:

§ 440.250 Limits on comparability of services.

* * * * *

(h) Ambulatory service for the medically needy (§ 440.220(b)) may be limited to—

(1) Individuals under age 18; and

(2) Individuals entitled to institutional services.

(i) Services provided under exceptions to requirements allowed under § 431.54

may be limited as provided under those exceptions.

(j) If HCFA has approved a waiver of Medicaid requirements under § 431.55, services may be limited as provided by the waiver.

(k) If the agency has been granted a waiver of the requirements of § 440.240 (Comparability of services) in order to provide home or community-based services under § 440.180, the services provided under the waiver need not be comparable for all individuals within a group.

(Catalog of Federal Domestic Assistance Program No. 13.761, Medical Assistance Program)

Dated: September 16, 1981.

Carolyne K. Davis,

Administrator, Health Care Financin Administration.

Approved: September 24, 1981.

Richard S. Schweiker,

Secretary.

[FR Doc. 81-28330 Filed 9-30-81; 8:45 am]

BILLING CODE 4110-35-M

Federal Register

Thursday
October 1, 1981

Part V

Department of Health and Human Services

Health Care Financing Administratio-

Medicaid Program; Home and Community-Based Services

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 431, 435, 440, 441

Medicaid Program; Home and Community-Based Services

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Interim final rule with comment period.

SUMMARY: This rule amends current Medicaid regulations to permit States to offer, under a Secretarial waiver, a wide array of home and community-based services that an individual may need in order to avoid institutionalization. Before enactment on August 13, 1981, of the Omnibus Budget Reconciliation Act of 1981, little coverage under Medicaid was available for noninstitutional long-term care services. Conversely, institutional long-term care services represent a significant part of the budgets of State Medicaid programs.

These regulations, which implement section 2176 of Pub. L. 97-35, allow Federal payment for these noninstitutional services, subject to HCFA's approval of the States' requests for waivers and to certain assurances made by the States. Once granted, waivers are in effect for 3 years and are renewable. On an annual basis, the States must report to HCFA on the impact and effectiveness of the program.

EFFECTIVE DATES: October 1, 1981. These regulations are being published in final, for reasons described in the Supplementary Information, below. However, we will consider any written comments mailed by December 30, 1981 and will revise the regulations if necessary.

Sections 441.300-441.305 of these regulations contain reporting requirements subject to the Paperwork Reduction Act (Pub. L. 96-511) that have not been approved by the Office of Management and Budget. The reporting is not required until the Office of Management and Budget approval has been obtained. HCFA will publish a notice in the Federal Register when approval has been obtained, indicating the effective date of the reporting.

ADDRESS: Address comments in writing to: Administrator, Department of Health and Human Services, Health Care Financing Administration, P.O. Box 17076, Baltimore, Maryland 21235.

If you prefer, you may deliver your comments to Room 309-G Hubert H. Humphrey Building, 200 Independence Ave., S.W., Washington, D.C., or to Room 789, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

In commenting, please refer to BPP-182-FC. Agencies and organizations are requested to submit comments in duplicate.

Comments will be available for public inspection, beginning approximately two weeks after publication, in Room 309-G of the Department's office at 200 Independence Ave., S.W., Washington, D.C. 20201 on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (202-245-7890).

Because of the large number of comments we receive, we cannot acknowledge or respond to them individually. However, if as a result of comments, we believe that changes are needed in these regulations, we will publish the changes in the Federal Register and respond to the comments in the preamble of that document.

FOR FURTHER INFORMATION, CONTACT: Robert Wren, (301) 594-9820.

SUPPLEMENTARY INFORMATION:

Background

Until Pub. L. 97-35, the Omnibus Budget Reconciliation Act, was signed on August 13, 1981, the Medicaid program provided little coverage for long-term care services in a noninstitutional setting, but offered full or partial coverage for such care in an institution. Even though only approximately 6 percent of the elderly reside in an institution, more than 40 percent of Medicaid expenditures was for long-term institutional care in the most recent year for which data are available.

The House Report accompanying the House Omnibus Reconciliation Bill (H. Rept. 97-158, p. 316) notes that it has been estimated that a quarter of the current nursing home population do not need full-time, residential care. Many elderly, disabled and chronically ill persons live in institutions not for medical reasons, but because of the paucity of health and social services available to them in their homes or communities, and the individual's inability to pay for those services or to have them covered by Medicaid when they do exist.

Assessment procedures required under Medicaid to determine the need for institutional care for the elderly and disabled have not been adequate in preventing avoidable admissions. Most of the reviews occur after admission to the long-term care facility, when it is most difficult to discharge the resident back to the community. In addition, the reviews focus on medical conditions, primarily, and not on social and other factors that are often more critical in determining the most suitable placement.

Statutory Amendments

Section 2176 of Pub. L. 97-35 added new provisions to the Social Security Act to deal with the circumstances described above, by inserting a new subsection 1915(c). (Section 1915 itself was added by section 2175 of Pub. L. 97-35.) The subsection authorizes the Secretary of HHS to waive Medicaid statutory limitations in order to enable a State to cover a broad array of home and community-based services. All such services must be furnished under an individual written plan of care, and may only be furnished to persons who would otherwise require the level of care provided in a skilled nursing facility (SNF) or intermediate care facility (ICF) for which the cost could be reimbursed under the State plan. The law provides that the Secretary will not approve the State's request for a waiver unless the State provides satisfactory assurances to the Secretary that:

1. Necessary safeguards (including adequate standards for provider participation) have been taken to protect the health and welfare of beneficiaries provided services under the waiver and to assure financial accountability for funds spent for the services;

2. The State will provide for an evaluation of the need for the inpatient services for individuals who are entitled to and who may require the level of care provided in an SNF or ICF under the State plan;

3. Any individuals who are determined to be likely to require the level of care provided in a SNF or ICF are informed of the feasible alternatives available under the waiver, and are given the choice of the inpatient services or the alternative noninstitutional services;

4. The average per capita expenditure estimated by the State in any fiscal year for medical assistance provided to these individuals does not exceed the average per capita expenditure that the State reasonably estimates would have been made in that fiscal year for expenditures under the State plan for these individuals if the waiver had not been granted; and

5. The State will provide to the Secretary annually, consistent with a data collection plan designed by the Secretary, information on the impact of the waiver on the type and amount of medical assistance provided under the State plan and on the health and welfare of its beneficiaries.

Additionally, the law specifically provides that a waiver granted under section 1915(c) may include a waiver of the requirements of section 1902(a)(1) and (10) of the Social Security Act. Under section 1902(a)(1) of the Act, a State plan for medical assistance must be in effect throughout the State. Section 1902(a)(10), as amended by Pub. L. 97-35 of the Act, sets forth certain Medicaid eligibility and service coverage requirements. It requires the plan to provide that services available to the categorically needy beneficiary are not less in amount, duration and scope than services available to the medically needy and are equal in amount, duration and scope for all categorically needy beneficiaries.

Waivers granted under section 1915(c) of the Act shall be for an initial term of three years and, if requested by the State, shall be extended for additional three-year periods unless the Secretary determines that, for the previous three-year period, the State did not meet the assurances discussed above (in (1) through (5)).

Section 1915(d), as added by section 2175 and redesignated as section 1915(e) by section 2176 of Pub. L. 97-35, provides that the Secretary shall monitor the implementation of the waivers granted to determine if the requirements of the waivers are being met. After giving the State notice and an opportunity for a hearing, the Secretary shall terminate any waivers if noncompliance has occurred.

Under the waiver, the State may exclude those individuals for whom there is a reasonable expectation that home and community-based services would be more expensive than Medicaid services the individual would otherwise receive.

A waiver will allow a State to provide Medicaid to individuals for such services as case management, homemaker, home health aide, personal care, adult day health, habilitation, and respite care, and other services requested by the State and approved by the Secretary. The services must be consistent with plans of care, which are subject to the State's approval.

Section 2177 of the Omnibus Budget Reconciliation Act of 1981 also amends the new section 1915 of the Social Security Act. It adds a new subsection (f) that affects subsection (c) as well as other parts of title XIX. Section 1915(f) provides that a request from a State for approval of a State plan amendment or waiver, including a waiver request under section 1915(c), shall be deemed granted unless the Secretary, within 90 days after the date of its submission to the Secretary, either denies the request in writing or informs the State in writing of any additional information needed to make the determination on the request. The request will be deemed granted 90 days after the receipt of the additional information, unless the Secretary denies the request in writing within the 90 days.

Regulatory Provisions

The provisions of the new regulations parallel the statute with clarifying or implementing policy as discussed below.

The new regulations add a new § 440.180, defining home or community-based services, to 42 CFR Part 440; and a new Subpart G to Part 441, specifying requirements for providing these services. They also add new §§ 435.232, 435.726, and 435.735 to the eligibility regulations, specifying new eligibility provisions that allow States to cover certain individuals who would otherwise be institutionalized. The regulations also make technical amendments to §431.50, Statewideness; § 440.1, the basis and purpose section of the regulations defining Medicaid services; § 440.170(f), Personal care services in a recipient's home; and § 440.250, Limits on comparability of services.

The purpose of these regulations is to give the States the maximum opportunity for innovation in furnishing noninstitutional services to beneficiaries, with a minimum of Federal regulation. Basically, we will measure the States' proposals against the statutory requirements rather than against a detailed additional set of Federal guidelines or criteria. That is, we will require the State requesting a waiver to describe its proposal, to explain how it satisfies the statutory requirements of section 1915(c) and, with regard to some specific requirements, to make assurances that those requirements are met. However, we are not generally mandating how the States must establish or implement their community care programs.

Using our experience with demonstration projects, which tested an expanded range of noninstitutional services, we will be able to offer technical assistance to States interested in requesting waivers. We can provide the States with information, for example, on successful procedures and services for a case management system and home health aides. We can also provide assistance to States that they can use in developing their community care programs and, in requesting appropriate waivers and State plan changes.

Note.—References in this document to "the level of care provided in an ICF" include the level of care furnished to beneficiaries in ICFs for the mentally retarded (ICF/MR) (42 CFR 440.150(c)).

A. Definition of Services

The regulations provide that home or community-based services for which a waiver may be granted under this provision may consist of the following services (other than room and board):

1. Case management services.
2. Homemaker services.
3. Home health aide services.
4. Personal care services.
5. Adult day health services.
6. Habilitation services.
7. Respite care services.
8. Other services requested by the State and approved by the Secretary.

We are not going to try to define these terms in our regulation. Instead, we are requiring that the States define them in their waiver request. The States thus have broad discretion in determining the nature of the services to be covered, subject to the budgetary restraints discussed below.

The following discussion of services is presented solely for the purpose of providing the States with suggestions on how they might begin developing a waiver proposal

1. "*Case management*" is commonly understood to be a system under which responsibility for locating, coordinating and monitoring a group of services rests with a designated person or organization. It was Congress' view (H. Rept. 97-158, p. 321) that the case manager should be responsible for locating available sources of help from within the family and community so that the burden of care will not be exclusively borne by formal health and social agencies. Thus, an "informal network" of friends, relatives, churches, etc., can be used wherever feasible to strengthen the elderly or disabled person's ties with his or her own community.

2. "*Homemaker services*" is normally viewed as consisting of general household activities (meal preparation and routine household care) provided by a trained homemaker when the individual regularly responsible for these activities is temporarily absent or unable to manage the home and care for himself or others in the home.

3. "*Home health aide services*" would typically include the performance of simple procedures such as the extension of therapy services, personal care, ambulation and exercise, household services essential to health care at home, assistance with medications that are ordinarily self-administered, reporting changes in the patient's condition and needs, and completing

appropriate records. (See 42 CFR 405.1227(a) and 440.70 for the Medicare and current Medicaid provisions on home health aides.)

4. *"Personal care services"* are presently defined for the Medicaid program in 42 CFR 440.170(f) as services furnished to a recipient in his or her home that are prescribed by a physician in accordance with the recipient's plan of treatment and provided by an individual who is—

(i) Qualified;

(ii) Supervised by a registered nurse; and

(iii) Not a member of the recipient's family.

States can furnish home health aide and personal care services under their State plan without seeking a waiver under section 1915(c). However, they can also seek such a waiver to provide these services in a manner that departs from these definitions.

5. *"Adult day health services"* are discussed in the legislative history as encompassing "both health and social services needed to insure the optimal functioning of the client, as well as habilitation services suitable for the care of the mentally retarded and the developmentally disabled" (H. Rept. 97-158, p. 321). In our view, such care should be furnished for four or more hours per day on a regularly scheduled basis, for one or more days a week in an outpatient setting. We also believe that meals provided as a part of these services could be covered. Although section 1915(c)(1) has a general prohibition against the payment for room and board, the Conference Report (H. Rept. 97-208, p. 966) indicates that Congress was aware of the manner in which homemaker and adult day health services are provided under title XX. That statute contains a similar prohibition against payment for "room and board". The title XX regulations at 45 CFR 1396.1 define "board" as "three meals a day or any other full nutritional regimen" Under this definition, title XX now pays for individual meals provided as part of adult day health services. We are adopting the title XX approach. Accordingly, Federal financial participation (FFP) will be available for meals that are provided as a part of adult day health services.

6. *"Habilitation services"* are typically health and social services needed to insure optimal functioning of the mentally retarded or persons with related conditions.

7. *"Respite care"*—The Conference Report (H. Rept. 97-208, p. 966) states that respite care is given to individuals unable to care for themselves and is provided on a short term basis to the individual because of the absence or need for relief of those persons normally providing the care. Respite care services may be provided in the individual's home or in a facility approved by the State such as a hospital, nursing home, foster home or community residential facility. As noted above, section 1915(c)(1) of the Act precludes Federal payment for room and board when furnished as a home or community-based service. However, since the statute specifically authorizes the provision of respite care, and the Conference Report indicates that Congress intended that respite care include full-time, short-term institutional care, which always under the Medicaid program has included room and board, we have concluded that Congress intends to create an exception to the general statutory prohibition against room and board. Accordingly, Federal funds will be available for respite care provided under the waiver, including any room and board that may result from furnishing respite care outside a private residence. When respite care is furnished in a setting that charges a "per diem" rate, the room and board is considered part of the "per diem" rate.

8. *Other services*—The State may also request HCFA's approval to provide other home and community-based services not listed here. Such services may include, for example, but not be limited to, nursing care, medical equipment and supplies, physical and occupational therapy, speech pathology and audiology, and minor physical adaptations to the home. We will approve these services and others if the State demonstrates in its waiver request that they are cost-effective (i.e., their cost would not raise the cost of home and community-based care for the beneficiaries to whom they are provided to an amount greater than the cost of the level of care provided in an SNF or ICF), describes the services in detail, and assures HCFA that the services are necessary to avoid institutionalization.

B. Content of Waiver Requests

Requests for waivers must contain—

(1) The information as described below in C;

(2) The assurances discussed below in D; and

(3) The required supporting information discussed below in E.

Section 1915(c) describes this provision as a waiver. We are implementing it in that fashion. Therefore, we are requiring that the State submit supporting explanation and documentation in the form of a waiver request. If the State does not intend to offer home and community-based services to all individuals who would otherwise likely require institutionalization, it must also include a request for a waiver of the requirements of either section 1902(a) (1) or (10) of the Social Security Act, or both, if applicable. If the State intends not to offer the home or community-based services to beneficiaries on the basis that it can reasonably expect that the services would cost more than the services the beneficiaries would otherwise receive, the State must also explain in its waiver request how it will make and implement such determinations.

C. Waiver Request Requirements

The waiver request must describe the services the State is offering under the waiver and who is eligible to receive them. It must also state that the services will only be furnished to those eligible beneficiaries who, but for the provision of the home and community-based services, would require the level of care provided in an ICF or SNF.

The request must indicate how the statutory requirements for a plan of care will be met. The services provided a beneficiary must be furnished under a plan of care that is written specifically for that beneficiary. The State has discretion in designing the plan of care process and prescribing who writes individual plans of care. Based on our experience and that of the States, we expect the plan of care to include the medical and other services to be given, their frequency, and the type of provider to furnish them. Plans of care are subject to the State's approval, and the State has the discretion to set up its own approval process. The waiver request must include a description of the qualifications of the individual or individuals who will be responsible for developing the individual plan of care.

D. State Assurances

Section 1915(c) of the Act explicitly requires that a waiver can be approved only if the State provides us with satisfactory assurances of the following:

1. *Safeguards*—The State must assure us that necessary safeguards have been taken to protect the health and welfare of the beneficiaries receiving the services. Under the statute, these safeguards must include adequate standards for provider participation. These regulations do not attempt to define these safeguards or to prescribe how they are to be developed. It is the State's responsibility to determine what the necessary safeguards are, to define them or specify how they will be developed and implemented, and to

explain how they satisfy the statute. If the State has licensure or certification requirements for any services (or for the individuals who furnish these services) provided under the waiver, it must assure HCFA that the standards in the licensure or certification requirements will be met.

The State must also assure us that it will maintain, and require providers of these services to maintain, financial accountability for funds expended with respect to these services. Again, it is the State's responsibility to inform us how it will meet this requirement and, in particular how it will assure that there is an audit trail for all State and Federal funds.

2. *Individual assessments*—Services under the waiver may be furnished only to an individual who, but for these services, would require the level of care provided in an SNF or ICF. This does not mean that the individual must be receiving the level of care provided in an SNF or ICF before receiving the noninstitutional services. It means, rather, that the individual, in the absence of the noninstitutional services, would require the level of care provided in an SNF or ICF. Thus, the state must assure us that, for each beneficiary encompassed by the waiver, it will provide an objective method for evaluating the beneficiary's need for the level of care provided in an SNF or ICF.

The new section requires the States to provide for an evaluation of the need for the level of care provided in an SNF or ICF with respect to all individuals who are entitled to medical assistance for these services and who may require these services. Section 1903(g) of the Act requires specific recertification of the need for institutional care with respect to beneficiaries who are already inpatients. Accordingly, under the waiver, a State would not be required to perform any further evaluation of those inpatients, although it would, of course be free to do so. It would, however, be required to perform an evaluation for all beneficiaries or Medicaid applicants for whom there is a reasonable indication that they might need the level of care provided in an SNF or ICF in the near future. In making this evaluation, the level of care provided in an SNF or ICF, as defined at 42 CFR 440.40 and 440.150 respectively, must be used. Other factors, whether medical or not, may be employed as the State deems appropriate. The State, in its assurance, must include a copy of the written assessment instrument that will be used, must describe how those assessments will be made, and specify who has responsibility for doing them.

The waiver request would have to describe, for example, the party or parties responsible for the assessment, what factors they will use to evaluate and reevaluate the recipient's need for the level of care provided in an SNF or ICF, and when evaluations and reevaluations will be made.

Our regulations require that the State maintain written documentation of all such evaluations and reevaluations. (The State need not keep the documentation itself but may arrange for the provider or for another person or agency to keep it.) The State must include in its waiver request an explanation of how it will satisfy this requirement. Congress clearly intended that these services would be made available only to individuals who had been determined to need inpatient SNF or ICF services in the absence of the alternative noninstitutional services. Therefore, we believe the maintenance of documentation is necessary to insure an audit trail and to enable us to determine whether only those individuals who would otherwise have required institutionalization were being provided these services.

3. *Informing beneficiaries of choice.*—Beneficiaries determined to be likely to require an SNF or ICF level of care must be informed of the feasible alternatives and given a choice as to which type of services to receive. (This would not apply to beneficiaries for whom there is a reasonable expectation that the cost of home and community-based services would be more than the cost of SNF or ICF care, if the State indicates in its waiver request that it will exclude these individuals from coverage under the waiver. See discussion in B above.) The State must explain in its waiver request how this requirement will be met and assure us that it will be met. We are not, however, requiring that the State document that each beneficiary (or his or her representative) has been so informed. In the absence of information to the contrary, we will accept the State's assurance that it has been done.

The Congressional Conference Committee, in its report on this amendment (H. Rept. 97-208, p. 966) emphasized that, while it is expected that the existence of alternatives will encourage the acceptance of community care, the integrity of patient choice must be preserved. The determination of which long-term care options are feasible in a particular case should be based on the individual's needs, as determined by an evaluation, and not on short-term cost savings.

As with other services under Medicaid, a beneficiary who is not given the choice of home or community-based services as an alternative to SNF or ICF services may request a fair hearing under 42 CFR Part 431, Subpart E, unless the reason for the denial is that the group of which the individual is a part is not included within the scope of the waiver (see 42 CFR 431.220(b)). Since a finding that home or community-based services are not feasible in a particular case constitutes a denial of services covered under a State's Medicaid plan, the Medicaid statute (section 1902(a)(3)) requires that applicants and beneficiaries be provided the procedural protections of the Medicaid administrative hearing process as described in 42 CFR Part 431, Subpart E.

4. *Average per capita expenditures.*—Congress was concerned that the total of all medical assistance for services provided to individuals who would qualify for home or community-based care under the State plan not exceed, on an average per capita basis, the total expenditures that would be incurred for such individuals if home and community-based services were not available. Accordingly, the statute and these regulations provide that the State, in its waiver request, must assure us that the average per capita expenditure under the waiver does not exceed the average per capita expenditure, as reasonably estimated by the State, that would have been made under the State plan had the waiver not been granted. Congress expected that this provision would assure that aggregate costs will not be greater than they would have been without these alternative services. (H. Rept. 97-208, p. 967)

Average per capita expenditures for services for this purpose means the aggregate Medicaid payment for all long-term care services furnished (taking into account the utilization of each type of service) divided by the number of beneficiaries expected to receive services. (We are excluding from these calculations services other than long-term care services, since they should be unaffected by the waiver, and their inclusion would simply make the calculations more burdensome.) These estimates must cover each fiscal year during the 3-year term of the waiver. To be granted approval by HCFA, the estimates must be reasonable, based on statistically sound and valid procedures, and verifiable. To develop the required assurances, the State will have to develop estimates of the costs and utilization for each type of service and an estimate of the total population that would likely receive these services.

The estimated average per capita expenditures under the waiver is obtained by multiplying (A) the

estimated number of beneficiaries who would receive the level of care provided in an SNF or ICF under the waiver times (B) the estimated Medicaid payment per eligible Medicaid user of such care; and adding that figure to the product of (C) the estimated number of beneficiaries who would receive home and community-based services under the waiver or other noninstitutional alternative services included under the State plan times (D) the estimated Medicaid payment per eligible Medicaid user of such services. This figure is to be divided by (F) the estimated number of beneficiaries who would receive the level of care provided in an SNF or ICF under Medicaid in the absence of the waiver plus (H) the estimated number of beneficiaries who would receive any of the noninstitutional, long-term care services otherwise provided under the State plan as an alternative to institutional care.

To illustrate,

$$\frac{(A\times B)+(C\times D)}{F+H} = \text{the estimated average}$$

per capita expenditure under the waiver.

Note.—The product of A×B would be calculated separately for SNF and ICF levels of care and then added. Similarly, the product of C×D would be calculated for each type of service covered under the waiver and then added. Thus, the numerator would be the sum of all these products—or the estimated aggregate cost for all long-term care services offered under the plan.

Next, the State will develop an estimate of average per capita expenditures that would result in the absence of a waiver. This estimate is obtained by multiplying (F) the estimated number of beneficiaries who would receive the level of care provided in an SNF or ICF in the absence of the waiver times (G) the estimated Medicaid payment per eligible Medicaid user of such care; and adding that figure to the product of (H) the estimated number of beneficiaries who would receive any of the noninstitutional, long-term care services otherwise provided under the State plan as an alternative to institutional care times (I) the estimated Medicaid payment per eligible Medicaid user of such noninstitutional services. This figure will be divided by the same denominator as before—namely, (F) the estimated number of beneficiaries who would receive the level of care provided in an SNF or ICF under Medicaid in the absence of the waiver plus (H) the estimated number of beneficiaries who would receive any of the noninstitutional, long-term care services otherwise provided under the State plan as an alternative to institutional care.

To illustrate,

$$\frac{(F\times G)+(H\times I)}{F+H} = \text{the estimated average per capita expenditures in the absence of a waiver.}$$

In both of these computations the denominator (i.e., the estimated number of beneficiaries who would likely receive the level of care provided in an ICF or SNF under Medicaid in the absence of the waiver) must be the same number for like periods of time. In particular, if the State wishes to revise its estimate of the denominator at some point after a waiver is approved (in order to adjust for an error in the estimate or for adding an unanticipated increase in the eligible population), that revision would be made in both calculations and the comparison would be re-examined to determine if the waiver is still cost effective.

In developing the estimates of utilization necessary to complete the above computations, the State must use actual data on nursing home cost and utilization and on cost and utilization of community-based services for the most recent year before the waiver takes effect. These figures would be adjusted by the State to reflect anticipated growth in the supply of nursing home beds, availability of community-based services and inflation. Similarly, the State's experience with utilization and cost of home and community-based services provided under title XIX, title XX and other programs should provide a useful basis for the necessary estimates.

The State, in its waiver request, must inform HCFA of what its per capita expenditures are, describe how these were estimated, and describe the factors it employed in deriving the estimates. HCFA will review these estimates very closely to determine if they are reasonable and based on statistically supportable assumptions. Further, HCFA will compare these estimates with data the State must furnish annually on its actual experience. In the event of a discrepancy between actual and estimated per capita expenditures, HCFA will ask the State to explain the basis for the difference or to adjust its estimates.

We will provide further guidance on how to develop estimating methodology and will provide technical assistance to States that request it.

5. *Annual report on impact*—The State must assure us that it will provide us annually with information on the impact of the waiver on the type and amount of services provided under the State plan and on the health and welfare of the beneficiaries. The data will have to be consistent with a data collection plan we are designing. We will provide further guidance to the States on what data must be submitted and in what form. However, such data would include, but not be limited to, the State's actual per capita expenditures for services provided under the waiver.

D. Duration of Waiver

If we approve a waiver request, the waiver may continue for three years. The waiver may be extended for three-year periods thereafter if the State requests it, unless our review of the prior three-year period shows that the assurances the State offered were not met.

The development and implementation of a State home and community-based services program is a time-consuming and complex process, often requiring the coordination of several agencies and, sometimes, State legislative action. In recognition of this, Congress provided that the waiver would be for three-year periods of time. However, Congress also provided in the amendments for the Secretary to monitor implementation of the waivers to assure that the requirements for them are being met. Thus, if HCFA finds that a given State is not meeting the assurances it made in its waiver request or any of the other requirements for a waiver specified in this subpart, the State will be given a notice of these findings and an opportunity for a hearing to rebut the findings. If, after the proceedings, HCFA determines that the State is not in compliance, HCFA will terminate the waiver. Possible grounds for termination will include excessive costs.

If a State wants to terminate its waiver before the completion of the three-year period and no longer provide home and community-based services, it must submit a written request to HCFA showing its intent to terminate the waiver 30 days before terminating services.

Whether HCFA or the State terminates the waiver, the State must notify beneficiaries receiving services under the waiver in accordance with 42 CFR 431.210 and must notify them 30 days before ending services. The State does not have to offer a hearing to beneficiaries when a waiver is terminated.

E. HCFA's Review of Waiver Requests

When we receive a request for a waiver, we will review its contents against the regulations and the statute to determine whether the request meets our requirements. For example, we will review to see that per capita expenditure estimates are reasonable

and that the State has an adequate means for evaluating whether a beneficiary needs the level of care provided in an SNF or ICF. If we find the request inadequate, unrealistic, or not cost-effective, we will return the request for more or better information. If the additional information does not improve the request sufficiently, we will deny it.

F. Eligibility of Beneficiaries

Under 42 CFR 435.231, it is possible for a beneficiary who would not be eligible for Medicaid while in the community to be eligible in an institution. The regulations permit States to set a special income standard that results in a higher institutional eligibility level for institutionalized beneficiaries than the community-based eligibility level. This level cannot exceed 300 percent of the Supplemental Security Income (SSI) community-based payment standard (42 CFR 435.722 and 435.1005). Most States have chosen this option and often the institutional level is significantly higher than the community level. The purpose of current regulations, which recognize the high cost of institutional care, is to enable States, particularly those without spend down mechanisms, such as a medically needy program, to cover institutionalized individuals although their income exceeds the community-based level. However, a beneficiary may lose Medicaid eligibility if he or she leaves the institution and returns to the community. A lack of community-based supportive services and the eligibility effect of § 435.231 have combined to provide an incentive toward institutionalization.

Section 1915(c) of the Act has a target population consisting of beneficiaries who are or who would be eligible for Medicaid in an institutional setting. The statute is not explicit on how beneficiaries are to be determined eligible for new services under the waiver. However, we believe that Congress did not intend that there would be a smaller population eligible for Medicaid for home and community-based services than for institutional long-term care. In addition, the purpose of the law is to provide an incentive for beneficiaries to remain in the community by providing supportive care at home, rather than making it available to them only in an institution.

Under our regulations implementing the changes in Medicaid eligibility made by Pub. L. 97-35, "Medicaid Eligibility and Coverage Criteria", BPP-179-FC, published in the Federal Register of September 30, 1981, we decided to retain, at least for the time being, this and other optional categorically needy groups. To keep optional categorical coverage under 42 CFR 435.231 for the institutionalized only would deprive the program and the beneficiaries who are eligible for Medicaid only because they are institutionalized of the benefits of having care provided at home and in the community, and of the savings that Congress expected would accrue from the provision of less costly noninstitutional care. Therefore, we are adding new regulations, 42 CFR 435.232, to allow States to cover individuals who would be eligible for institutional services under 42 CFR 435.231 to be eligible for home and community-based services furnished under a waiver. The new regulations, § 435.232, will affect only the base of categorically-needy beneficiaries. Medically needy individuals may become eligible under provisions of other regulations.

These new regulations, § 435.232, are very similar to § 435.231 and permit States to make eligible those categorically needy individuals in the community who—

(1) Are not eligible for SSI or a State supplement because of their income;

(2) Have income below a level specified in the plan under § 435.722;

(3) Would be eligible under § 435.231 if institutionalized; and

(4) Would require institutional care if not receiving home or community-based services authorized under the waiver.

The effect of the changes just discussed is to remove the bias in favor of institutionalization. Conversely, we do not wish to provide an inequitable incentive for those receiving noninstitutional services.

Since beneficiaries determined eligible under a special standard, such as § 435.231, have income in excess of their maintenance needs, it is reasonable to expect these beneficiaries to share in the cost of personal and medical care above a level of income protected for maintenance needs. Current regulations at 42 CFR 435.725 and 435.733 impose this requirement on beneficiaries who are Medicaid eligible under § 431.231. Therefore, to insure equal treatment of institutionalized beneficiaries and beneficiaries receiving home and community-based services under the waiver, we will require beneficiaries who are eligible for home and community-based services under the waiver to share in the cost of the services. We believe that this requirement is supportable under the rationale of *Friedman* v. *Berger*, 547 F. 2d 724 (2d Cir., 1976). We are adding new §§ 435.726 and 435.735 to 42 CFR Part 435 for categorically needy beneficiaries. The sections are very similar to §§ 435.725 and 435.733, which lay out the requirements of post-eligibility treatment of income and resources of institutionalized beneficiaries. Section 435.726 deals with beneficiaries who reside in States that provide Medicaid to all SSI beneficiaries or to all SSI beneficiaries and to State supplement beneficiaries. Section 435.735 deals with beneficiaries residing in States with more restrictive requirements than SSI.

There are two major differences in the new sections: (1) there is no provision dealing with consideration of maintenance of the beneficiary's home while he or she is an inpatient; and (2) there is no provision specifying the amount that is to be deducted from a beneficiary's total income and protected for his or her use for personal needs. Instead, there will be a provision discussing a beneficiary's maintenance allowance, which will be deducted from the total income. We are requiring this amount to be based on a reasonable assessment of need but it must not (for beneficiaries subject to the provisions of § 435.726, applicable to States covering all SSI beneficiaries) exceed the highest of:

(a) The amount of the income standard used to determine eligibility for SSI for and individual living in his own home, if the agency provides Medicaid only to individuals receiving SSI;

(b) The amount of the highest income standard, in the appropriate category of age, blindness, or disability, used to determine eligibility for an optional State supplement for an individual in his or her own home, if the agency provides Medicaid to optional State supplement recipients under § 435.230; or

(c) The amount of the medically needy income standard for one person established under §§ 435.811 and 435.814, if the agency provides Medicaid under the medically needy coverage option.

Our reasoning for setting these maximum levels (and those under § 435.735) for beneficiaries only is that they are the levels set under the present regulations at §§ 435.726(c)(2) and 435.733(c)(2) for maximum maintenance levels for spouses in the community. We assume that all other needs of beneficiaries under the waiver, which might otherwise require a higher income level to meet them, will be met by the supportive services furnished under the waiver.

In these regulations the allowances for a beneficiary with only a spouse at home and for a beneficiary with a family at home will be based on the same criteria that are used for beneficiaries

who are eligible for Medicaid because they are institutionalized.

A beneficiary with only a spouse will be allowed the reasonable amount for the beneficiary's maintenance, as determined above, plus a reasonable amount for maintenance of the spouse. The reasonable amount for the spouse will be based on the same criteria used to determine the allowance for the beneficiary.

The allowances for a beneficiary with a family will be the reasonable amount (as determined above) for the beneficiary, plus an additional amount for the maintenance needs of the family. The additional amount will:

(a) Be based on a reasonable assessment of the family's financial needs;

(b) Be adjusted for the number of family members living in the home; and

(c) Not exceed the higher of the need standard for a family of the same size used to determine eligibility under the State's AFDC plan or the medically needy income standard established under 42 CFR Part 435, Subpart I, for a family of the same size. See present § 435.725(c)(3).

The State must also deduct from the beneficiary's total income amounts for incurred medical expenses that are not subject to payment by a third party. These expenses include:

(a) Medicare and other health insurance premiums, deductibles, or coinsurance charges; and

(b) Necessary medical or remedial care recognized under State law but not covered under the State's Medicaid plan, subject to reasonable limits the agency may establish on amounts of these expenses. See present § 435.725(c)(4).

For beneficiaries subject to the provisions of § 435.735 (applicable to States with more restrictive requirements than SSI), the amount the beneficiary needs for maintenance will be determined in the same manner as the maintenance needs of the spouse under existing regulations at § 435.733. The spouse's needs will be determined the same as in § 435.733, as will the family's needs. Amounts for incurred medical expenses, as in § 435.733, will be deducted from total income.

G. Technical Changes

We are revising § 431.50, Statewide operation, to show that a State need not offer services under the new benefit to all beneficiaries in the State.

We are revising § 440.1, the basis and purpose statement for existing regulations on services, to show the new statutory authority for services that can be furnished under the waiver.

We are amending § 440.170(f) so that personal care services, when furnished under a waiver as home and community-based services, will not have to meet the definitions of these sections.

Finally, we are amending § 440.250, regulations on comparability of services, to provide that, if applicable under the waiver, services provided by the State need not be comparable for all individuals within a group.

Some sections of these regulations are affected by statutory provisions that are implemented by other regulations documents also being published at this time. It would be confusing to present the same section with different wording in different documents (by making, in each document, only the particular changes called for by the statutory provisions implemented by that document). In order to avoid this problem, the sections affected by more than one provision are presented in each document with all the changes required by each of the provisons of law that affect them. However, each of the changes is explained only once, in the preamble of the regulations document that implements the provision which requires that particular change.

Waiver of Proposed Rulemaking

Public Law 97-35 was enacted on August 13, 1981, and section 2176 of that law became effective on that date. In order to have regulations in place as close as possible to the effective date of the law, we must publish these regulations in final form promptly. Because of this, and because we believe that the States and a substantial number of Medicaid recipients may benefit by these regulations, we believe that publication of a notice of proposed rulemaking would be contrary to the public interest. We therefore find good cause to waive notice of proposed rulemaking and our normal 30-day delay in effective date. We will, however, consider any comments on this rule that are mailed by the date specified above in the "Dates" section and make any further changes that may be necessary. We will also respond to the comments when we make any further changes.

Impact Analyses

Executive Order 12291

The Secretary has determined that the proposed regulations do not meet the criteria for a "major rule", as defined by section 1(b) of Executive Order 12291. That is, the proposed regulations will not—

- Have an annual effect on the economy of $100 million or more;
- Result in a major increase in costs or prices for consumers, any industries, any government agencies or any geographic regions; or
- Have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or import markets.

Congress estimated that this provision, as it appeared in H.R. 3982, would save $20 million in fiscal year 1982. Cost or savings estimates for the provision, as enacted, were not developed.

The costs or savings are a function of the balance between deinstitutionalization (some current residents of nursing homes could be returned to the community for less money) and new demand (some people who currently receive care from family and friends despite a medical need for nursing home care will become eligible for Medicaid outside the nursing home setting), and the number of States which choose to exercise this option. Because of these variables, we cannot estimate the cost of this program at this time. (However, Congress indicated (H. Rept. 97-208, p. 967) that it expected the provisions concerning per capita costs to assure that aggregate costs will not be greater than they would have been without the home and community-based services.) Moreover, the purpose of the legislative amendment was to provide the States with sufficient flexibility to develop more economical alternatives to the high cost of long-term care institutional services. To the extent that this purpose is achieved, then the cost of providing the home and community-based services under the waiver will offset the cost of institutional care that would otherwise have been required. Further, by facilitating the use of other providers of care, more competition should be generated. Accordingly, we do not believe the criteria for a "major rule" will be met.

Regulatory Flexibility Act

Section 604 of Public Law 96-354 (the Regulatory Flexibility Act of 1980) requires that each Federal agency prepare, and make available for public comment, a regulatory flexibility analysis on certain regulations. The regulatory flexibility analysis is intended to explain what effect regulatory actions by agencies would have on small businesses and other small entities.

As defined by the Regulatory Flexibility Act, the term "small entities"

includes "small governmental jurisdictions". The latter term is defined as local governments (cities, counties, towns, townships, villages, school districts; or other special districts) with a population of less than fifty thousand persons.

As explained above, these regulations will permit States to offer an array of services to beneficiaries outside of an institutional setting. Although they directly affect States, the regulations could indirectly adversely affect providers of institutional services that are small enough to meet the definition of "small entity", since some individuals may choose a home or community-based service rather than an inpatient service. However, we do not believe the regulations will have a significant economic effect on a substantial number of small entities. These regulations will benefit some entities that were not able to participate previously as providers under Medicaid before because the services they provide are not covered under the Medicaid program. The regulations are intended to expand the universe of small providers and may benefit them economically. Although we do not know how many States will take advantage of the provisions of these regulations, we project that the total number of providers that benefit significantly will be small compared to total number of providers. (Many providers in a position to become Medicaid providers are already reimbursed under other programs for the same services.) Therefore, the Secretary certifies, under section 605(b) of the Regulatory Flexibility Act, that the regulations will not have a significant economic impact on a substantial number of small entities.

Reporting and Recordkeeping Requirements

The Department is required to submit to the Office of Management and Budget for review and approval, 42 CFR 441.301, 441.302, 441.303 and 441.304, which include reporting and recordkeeping requirements. These sections have been submitted to OMB. We will publish a notice in the Federal Register when approval has been obtained indicating the effective date of the reporting.

PART 431—STATE ORGANIZATION AND GENERAL ADMINISTRATION

42 CFR Part 431 is amended as follows:

The authority citation for Part 431 reads as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

2. Section 431.50 is amended by revising paragraphs (a) and (c) to read as follows:

§ 431.50 Statewide operation.

(a) *Basis and purpose.* This section implements section 1902(a)(1) of the Act, which requires a State plan to be in effect throughout the State, and section 1915, which permits certain exceptions.

* * * * *

(c) *Exceptions.* The requirements of paragraph (b) of this section do not apply with respect to:

(1) Service offered by comprehensive health services organizations (see § 440.250(g)) of this subchapter;

(2) Services offered by rural health clinics (see § 440.20(b));

(3) Arrangements under § 431.54(d) to purchase medical services or laboratory and x-ray services (as defined in § 440.30);

(4) Lock-in or lock-out restrictions under § 431.54(e) and (f); and

(5) Services offered under a waiver with respect to home and community based services (§ 440.180).

PART 435—ELIGIBILITY IN THE STATES AND DISTRICT OF COLUMBIA

42 CFR Part 435 is amended as follows:

1. The table of contents for Part 435 is amended by adding new §§ 435.232, 435.726 and 435.735 as follows:

Subpart C—Options for Coverage as Categorically Needy

* * * * *

Section

435.232 Individuals receiving home and community-based services who are eligible under a special income level.

* * * * *

Subpart H—Financial Requirements for the Categorically Needy

* * * * *

435.726 Post-eligibility treatment of income and resources of individuals receiving home and community-based services furnished under a waiver: Application of patient income to the cost of care.

* * * * *

435.735 Post-eligibility treatment of income and resources of individuals receiving home and community-based services furnished under a waiver: Application of patient income to the cost of care.

2. The authority citation for Part 435 reads as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

3. Section 435.3 is amended by adding a new statutory citation at the end of the existing text as set forth below.

§ 435.3 Basis

This part implements the following sections of the Act, which state eligibility requirements and standards:

* * * * *

1915(c) Home or community based services.

4. A new § 435.232 is added to read as follows:

§ 435.232 Individuals receiving home and community-based services who are eligible under a special income level.

(a) If the agency provides Medicaid under § 435.231 to individuals in institutions who are eligible under a special income level, it may also cover aged, blind and disabled individuals in the community who—

(1) Because of their income, are not eligible for SSI or State supplements;

(2) Have income below a level specified in the plan under § 435.722 (See § 435.1005 for limitations on FFP in Medicaid expenditures for individuals specified in this section);

(3) Would be eligible for Medicaid under § 435.231 if institutionalized; and

(4) Will receive home and community-based services under a waiver granted under Part 441, Subpart G, of this subchapter.

5. New §§ 435.726 and 435.735 are added to read as follows:

§ 435.726 Post-eligibility treatment of income and resources of individuals receiving home and community-based services furnished under a waiver: Application of patient income to the cost of care.

(a) The agency must reduce its payment for home and community-based services provided to an individual specified in paragraph (b) of this section, by the amount that remains after deducting the amounts specified in paragraph (c) of this section from the individual's income.

(b) This section applies to individuals who are eligible for Medicaid under § 435.232 and are receiving home and community-based services furnished under a waiver of Medicaid requirements under Part 441, Subpart G of this subchapter.

(c) In reducing its payment for home and community-based services, the agency must deduct the following amounts, in the following order, from the individual's total income (including amounts disregarded in determining eligibility):

(1) An amount for the maintenance needs of the individual. This amount must be based on a reasonable assessment of need but must not exceed the highest of—

(i) The amount of the income standard used to determine eligibility for SSI for an individual living in his own home, if the agency provides Medicaid only to individuals receiving SSI;

(ii) The amount of the highest income standard, in the appropriate category of age, blindness, or disability, used to determine eligibility for an optional State supplement for an individual in his own home, if the agency provides Medicaid to optional State supplement recipients under § 435.230; or

(iii) The amount of the medically needy income standard for one person established under §§ 435.811 and 435.814, if the agency provides Medicaid under the medically needy coverage option.

(2) For an individual with only a spouse at home, an additional amount for the maintenance needs of the spouse. This amount must be based on a reasonable assessment of need but must not exceed the highest of—

(i) The amount of the income standard used to determine eligibility for SSI for an individual living in his own home, if the agency provides Medicaid only to individuals receiving SSI;

(ii) The amount of the highest income standard, in the appropriate category of age, blindness, or disability, used to determine eligibility for an optional State supplement for an individual in his own home, if the agency provides Medicaid to optional State supplement recipients under § 435.230; or

(iii) The amount of the medically needy income standard for one person established under §§ 435.811 and 435.814, if the agency provides Medicaid under the medically needy coverage option.

(3) For an individual with a family at home, an additional amount for the maintenance needs of the family. This amount must—

(i) Be based on a reasonable assessment of their financial need;

(ii) Be adjusted for the number of family members living in the home; and

(iii) Not exceed the higher of the need standard for a family of the same size used to determine eligibility under the State's AFDC plan or the medically needy income standard established under subpart I of this part for a family of the same size.

(4) Amounts for incurred expenses for medical or remedial care that are not subject to payment by a third party including—

(i) Medicare and other health insurance premiums, deductibles, or coinsurance charges; and

(ii) Necessary medical or remedial care recognized under State law but not covered under the State's Medicaid plan, subject to reasonable limits the agency may establish on amounts of these expenses.

§ 435.735 Post-eligibility treatment of income and resources of individuals receiving home and community-based services furnished under a waiver: Application of patient income to the cost of care.

(a) The agency must reduce its payment for home and community-based services provided to an individual specified in paragraph (b) of this section, by the amount that remains after deducting the amounts specified in paragraph (c) of this section from the individual's income.

(b) This section applies to individuals who are eligible for Medicaid under § 435.232, and are eligible for home and community-based services furnished under a waiver of State plan requirements under Part 441, Subpart G of this subchapter.

(c) In reducing its payment for home and community-based services, the agency must deduct the following amounts, in the following order, from the individual's total income (including amounts disregarded in determining eligibility):

(1) An amount for the maintenance needs of the individual. This amount must be based on a reasonable assessment of need but must not exceed the higher of—

(i) The more restrictive income standard established under § 435.121; or

(ii) The medically needy standard for an individual.

(2) For an individual with only a spouse at home, an additional amount for the maintenance needs of the spouse. This amount must be based on a reasonable assessment of need but must not exceed the higher of—

(i) The more restrictive income standard established under § 435.121; or

(ii) The medically needy standard for an individual.

(3) For an individual with a family at home, an additional amount for the maintenance needs of the family. This amount must—

(i) Be based on a reasonable assessment of their financial need;

(ii) Be adjusted for the number of family members living in the home; and

(iii) Not exceed the higher of the need standard for a family of the same size used to determine eligibility under the State's approved AFDC plan or the medically needy income standard established under subpart I of this part for a family of the same size.

(4) Amounts for incurred expenses for medical or remedial care that are not subject to payment by a third party, including—

(i) Medicare and other health insurance premiums, deductibles, or coinsurance charges; and

(ii) Necessary medical or remedial care recognized under State law but not covered under the State's Medicaid plan, subject to reasonable limits the agency may establish on amounts of these expenses.

PART 440—SERVICES: GENERAL PROVISIONS

42 CFR Part 440 is amended as follows.

1. The authority citation for Part 440 reads as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

2. Section 440.1 is revised to read as follows:

§ 440.1 Basis and purpose.

This subpart interprets section 1905(a) of the Act, which lists the services included in the term "medical assistance," sections 1905 (c), (d), (f)-(i), and (l), which define some of those services, and section 1915(c), which lists as "medical assistance" certain home and community-based services provided under waivers under that section to individuals who would otherwise require institutionalization. It also implements sec. 1902(a)(43) with respect to laboratory services (see also §§ 447.10 and 447.342).

3. Section 440.170 is amended by revising paragraph (f) as follows:

§ 440.170 Any other medical care or remedial care recognized under State law and specified by the Secretary.

* * * * *

(f) *Personal care services in a recipient's home.* Unless defined differently by a State agency for purposes of a waiver granted under Part 441, Subpart G of this chapter, "personal care services in a recipient's home" means services prescribed by a physician in accordance with the recipient's plan of treatment and provided by an individual who is—

(1) Qualified to provide the services;

(2) Supervised by a registered nurse; and

(3) Not a member of the recipient's family.

4. Section 440.180 is added to read as follows:

§ 440.180 Home or community-based services.

(a) "Home or community-based services" means services that are furnished under a waiver granted under the provisions of Part 441, Subpart G of this subchapter. The services may

consist of any of the following services as defined by the agency (but not including room and board except as specifically provided for in paragraph (b) of this section):

(1) Case management services;
(2) Homemaker services;
(3) Home health aide services;
(4) Personal care services;
(5) Adult day health services;
(6) Habilitation services;
(7) Respite care services;
(8) Other services requested by the Medicaid agency and approved by HCFA as cost-effective.

(b) FFP for home community-based services described in paragraph (a) of this section is not available in expenditures for the cost of room and board except when provided as part of respite care in a facility approved by the State that is not a private residence. For purposes of this provision, "board" means three meals a day or any other full nutritional regimen and does not include meals provided as part of a program of adult day health services.

5. Section 440.250 is amended by adding new paragraphs (h) through (k) to read as follows:

§ 440.250 Limits on comparability of services.

* * * * *

(h) Ambulatory services for the medically needy (§ 440.220(b)) may be limited to—

(1) Individuals under age 18; and
(2) Individuals entitled to institutional services.

(i) Services provided under an exception to requirements allowed under § 431.54 may be limited as provided under that exception.

(j) If HCFA has approved a waiver of Medicaid requirements under § 431.55, services may be limited as provided by the waiver.

(k) If the agency has been granted a waiver of the requirements of § 440.240 (Comparability of services) in order to provide home or community-based services under § 440.180, the services provided under the waiver need not be comparable for all individuals within a group.

PART 441—SERVICES: REQUIREMENTS AND LIMITS APPLICABLE TO SPECIFIC SERVICES

42 CFR Part 441 is amended as follows:

Subpart G, §§ 441.300–441.305 is added to read as follows:

Subpart G—Home and Community Based Services: Waiver Requirements

Sec.
441.300 Basis and purpose.
441.301 Contents of request for a waiver.
441.302 State assurances.
441.303 Supporting documentation required.
441.304 Duration of waiver.
441.305 Notification of termination of a waiver.

Authority: Section 1102 of the Social Security Act (42 U.S.C. 1302).

Subpart G—Home and Community-Based Services: Waiver Requirements

§ 441.300 Basis and purpose.

Section 1915(c) of the Act permits States to offer, under a waiver of statutory requirements, an array of home and community-based services that an individual needs to avoid institutionalization. Those services are defined in § 440.180 of this subchapter. This subpart describes what the Medicaid agency must do to obtain a waiver.

§ 441.301 Contents of request for a waiver.

(a) A request for a waiver under this section must consist of—

(1) The assurances required by § 441.302 and the supporting documentation required by § 441.303;

(2) When applicable, requests for waivers of the requirements of section 1902(a) (1) or (10) of the Act; and

(3) A statement as to whether the agency will refuse to offer home or community-based services to any recipient because it can reasonably expect that the cost of the home or community-based services furnished to that recipient would exceed the cost of the level of care provided in an SNF or ICF (or ICF/MR if applicable).

(b) If the agency furnishes home and community-based services, as defined in § 440.180 of this subchapter, under a waiver granted under this subpart, the waiver request must:

(1) Provide that the services are furnished—

(i) Under a written plan of care subject to approval by the Medicaid agency;

(ii) Only to recipients who are not inpatients of a hospital, SNF, ICF, or ICF/MR, and who the agency determines would require the level of care provided in an SNF or ICF (or ICF/MR, if applicable) under Medicaid (as defined in §§ 440.40 and 440.150) if not furnished these services;

(2) Describe the qualifications of the individual or individuals who will be responsible for developing the individual plan of care;

(3) Describe the group or groups of individuals to whom the services will be offered;

(4) Describe the services to be furnished; and

(5) Provide that the documentation requirements regarding individual evaluation, specified in § 441.303(c), will be met.

§ 441.302 State assurances.

HCFA will not grant a waiver under this subpart unless the Medicaid agency provides satisfactory assurances to HCFA that:

(a) Necessary safeguards have been taken to protect the health and welfare of the recipients of the services. Those safeguards must include adequate standards for provider participation. If the State has licensure or certification requirements for any services or for any individuals furnishing services provided under the waiver, it must assure that the standards in the licensure or certification requirements will be met.

(b) The agency will assure financial accountability for funds expended for home and community-based services, and it will maintain and make available to HHS, the Comptroller General, or their designees, appropriate financial records documenting the cost of services provided under the waiver.

(c) The agency will provide for an evaluation of the need for home and community-based care for recipients who are entitled to the level of care provided in an SNF, ICF, or ICF/MR, as defined by §§ 440.40 and 440.150 respectively, and for whom there is a reasonable indication that they might need such services in the near future.

(d) If a recipient is determined to be likely to require the level of care provided in an SNF, ICF, or ICF/MR services, the recipient or his or her representative will be informed of the feasible alternatives, if any, available under the waiver, and permitted to choose among them.

(e) The average per capita fiscal year expenditures under the waiver will not exceed the average per capita expenditures for the level of care provided in an SNF, ICF, or ICF/MR under the State plan that would have been made in that fiscal year had the waiver not been granted. These expenditures must be reasonably estimated by the agency, and the estimates must cover each year of the waiver period.

(f) The agency will provide HCFA annually with information on the impact of the waiver on the type, amount and cost of services provided under the State plan and on the health and welfare of recipients. The information must be consistent with a data collection plan designed by HCFA.

§ 441.303 Supporting documentation required.

The agency must furnish HCFA with sufficient information to support the assurances required by § 441.302. The information must consist of the following, at a minimum:

(a) A description of the safeguards necessary to protect the health and welfare of recipients.

(b) A description of the records and information that will be maintained to support financial accountability.

(c) A description of the agency's plan for the evaluation and reevaluation of recipients, including a description of who will make these evaluations and how they will be made. The information must include a copy of the evaluation instrument to be used and provide for the maintenance of written documentation of all evaluations and reevaluations.

(d) An explanation with supporting documentation of how the agency estimated the per capita expenditures for both institutional and noninstitutional services. This information must include the estimated utilization rates and costs for institutional and noninstitutional services included in the plan.

(1) The average per capita expenditure estimate of the cost of all services, both institutional and noninstitutional, under the waiver must not exceed the average per capita expenditure of the cost of all services in the absence of a waiver. The estimates are to be based on the following equation:

$$\frac{(A \times B) + (C \times D)}{F+H} \leq \frac{(F \times G) + (H \times I)}{F+H}$$

where:

A = the estimated number of beneficiaries who would receive the level of care provided in an SNF, ICF, or ICF/MR under the waiver.

B = the estimated Medicaid payment per eligible Medicaid user of such institutional care.

C = the estimated number of beneficiaries who would receive home and community-based services under the waiver or other noninstitutional alternative services included under the State plan.

D = the estimated Medicaid payment per eligible Medicaid user of such home and community-based services.

F = the estimated number of beneficiaries who would likely receive the level of care provided in an SNF, ICF, or ICF/MR in the absence of the waiver.

G = the estimated Medicaid payment per eligible Medicaid user of such institutional care.

H = the estimated number of beneficiaries who would receive any of the noninstitutional, long-term care services otherwise provided under the State plan as an alternative to institutional care.

I = the estimated Medicaid payment per eligible Medicaid user of the noninstitutional services referred to in H.

§ 441.304 Duration of a waiver.

(a) Except as provided in paragraph (b) of this section, a waiver of State plan requirements to provide home or community-based services approved under this section will continue for a three-year period from the date of the approval. If the agency requests it, the waiver may be extended for three years after the initial three-year period, if HCFA's review of the prior three-year period shows that the assurances required by § 441.302 of this subpart were met.

(b) If HCFA finds that an agency is not meeting any of the requirements for a waiver contained in this subpart, the agency will be given a notice of HCFA's findings and an opportunity for a hearing to rebut the findings. If HCFA determines that the agency is not in compliance with this subpart after the notice and any hearing, HCFA will terminate the waiver.

§ 441.305 Notification of a waiver termination.

(a) If a State chooses to terminate its waiver before the three-year period is up, it must notify HCFA in writing 30 days before terminating services to recipients.

(b) If HCFA or the State terminates the waiver, the State must notify recipients of services under the waiver in accordance with § 431.210 of this subchapter and notify them 30 days before terminating services.

(Catalog of Federal Domestic Assistance Program No. 13.714, Medical Assistance Program)

Dated: September 16, 1981.

Carolyne K. Davis,

Administrator, Health Care Financing Administration.

Approved: September 24, 1981.

Richard S. Schweiker,

Secretary.

[FR Doc. 81-28331 Filed 9-30-81; 8:45 am]

BILLING CODE 4110-35-M

federal register

Thursday
October 1, 1981

Part VI

Department of Health and Human Services

Health Care Financing Administration

Medicare Program; Inpatient Routine Nursing Salary Cost Differential; Interim Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES
Health Care Financing Administration
42 CFR Part 405

Medicare Program; Inpatient Routine Nursing Salary Cost Differential

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Interim final rule with comment period.

SUMMARY: Because patients age 65 and over are presumed to require more nursing services than the general patient population, the Medicare reimbursement principles currently recognize an inpatient routine nursing salary cost differential for hospitals and skilled nursing facilities (SNFs). This differential is presently set at the rate of 8½ percent. On August 13, 1981, Pub. L. 97-35, the Omnibus Budget Reconciliation Act of 1981, amended section 1861(v)(1) of the Social Security Act, by incorporating the nursing salary cost differential for hospitals specifically into the statute and by limiting the rate for hospitals to no more than 5 percent, beginning October 1, 1981.

We are amending the Medicare regulations to incorporate the legislative amendment for hospitals.

DATES: These regulations are effective October 1, 1981 and are being published in final for reasons described in the Supplementary Information below.

However, we will consider any written comments mailed by November 30, 1981, and revise the regulations, if necessary.

ADDRESS: Address comments in writing to: Administrator, Department of Health and Human Services, Health Care Financing Administration, P.O. Box 17073, Baltimore, Maryland 21235.

If you prefer, you may deliver your comments to Room 309-G Hubert H. Humphrey Building, 200 Independence Ave., S.W., Washington, D.C. or to Room 789, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

In commenting, please refer to BPP-171-FC. Agencies and organizations are requested to submit comments in duplicate.

Comments will be available for public inspection, beginning approximately two weeks after publication, in Room 309-G of the Department's office at 200 Independence Ave., S.W., Washington, D.C. 20201 on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (202-245-7890).

Because of the large number of comments we receive, we cannot acknowledge or respond to them individually. However, if as a result of comments, we believe that changes are needed in these regulations, we will publish the changes in the Federal Register, and respond to the comments in the preamble of that document.

FOR FURTHER INFORMATION CONTACT: William Goeller (301) 597-1802.

SUPPLEMENTARY INFORMATION:

Background

Under Part A of the Medicare program (title XVIII of the Social Security Act), hospitals and skilled nursing facilities (SNFs) are reimbursed based on the reasonable cost of health care items and services furnished to beneficiaries. The Medicare rules for calculating reimbursable costs of these providers include an inpatient nursing salary cost differential (42 CFR 405.430). This differential was adopted by the Medicare program on the basis of certain studies that were conducted at the time that indicated that, on the average, elderly patients in an institutional setting require more general routine nursing services than do other patients. The differential is also applied to pediatric and maternity patients, who also are assumed to require a greater amount of routine nursing services than other patients.

The differential is not an add-on to the total routine nursing salary costs incurred by a provider, but rather a reallocation of the actual routine nursing salary costs between aged, pediatric and maternity patients and all other classes of patients.

The effect of the nursing differential is that the Medicare program recognizes a higher than average routine per diem cost for aged, pediatric and maternity patients and a lower than average per diem cost for other classes of patients. (Disabled Medicare beneficiaries are counted in the "all other" category unless they are otherwise pediatric or maternity patients, and the lower than average per diem is applicable to that class of patient.) The total impact of the differential on a particular provider's Medicare reimbursement will vary, depending on the provider's patient mix. If all of the provider's patients were aged, pediatric and maternity, no differential would be applicable.

We originally published regulations in the Federal Register on July 2, 1971 (36 FR 12606) to establish the principle of an inpatient routine nursing salary cost differential as an element of reimbursable cost under the Medicare principles of reimbursement. The differential was effective for services furnished beginning July 1, 1969 and we set the rate at 8½ percent.

On May 23, 1975, we amended the regulations (see 40 FR 22540) to terminate payment of the inpatient routine nursing salary cost differential for provider cost reporting periods beginning July 1975. However, on August 1, 1975, the U.S. District Court for the District of Columbia declared the amended regulations invalid. To comply with this decision, we issued instructions to Medicare fiscal intermediaries (Part A Intermediary Letter No. 75-49, September 1975) instructing them to continue payment of the differential in accordance with regulations previously in effect. However, the regulations were not amended to reflect the court's decision.

Statutory Amendment

Section 2141 of the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97-35) amended section 1861(v)(1) of the Social Security Act by requiring that the Secretary, through regulations, allow an inpatient routine nursing salary cost differential as a reimbursable cost of hospitals, at a rate not to exceed 5 percent. The legislation also requires the differential to be applied under the same methodology as that used in April 1981. The amendments apply to cost reporting periods ending after September 30, 1981. In cases of cost reporting periods that begin before October 1, 1981, the reduced rate is imposed only in proportion to the part of the period that occurs after September, 1981.

The statute also requires the Comptroller General to conduct a study of the extent, if any, to which the average cost of efficiently providing routine inpatient nursing care to Medicare beneficiaries exceeds the average cost of furnishing that care to other patients. The report is due to Congress by February 13, 1982.

Regulatory Provisions

Current regulations at 42 CFR 405.430 indicate that there is a nursing differential of 8½ percent payable for services furnished during specified periods. The regulations cover Medicare institutional providers of services, which include both hospitals and SNFs. Historically, we have uniformly applied the differential to both types of institutions. The legislation establishes a routine nursing salary cost differential for hospitals at a rate not to exceed 5 percent beginning October 1, 1981, but is silent with respect to the application of a nursing salary differential for SNFs. We will, therefore, continue to apply the differential to SNFs at the rate of 8½

percent after September 30, 1981. We are amending the regulations to implement the provisions of the statute as follows:

A Section 405.430(a)—Principle. This paragraph currently states that there is a differential of 8½ percent payable for periods after June 30, 1969, to the provider's first cost reporting period beginning after June 1975. We have changed this paragraph by deleting the reference to June 30, 1969 and to show that for hospitals there is a differential of 8½ percent for inpatient routine nursing services furnished through September 30, 1981, and a differential of 5 percent for inpatient routine nursing services furnished thereafter. We also state in this paragraph that the 8½ percent differential will continue for SNFs.

B Section 405.430(b)(7)—Definition of "Adjusted inpatient routine nursing salary cost" This subparagraph currently gives an explanation and a formula for determining the differential at 8½ percent. We have changed the explanatory material to delete references to specific percentages and have deleted the formula. We do not believe further clarification of the explanation is necessary.

C Section 405.430(c)—Application. We are revising this section to conform to the specific differential percentages in effect and the time periods to which they apply. We are also removing any references to periods prior to June 30, 1969.

D Section 405.430(d) (1), (2) and (3)—Effective dates. We have revised § 405.430(d) in the following manner:

1. In paragraph (d)(1), we have removed references to cost reporting periods beginning prior to July 1, 1969. Also in that paragraph, we have made a technical correction to eliminate the current wording in the paragraph that indicates that the differential no longer applies after June 1975. Further, we have added language to the paragraph that makes it clear that the existing differential rate of 8½ percent will continue to apply to SNFs for periods after September 30, 1981.

2. We are revising paragraphs (d)(2) and (d)(3) to indicate that hospitals with cost reporting periods that straddle October 1, 1981, (the effective date of the 5 percent differential for hospitals) are to calculate the differential for that portion of the period through September 30, 1981, at 8½ percent and to calculate the differential at 5 percent for that portion of the period after that date. The individual calculations are simplified by computing an aggregate nursing differential percentage weighted to reflect the number of months in the cost reporting period where the 8½ percent factor is applicable and the number of months in the period where the 5 percent applies. This weighted percentage is computed as follows:

(Total Months in Cost Reporting period prior to October 1, 1981) × 1.085 + (Total Months in Cost Reporting period after September 30, 1981) × 1.085 ÷ 12 calendar months = Nursing Differential Percentage

The following table will be used to compute the routine nursing salary cost differential for 12-month cost reporting periods beginning before October 1, 1981, and ending on the last day of each of the 12 months after September 30, 1981. We will publish this table in our cost reporting instructions for hospitals. For cost reporting periods ending on a day other than the last day of the month, the table would not be appropriate. The appropriate aggregate percentage can be developed using the above formula and substituting calendar days for calendar months. Also, the table would not be appropriate for cost reporting periods of less than 12 months.

By using the aggregate percentage for the appropriate cost reporting period designated in the table, we can compute the inpatient routine nursing salary cost differential in the same manner as for cost reporting periods that do not straddle October 1, 1981. Accordingly, the appropriate percentage should be substituted for 1.085 shown in the example in 42 CFR 405.430(e)(1).

12-month Cost Reporting Period Ending Date—Nursing Differential Percentage

October 31, 1981—1.082
November 30 1981—1.080
December 31, 1981—1.077
January 31, 1982—1.074
February 28, 1982—1.071
March 31, 1982—1.068
April 30, 1982—1.065
May 31, 1982—1.062
June 30, 1982—1.059
July 31, 1982—1.056
August 31, 1982—1.053
September 30, 1982—1.05

Waiver of Proposed Rulemaking

These amendments are technical in nature and merely implement the clear language of Pub. L. 97-35. They reinstate in regulations an inpatient routine nursing salary cost differential of 8½ percent for hospitals and SNFs for cost reporting periods beginning after June 1975. The amendments also reduce the rate of the inpatient routine nursing salary cost differential to 5 percent for hospitals for services furnished after September 30, 1981. In our view, publishing a notice of proposed rulemaking is unnecessary for the immediate and proper implementation of this provision and would not contribute to the clarification of any issues. Moreover, the statutory language is quite clear in requiring that these changes to the regulations be effective October 1, 1981, and any delay caused by such a notice would not serve the public interest. We therefore find good cause to waive proposed rulemaking procedures. We will, however, consider any comments on this rule that are mailed by the date specified above in the "DATES" section and make any further changes that may be necessary. We also find good cause to waive the delayed effective date for these amendments based on the statutory effective date.

Impact Analyses

Executive Order 12291

The Secretary has determined that these final regulations do not meet the criteria for a "major rule", as defined by section 1(b) of Executive Order 12291.

As stated above, these rules are essentially technical in that we are updating our nursing salary cost differential policy to cover the period after June 1975 and implementing specific provisions of the law, about which we have no discretion, to cover the period beginning October 1, 1981. Because the intent of the Congress in enacting section 2141 of the Omnibus Budget Reconciliation Act of 1981 was to reduce total Medicare program outlays, hospitals will experience a decrease in total Medicare reimbursement. We expect that implementation of the law will result in a decrease in total Medicare reimbursement to hospitals in fiscal year 1982 of about $53 million.

Regulatory Flexibility Analysis

Section 604(a) of the Regulatory Flexibility Act of 1980 (Pub. L. 96-354) requires that each Federal agency prepare, and make available for public comment, a regulatory flexibility analysis when the agency issues regulations, which would have a "significant impact on a substantial number of small providers". The analysis is intended to explain what effect the regulatory action by the agency would have on small businesses and other small entities and to develop lower cost or burden alternatives.

As noted above, hospitals, most of which are small entities, will experience some reduction in Medicare reimbursement. However, the reduced reimbursement of $53 million represents only about one tenth of one percent of hospital revenues and can be offset by reallocation of charges to other patients

or changes in staffing patterns. Accordingly, we have determined that the impact on hospitals is not "significant" and does not require preparation of a regulatory flexibility analysis.

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

42 CFR Part 405, Subpart D is amended as follows:

1. The authority citation for 42 CFR Part 405, Subpart D reads as follows:

Authority: Secs. 1102, 1814(b), 1833(a), 1861(v), and 1871, 49 Stat. 647, as amended, 79 Stat. 296, 79 Stat. 302, 79 Stat. 322, 79 Stat. 331; 42 U.S.C. 1302, 1395 et seq., unless otherwise noted.

2. 42 CFR 405.430 is amended by revising paragraphs (a), (b)(7), (c), (d)(1), (2) and (3), and (e)(1) and removing paragraph (e)(3) to read as follows:

§ 405.430 Inpatient routine nursing salary cost differential.

(a) *Principle.* In recognition of the above-average cost of inpatient routine nursing care furnished to aged, pediatric, and maternity patients, an inpatient routine nursing salary cost differential is allowable as a reimbursable cost of a provider. The allowable differential applicable to such inpatient routine nursing salary costs of aged, pediatric, and maternity patients is reimbursable at the rate of 8½ percent for services furnished by hospitals and skilled nursing facilities before October 1, 1981. For services furnished on or after October 1, 1981, the applicable rate will be 8½ percent for skilled nursing facilities and 5 percent for hospitals. Recognition of the differential by the health insurance program is accomplished through an inpatient routine nursing salary cost differential adjustment factor as specified in paragraph (b)(8) of this section.

(b) *Definitions*—

* * * * *

(7) *Adjusted inpatient routine nursing salary cost.* The adjusted inpatient routine nursing salary cost attributable to title XVIII beneficiaries is determined on a per diem basis and is arrived at by dividing (i) total inpatient routine nursing service salary costs for all patients (excluding nursery patients), plus the differential percentages as specified in paragraph (a) of this section by (ii) total inpatient days (excluding nursery days), plus the differential percentages, as specified in paragraph (a) of this section, of aged, pediatric, and maternity days. This quotient is the adjusted average per diem inpatient routine nursing salary (excluding nursery salary) cost.

* * * * *

(c) *Application.* (1) In the determination of health insurance inpatient routine service costs, an inpatient routine nursing salary cost differential applies for aged, pediatric, and maternity patients.

(2) Although the inpatient routine nursing salary cost differential under the health insurance program is established at a rate of 8½ percent for skilled nursing facilities, and 8½ percent for hospitals, through September 30, 1981, and at 5 percent thereafter, the effect of the differential on reimbursement to a particular provider is also a function of the relationship that total aged, pediatric, and maternity patient days of service bears to total patient days of service (excluding nursery days) rendered by that provider.

(d) *Effective dates*—(1) *Cost-reporting periods ending before October 1, 1981.* For cost-reporting periods ending before October 1, 1981, an inpatient routine nursing salary cost differential of 8½ percent is applicable for the reporting period as an element in the computation of a hospital's or skilled nursing facility's reimbursable cost. For cost reporting periods ending after September 30, 1981, an inpatient routine nursing salary cost differential of 8½ percent will continue to apply for skilled nursing facilities for the reporting period as an element in the computation of its reimbursable cost.

(2) *Hospitals with cost reporting periods beginning before October 1, 1981, and ending after September 30, 1981.* For hospitals with cost reporting periods beginning before October 1, 1981, and ending after September 30, 1981, an inpatient routine nursing salary cost differential is applicable as an element in the computation of the hospitals reimbursable cost as follows:

(i) For that portion of the cost reporting period occurring before October 1, 1981, the routine nursing salary cost differential of 8½ percent is applicable.

(ii) For that portion of the cost reporting period occurring after September 30, 1981, a routine nursing salary cost differential of 5 percent is applicable.

For cost reporting periods ending on the last day of a month, a composite nursing differential percentage will be determined based on the number of months in the reporting period occurring prior to October 1, 1981, and the number of months ending after September 30, 1981. For cost reporting periods ending on a day other than on the last day of the month, a composite nursing differential percentage will be determined based on the number of calendar days in the reporting period occurring prior to October 1, 1981 and the number of calendar days ending after September 30, 1981.

(3) *Hospitals with cost reporting periods beginning on or after October 1, 1981.* For hospitals with cost reporting periods beginning on or after October 1, 1981, an inpatient routine nursing salary cost differential of 5 percent is applicable for the reporting period as an element in the computation of the hospital's reimbursable cost.

(e) *Examples*—(1) *Illustration of calculation of differential adjustment factor for a cost-reporting period ending before October 1, 1981.*

Inpatient routine nursing salary costs (excluding nursery costs)	$160,000
Total inpatient days	12,800
Total inpatient days applicable to beneficiaries	3,040
Total aged, pediatric, and maternity days	5,120
Adjusted per diem inpatient routine nursing salary (excluding nursery salary) cost	$13.12

$$\frac{\$160{,}000 \times 1.085}{(12{,}800 + 5{,}120) + (5{,}120 \times 1.085)}$$

Average per diem routine nursing salary (excluding nursery salary) cost $160,000÷12,800	−12.50
Per diem differential adjustment factor	.62
Allowable routine nursing salary cost differential adjustment factor applicable to beneficiaries for the reporting period $0.62×3,840	$2,301

(2) *Verification of differential adjustment factor computation as calculated in the illustration in (e)(1) of this section.* Using data in the illustration in (e)(1) of this section the computation of the differential adjustment factor may be verified as follows:

(i) Adjusted per diem inpatient routine nursing salary cost per computation in (e)(1)	$13.12
(ii) Total adjusted inpatient routine nursing salary cost for these patients (5,120×$13.12)	$67,174.40
(iii) total inpatient routine nursing salary cost for the remainder of the adult patient population ($160,000−$67,174.40)	$92,825.60
(iv) Per diem inpatient routine nursing salary cost for the remaining adult patient population	$12.09
Total patient days	12,800
Aged, pediatric, and maternity days	−5,120
Remaining adult patient days	7,680

$92,825.60/7,680=$12.09

(v) Difference between adjusted per diem inpatient routine nursing salary cost and per diem inpatient routine nursing salary cost for the remainder of the adult patient population (i) less (iv)	$1.03
(vi) $1.03÷$12.09=8.5 percent.	
(vii) Average per diem routine nursing salary cost included in basic computation of cost of routine services ($160,000÷12,800)	$12.50
(viii) Inpatient routine nursing salary cost differential adjustment factor to be reimbursed in addition to average per diem routine nursing salary cost ($13.12−$12.50)	$0.62
(ix) Portion of the per diem inpatient routine nursing salary cost differential included in the cost of routine service ($12.50−$12.09)	$0.41

(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare—Hospital Insurance Program)

Dated: September 15, 1981.

Carolyne K. Davis,

Administrator, Health Care Financing Administration.

Approved: September 22, 1981.

Richard S. Schweiker,

Secretary.

[FR Doc. 81-28332 Filed 9-30-81; 8:45 am]

BILLING CODE 4110-35-M

Federal Register

Thursday
October 1, 1981

Part VII

Department of Health and Human Services

Health Care Financing Administration

Medicare and Medicaid Program; Less Than Effective Drugs and Inpatient Hospital Tests

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 405 and 441

Medicare and Medicaid Program; Less Than Effective Drugs and Inpatient Hospital Tests

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Interim final rule with comment period.

SUMMARY: This rule amends current Medicare and Medicaid regulations to implement two provisions of the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97-35). Those provisions are intended to assure that Federal funds are properly expended for drug products and inpatient tests without endangering the quality of care provided Medicare and Medicaid beneficiaries. The amendments pertain to the following subjects:

I. Prohibition of the use of Federal funds under the Medicare Part B and Medicaid programs for drugs that the Food and Drug Administration of HHS has proposed, in a notice of opportunity for hearing, to withdraw from the market because they are less than effective. (Section 2103 of Pub. L. 97-35).

II. Prohibition of the use of Federal funds under the Medicaid program for routine inpatient hospital tests unless they are ordered by the attending physician or other responsible practitioner for purposes of diagnosis and treatment of a patient's specific condition. This prohibition does not apply, however, for inpatient hospital tests furnished in emergency situations. (Section 2164 of Pub. L. 97-35).

EFFECTIVE DATE: October 1, 1981 (see Supplementary Information for further explanation). Although these regulations are being issued in final for reasons described in the Supplementary Information section, we will consider any comments mailed by December 30, 1981, and we will revise the regulations, if necessary.

ADDRESS: Address comments in writing to: Administrator, Department of Health and Human Services, Health Care Financing Administration, P.O. Box 17073, Baltimore, Maryland 21235.

If you prefer, you may deliver your comments to Room 309-G, Hubert H. Humphrey Building, 200 Independence Ave., S.W., Washington, D.C., or to Room 789, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

In commenting, please refer to BPP-176-FC. Agencies and organizations are requested to submit comments in duplicate.

Comments will be available for public inspection, beginning approximately two weeks after publication, in Room 309-G of the Department's office at 200 Independence Ave., S.W., Washington, D.C., 20201 on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (202-245-7890).

Because of the large number of comments we receive, we cannot acknowledge or respond to them individually. However, if as a result of comments, we believe that changes are needed in these regulations, we will publish the changes in the Federal Register and respond to the comments in the preamble of that document.

FOR FURTHER INFORMATION CONTACT: Henry J. Hehir, 301-594-8561.

SUPPLEMENTARY INFORMATION:

I. Less Than Effective Drugs

A. Background

Both the Medicare program under title XVIII and the Medicaid program under title XIX of the Social Security Act reimburse, under certain circumstances, for drugs provided to eligible individuals. Medicare is authorized, under sections 1812(a), 1832(a), 1861(b)(2), 1861(h)(5), 1861(s)(2) and 1861(t) of the Act, to provide coverage of drugs under Part A (Hospital Insurance) when they are furnished during a Medicare-covered stay in a hospital or skilled nursing facility; and under Part B (Supplementary Medical Insurance) for drugs which cannot be self-administered and are furnished incident to a physician's professional service or in the outpatient department of a hospital. Medicare's regulations implementing these statutory provisions are set forth in 42 CFR 405.116(a), 405.125(a), and 405.231.

Under the Medicaid program, States may reimburse for prescribed drugs as an optional item of service under section 1905(a)(12) of the Act. As specified in regulations at 42 CFR 440.120, drugs must be prescribed by a physician or other licensed practitioner of the healing arts within the scope of his or her professional practice, as defined and limited by Federal and State law. Currently, 51 of the 54 States and jurisdictions with Medicaid programs include coverage of prescribed drugs.

The 1962 amendments to the Federal Food, Drug, and Cosmetic Act (Pub. L. 87-781, October 10, 1962) added the requirement that new drugs, as defined in that Act, section 201(p), 21 U.S.C. 321 (p), be found to have substantial evidence of their effectiveness under the conditions that are prescribed, recommended, or suggested in the proposed labeling, before they can be approved for marketing. Before those amendments, the statute required that new drugs only be found safe, rather than both safe and effective, before marketing. Authority under the new drug provisions of the Federal Food, Drug, and Cosmetic Act has been delegated to the Commissioner of Food and Drugs (21 CFR 5.10).

In addition to new drugs proposed for marketing in the future, the 1962 amendment applied retroactively to all drugs approved as safe by the Food and Drug Administration (FDA) from 1938 to 1962. Because an estimated 4,000 pre-1962 drug products needed to be reviewed for effectiveness, FDA contracted with the National Academy of Sciences, National Research Council (NAS-NRC) on June 16, 1966, to review those drugs and report to FDA findings and recommendations with respect to their effectiveness. NAS-NRC reviewed the drugs and forwarded to FDA for review and an initial determination by that agency as to effectiveness. FDA classified each labeled indication for each drug as: effective, probably effective, possibly effective, or ineffective. The program was named the Drug Efficacy Study Implementation (DESI).

FDA published in the Federal Register a notice of the effectiveness rating for each indication of each drug in the DESI program. For those drugs determined to be less than effective, it has been necessary for FDA to review any additional evidence submitted by the manufacturers in support of their therapeutic claims for the drugs. If the Bureau of Drugs, FDA, then decides that a drug product lacks substantial evidence of effectiveness for the conditions it is intended to threat, it publishes in the Federal Register a notice of opportunity for hearing (NOOH) on a proposal to withdraw approval for marketing. This notice affords the manufacturer an opportunity for a hearing before a final determination by FDA that a drug lacks substantial evidence of effectiveness for any claim and is no longer approved for marketing. The Commissioner of FDA has redelegated the authority to issue an NOOH to the Director and Deputy Director of the Bureau of Drugs (21 CFR 5.82(a)).

The Drug Amendments of 1962 also made changes in the classification of drug products. Before 1962, section 507 of the Federal Food, Drug, and Cosmetic Act established certification and other procedures for certain specifically named antibiotic drugs determined to be

safe and effective. Other antibiotics were regulated, along with nonantibiotics, under section 505 of that Act and were approved on the basis of safety. The 1962 amendments changed this system by making all antibiotics subject to section 507 and allowing those that were switched from section 505 to be certified unless they were determined to lack substantial evidence of effectiveness.

Thus, the DESI review encompassed both new drug products (section 505 drugs) and antibiotics (section 507 drugs). The standards that must be met to show safety and effectiveness apply equally to nonantibiotics and antibiotics, and the procedures for removing both kinds of drugs from the market are similar in that an NOOH is offered.

B. New Legislation

If a determination has been made that a drug is less than effective for all conditons of use and an NOOH to that effect has been published, Congress believes that the drug's use should not be reimbursed under the Medicare Part B and Medicaid programs unless there is a compelling justification for its medical need. Therefore, Congress enacted section 2103 of Pub. L. 97-35, the Omnibus Budget Reconciliation Act of 1981. Section 2103 adds sections 1862(c) and 1903(i)(5) to the Social Security Act.

Section 1862(c) of the Act prohibits payment under Medicare Part B for any drug product (1) that was approved by FDA before October 10, 1962, (2) that is furnished to beneficiaries only upon prescription, (3) that is the subject of an NOOH issued under section 505(e) of the Federal Food, Drug, and Cosmetic Act and published in the Federal Register stating that substantial evidence of the effectiveness of the drug product for all its uses is lacking, and (4) for which the Secretary has not determined there is a compelling justification for its medical need.

The prohibition in section 1862(c) of the Act applies both to drug products named in the NOOH and to those that are identical, related, or similar to the drugs named. (A further explanation of these related drugs is provided below under the next caption).

Section 1903(i)(5) of the Act requires that Federal payment under Medicaid not be made for any drug product that is excluded from payment under Medicare Part B because of section 1862(c) of the Act.

C. Provisions of the Regulations

1. *Drugs affected.* Two categories of drugs are affected by these regulations. The first category includes any prescription drug approved by FDA before October 10, 1962, for which FDA has, upon reevaluating it for efficacy, proposed an order to withdraw approval of the drug because of a lack of substantial evidence of its effectiveness.

As specified in the legislation, these regulations apply only to section 505 drugs, including antibiotic-containing drug products originally approved and currently regulated under section 505. Even though the Bureau of Drugs issues NOOHs for section 507 drugs (antibiotics) that are found to lack substantial evidence of effectiveness, Congress did not extend its prohibition on Federal funds to those drugs. For this reason, we are not including section 507 drugs in these regulations. Further, antibiotic drugs approved prior to 1962 under section 507 and later transferred to section 505 are not covered by these regulations. However, we are requesting interested parties to comment on the possibility of including section 507 drugs some time in the future.

The second category of drugs includes other products that are identical, related, or similar to the first category. These products are so-called "me-too" drugs that were marketed under different names or by different firms, without FDA's approval.

An NOOH specifically names only those drug products that are the subject of new drug applications, because it is not feasible for FDA to list identical, related, and similar products that are not explicity subjects of those applications. However, to achieve the purpose for which the statutory requirement for efficacy review was enacted, it is essential that efficacy decisions be applied to all identical, related, or similar drug products. This applicability is described in 21 CFR 310.6. Consequently, FDA applies the same regulatory policy to these drug products even though they are not listed in the Federal Register notice. The FDA regulations (21 CFR 310.6(a)) specify that manufacturers and distributors of drugs should review their products as drug efficacy notices are published, and assure that their identical, related, or similar products comply with the drug efficacy notices.

While sections 1862(c) and 1903(i)(5) of the Act prohibit Medicaid and Medicare Part B reimbursement for drugs determined to be less than effective, they also provide for an exception. If, as indicated above, the Secretary determined that there is a compelling justification for a drug's medical need, then the statute allows us to continue reimbursement for that drug regardless of its FDA standing.

Congress did not specify in either the legislation or the conference reports how or when such a determination would be made. FDA has already made a "compelling justification" determination for certain DESI drugs in order to permit their continued marketing while additional testing is conducted in an attempt to demonstrate their effectiveness. These drugs are designated as "paragraph XIV" drugs and were exempted from the timetable established in a court order for removing less than effective drugs from the market (*American Public Health Association* v. *Veneman*, 349 F. Supp. 1331 (D.D.C. 1972)). Drugs were put in paragraph XIV status when FDA determined that there was a compelling justification for the drugs' medical need.

FDA's current procedure is to revoke the paragraph XIV exemption prior to or simultaneously with the issuance of an NOOH. Thus, technically, an NOOH is not issued with respect to a paragraph XIV drug. Rather, the NOOH is issued when the drug is removed from paragraph XIV status. Similarly, if an NOOH had been issued, and thereafter a drug was put in paragraph XIV status, the latter action is considered as revoking the NOOH. Therefore, a drug product is subject to either an NOOH or the paragraph XIV exemption, but not to both at the same time.

One could interpret the legislation as referring to paragraph XIV drugs. Another interpretation is that the determination is not restricted to paragraph XIV drugs, but rather represents a different set of determinations from those made earlier by FDA. The short time frame for implementing section 2103 of Pub. L. 97-35, precluded an opportunity for reviewing all options for determining compelling medical need for the drugs. At this time, these regulations limit any determination made under this section of the Act (1862(c)(1)(D)) to those made by FDA under the paragraph XIV exemption. We are, however, reviewing options and welcome comments on procedures we might use in the future.

2. *Point of termination of Federal reimbursement.* We will terminate Federal reimbursement under the Medicare Part B and Medicaid programs for the affected drugs when FDA has published in the Federal Register an NOOH on a proposed order to withdraw approval for a drug because that drug is determined to lack substantial evidence of effectiveness for all conditions of use prescribed, recommended, or suggested in its labeling. If any drug that is the subject of an NOOH is subsequently proven to be effective, the Federal

government will reimburse under Medicare Part B and Medicaid claims that were denied during the period the NOOH was in effect because the drug was determined less than effective.

Although the statute did not specify the length of time between the date the NOOH is published and the date we would no longer reimburse for the affected drug, we believe it would be virtually impossible to inform all interested parties (Medicare contractors, Medicaid State agencies, physicians, pharmacists, medical facilities, and others) of the FDA's action on the same day the NOOH is published. We published a notice of proposed rulemaking (NPRM) in the Federal Register on June 5, 1980 (45 FR 37858) that proposed some restrictions in the Medicare and Medicaid policies of reimbursing for less than effective drugs. Comments we received in response to that NPRM indicated that it would be appropriate to allow at least 30 days for notification of interested parties when FDA published a determination in the Federal Register. We agree with these comments.

Therefore, although the statutory provision takes effect when the NOOH is published, we will, in the exercise of our enforcement discretion, grant a grace period of 30 days before we terminate reimbursement under this provision. The prohibition on the use of Medicare Part B funds to pay for less than effective drugs furnished to beneficiaries would be enforced with respect to drugs furnished to beneficiaries after the 30th day following the date of publication of the NOOH in the Federal Register. Similarly, for Medicaid, the prohibition on Federal financial participation (FFP) would be enforced with respect to drugs purchased by or provided to beneficiaries after the 30th day following the publication of the NOOH.

When an NOOH is published in the Federal Register, we will notify Medicare contractors and Medicaid State agencies. We will expect them to forward the information to their providers and suppliers.

We will also distribute and publish in the Federal Register a list of all the drugs that have been the subject of an NOOH before the publication date of these regulations. Although this regulation is effective October 1, 1981, we are, in the exercise of our enforcement discretion, allowing a 90-day grace period. Therefore, the prohibition against Federal reimbursement will be enforced for these drugs beginning January 1, 1982. (See discussion below regarding effective date.)

D. Effective Date of the Regulations

These regulations are effective October 1, 1981. However, in the exercise of our enforcement discretion, we are granting a grace period of 90 days during which we will not deny reimbursement for the affected drugs, nor will we audit or disallow Federal funds for any of the affected drugs because they are subject to an NOOH.

We are allowing 90 days in the case of Medicare Part B reimbursement so that Medicare contractors have time to make the necessary system changes and to apply them to the list of drugs subject to NOOHs before October 1. For the Medicaid program, we are allowing 90 days to provide States with sufficient time to make any necessary changes in their claims processing systems to implement these regulations. In addition, it will be necessary for Medicare contractors and Medicaid State agencies to notify their providers and suppliers.

On January 1, 1982, the prohibition on Federal reimbursement will be enforced under Medicare Part B and Medicaid for any drug that was the subject of an NOOH published before December 2, 1981. For any NOOH published on or after December 2, the 30-day rule will apply. For example, Federal reimbursement for expenses incurred for a drug product that is the subject of an NOOH published December 31, 1981, will be denied beginning January 31, 1982.

E. Applicability of Prohibition to Medicare Part A

The new statutory section 1862(c) prohibiting Medicare payments for less than effective drugs contains no reference to Part A of Medicare; its applicability is limited to Medicare Part B. Therefore, we are not extending the prohibition to Part A reimbursement in these regulations.

II. Inpatient Hospital Tests

A. Background

Under the Medicaid program, Federal matching funds are available to the States for inpatient hospital services provided to beneficiaries. This includes, in States that choose the option, inpatient hospital services furnished to persons aged 65 or older in an institution for tuberculosis or mental diseases—section 1905(a) (1) and (14) of the Social Security Act and 42 CFR 440.10 and 440.140.

Inpatient hospital tests are part of the inpatient hospital services provided Medicaid beneficiaries. In Pub. L. 97-35, Congress expressed the belief that many inpatient hospital tests are performed (1) that are not specifically ordered by an attending physician or other responsible practitioner, and (2) that are unrelated to a patient's specific diagnosis or course of treatment. Congress also noted that such tests have unnecessarily increased Medicaid costs (House of Representatives Report 97-158, Vol. II, p. 330).

B. New Legislation

In order to address the concerns noted above, Congress enacted section 2164 of Pub. L. 97-35. That section amended the Medicaid law by adding a new paragraph (i)(6) to section 1903 of the Social Security Act. The amendment prohibits Federal payment for inpatient hospital tests (other than in emergency situations) that have not been specifically ordered by the patient's attending physician or other responsible practitioner. Congress enacted that section because it believes that the amendment will result in cost savings without reducing the quality of care to beneficiaries (H.R. 97-158, Vol. II, p. 331).

C. Provisions of the Regulations

In order to clarify the limits for providing Federal matching funds to States for inpatient hospital tests, we have incorporated the legislative amendment into Medicaid regulations by adding a new section 42 CFR 441.12. That section specifies that Federal funds for inpatient hospital tests are not available unless specifically ordered by a physician or other licensed practitioner, acting within the scope of practice as defined under State law, who is responsible for the diagnosis or treatment of a particular patient's condition. An exception is provided in the case of emergency services.

State Responsibility

It will be up to the States to determine the manner in which they will monitor bills and conduct utilization reviews to assure that these provisions are properly implemented. In our view, the States are fully capable of performing these functions without specific Federal rules. We are available, however, to the States at all times for any assistance and consultation they may need.

Responsible Practitioner

New section 1903(i)(6) of the Social Security Act requires that inpatient tests be ordered by the attending physician or "other responsible practitioner". However, the statute did not define the term "other responsible practitioner" and the House Report (H.R. 97-158) did not address the meaning of that language.

We believe that a "responsible practitioner" is an individual other than an attending physician, acting within the scope of practice as defined by State law, who is responsible for the care or treatment of a particular patient's condition, such as a consultant or intern. This interpretation acknowledges that an individual other than the attending physician might be familiar with the specific needs of the patient, and could order tests for the purpose of diagnosis or treatment of that patient's condition. Therefore, Federal matching funds will be available for State expenditures for hospital tests ordered by a physician or licensed practitioner within the scope of practice as defined under State law.

For the Purpose of Diagnosis or Treatment

As noted above, we are requiring that inpatient tests be ordered by a physician or other licensed practitioner, acting within the scope of practice as defined by State law, who is responsible for the diagnosis or treatment of a particular patient's condition. We believe this requirement is consistent with Congressional intent because the Committee report indicated that the Congress did "not intend this provision to in any way restrict payment for tests and other diagnostic procedures the patient's physician deems necessary for the appropriate treatment of his or her patient." (H.R. 97–158, Vol. II, p. 332) We also believe that the language of our regulations allows the practitioner great flexibility in determining which tests are related to the diagnosis or treatment of the patient. The regulations do not inhibit the practice of medicine or impinge on the practitioner's judgment.

Inpatient tests that are not specifically ordered by the attending physician or other licensed practitioner who is responsible for the diagnosis or treatment of a particular patient's illness or injury would not qualify for Federal matching funds under these regulations. While physicians may have standing orders for certain tests for all their patients, such as following surgery, the test must be specifically ordered for the particular patient. That is, a test ordered routinely without a predetermined need for the test for the particular patient will not qualify for Federal matching funds.

Emergency Services

This amendment to Medicaid law allows one exception to the limits for inpatient testing. That exception applies to emergency situations. Federal matching funds will be available for tests ordered in emergency situations even though they are not specifically ordered by a physician. The exception was included because Congress recognized that, in emergency situations, prompt diagnosis and treatment are necessary.

Current regulations at 42 CFR 440.170(e)(1) define emergency hospital services as those "necessary to prevent the death or serious impairment of the health" of a beneficiary. We are incorporating this definition by reference in the regulations in order to clarify when the general restrictions on payments will not apply to this situation.

D. Effective Date of the Regulations

These regulations are effective October 1, 1981. However, in the exercise of our enforcement discretion, we will grant a grace period of 90 days before we disallow FFP for hospital tests that do not conform to the requirements of these regulations. This grace period is to provide States with sufficient time to implement the regulations, notify providers of changes in the law, and make necessary systems changes. Therefore, the prohibition on Federal funds for routine inpatient hospital tests not ordered by the attending physician or other responsible practitioner will be enforced on January 1, 1982.

III. Waiver of Proposed Rulemaking

We are publishing these regulations in final form without notice of proposed rulemaking procedures. In our view, because the language of the statute is clear, publishing a proposed rule is unnecessary for the proper implementation of these provisions and would not contribute to the clarification of any issues. In addition, to the extent that Federal dollars would be saved by implementation of the limits on inpatient hospital tests, we believe that publication of proposed rulemaking would be contrary to the public interest.

Therefore, we find good cause to waive notice of proposed rulemaking procedures. However, we invite comments from States, Medicare contractors, pharmacists, physicians, and others interested in these regulatory changes, and will make any necessary changes as a result of the comments.

IV Impact Analysis

Executive Order 12291

We have determined that this final rule does not meet the criteria for a major rule as defined by section 1(b) of Executive Order 12291. That is, this rule will not have an annual effect on the economy of $100 million or more; or cause a major increase in costs or prices for consumers, government agencies, industry, or a geographic region; or cause significant adverse effects on business or employment.

Although we have no specific estimate on the effect of the less-than-effective drug regulations on Medicare and Medicaid expenditures, we believe it will not be a significant amount. Any savings realized by prohibiting reimbursement for less than effective drugs will most likely be offset by reimbursement made for substitute drug products.

With regard to inpatient hospital tests, the Congressional Budget Office cost estimates (H.R. Report No. 97–158 accompanying H.R. 3982, a precursor to the Omnibus Budget Reconciliation Act of 1981), projected cost savings of $10 million in fiscal year 1982, $14 million in fiscal year 1983, and $17 million in fiscal year 1984 for *two* provisions in the bill: elimination of Federal funds for excess preoperative hospital stays, and for routine administered tests unrelated to diagnosis and treatment. Congress later dropped the provision concerning excess hospital stays. For that reason, the cost savings impact for the provision covered in these regulations would be less than the total impact indicated above. Even the overall estimates given for the two provisions do not place these regulations in the category of a major rule.

Regulatory Flexibility Act

Section 603(a) of Pub. L. 96–354 (The Regulatory Flexibility Act of 1980) requires Federal agencies to prepare and make public a regulatory flexibility analysis when regulations have a significant economic impact on a substantial number of small businesses or small governmental jurisdictions. Because we expect that the economic impact of these regulations is not significant, we believe a regulatory analysis is not required. Therefore, the Secretary certifies, under section 605(b) of Pub. L. 96–354, that this rule will not have a significant economic impact on a substantial number of small entities.

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

42 CFR Part 405 is amended as set forth below:

1. The authority citation for Subpart B reads as follows:

Authority: Secs. 1102, 1831–1843, 1861, 1862, 1866, 1871, 49 Stat. 647, as amended, 79 Stat. 301–312, 313, 325, 327, 331; 42 U.S.C. 1302, 1395 et seq.

2. Part 405, Subpart B is amended by revising § 405.232(c) to read as follows:

§ 405.232 Medical and other health services; conditions, limitations, and exclusions.

In addition to the general exclusions specified in Subpart C of this part, the following conditions, limitations, and exclusions shall apply with respect to the "medical and other health services" specified in § 405.231;

* * * * *

(c) *Drugs and biologicals.* The following items and services are excluded from the term "medical and other health services":

(1) Any drug or biological that can be self-administered, whether furnished by a physician, a provider of services, or other than a provider of services.

(2) Any drug product that meets all of the following conditions:

(i) The drug product was approved by the Food and Drug Administration (FDA) before October 10, 1962.

(ii) The drug product is available only through prescription.

(iii) The drug product was the subject of a notice of opportunity for hearing issued under section 505(e) of the Federal Food, Drug, and Cosmetic Act and published in the Federal Register on a proposed order of FDA to withdraw its approval for the drug product because it has determined that the product is less than effective for all its labeled indications.

(iv) The drug product is presently not subject to a determination by FDA, made under its efficacy review program (see 21 CFR 310.6 for an explanation of this program), that there is a compelling justification of the drug product's medical need.

(3) Any drug product that is identical, related, or similar, as defined in 21 CFR 310.6, to a drug product that meets the conditions of paragraph (c)(2) of this section.

* * * * *

PART 441—SERVICES: REQUIREMENTS AND LIMITS APPLICABLE TO SPECIFIC SERVICES

Part 441 is amended as set forth below:

1. The table of contents is amended to add new §§ 441.12 and 441.25 to Subpart A as follows:

* * * * *

Sec.
441.12 Inpatient hospital tests.
* * * * *
441.25 Prohibition on FFP for certain prescribed drugs.
* * * * *

Authority.—Sec. 1102 of the Social Security Act, (42 U.S.C. 1302), unless otherwise noted.

2. Section 441.10 is amended by adding new paragraphs (f) and (g) to read as follows:

§ 441.10 Basis.

This subpart is based on the following sections of the Act which state requirements and limits on the services specified or provide Secretarial authority to prescribe regulations relating to services:

* * * * *

(f) Section 1903(i)(5) for certain prescribed drugs (§ 441.25).

(g) Section 1903(i)(6) which prohibits (except in emergency situations) FFP in expenditures for inpatient hospital tests that are not ordered by the attending physician or other licensed practitioner (§ 441.12).

3. A new § 441.12 is added to read as follows:

§ 441.12 Inpatient hospital tests.

Except in an emergency situation (see § 440.170(e)(1) of this chapter for definition), FFP is not available in expenditures for inpatient hospital tests unless the tests are specifically ordered by the attending physician or other licensed practitioner, acting within the scope of practice as defined under State law, who is responsible for the diagnosis or treatment of a particular patient's condition.

4. A new § 441.25 is added to read as follows:

§ 441.25 Prohibition on FFP for certain prescribed drugs.

(a) FFP is not available in expenditures for the purchase or administration of any drug product that meets all of the following conditions:

(1) The drug product was approved by the Food and Drug Administration (FDA) before October 10, 1962.

(2) The drug product is available only through prescription.

(3) The drug product is the subject of a notice of opportunity for hearing issued under section 505(e) of the Federal Food, Drug, and Cosmetic Act and published in the Federal Register on a proposed order of FDA to withdraw its approval for the drug product because it has determined that the product is less than effective for all its labeled indications.

(4) The drug product is presently not subject to a determination by FDA, made under its efficacy review program (see 21 CFR 310.6 for an explanation of this program), that there is a compelling justification of the drug product's medical need.

(b) FFP is not available in expenditures for the purchase or administration of any drug product that is identical, related, or similar, as defined in 21 CFR 310.6, to a drug product that meets the conditions of paragraph (a) of this section.

(Catalog of Federal Domestic Assistance Program No. 13.714, Medical Assistance Program and No. 13.774, Medicare—Supplementary Medical Insurance)

Dated: September 16, 1981.

Carolyne K. Davis,

Administrator, Health Care Financing Administration.

Approved: September 24, 1981.

Richard S. Schweiker,

Secretary.

[FR Doc. 81-28333 Filed 9-30-81; 8:45 am]
BILLING CODE 4110-35-M

Thursday
October 1, 1981

Part VIII

Department of Health and Human Services

Health Care Financing Administration

Medicaid Program; Miscellaneous Medicaid Provisions—Increased State Flexibility

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 430, 433, 435, 441, 447, and 456

Medicaid Program; Miscellaneous Medicaid Provisions—Increased State Flexibility

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Interim final rule with comment period.

SUMMARY: This rule amends current Medicaid regulations to implement several provisions of the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97-35). Those provisions give State agencies increased flexibility in the administration of their Medicaid programs. The following subjects and sections of the law are included in these amendments:

I. Removal of reasonable charge limits that apply to reimbursement for the services of practitioners such as physicians, and for other noninstitutional services and items such as medical supplies and laboratory services (Section 2174);

II. Removal of the requirement for collection of third party payments when the amount of reimbursement that the State expects to recover exceeds the cost of recovery (Section 2182);

III. Permitting physician assistants and nurse practitioners to recertify the need for continued inpatient care for patients in institutions and extending the period of time for recertification from 60 days to 12 months in certain facilities for the mentally retarded or persons with related conditions (section 2183).

In addition, this rule includes technical amendments that add the Northern Mariana Islands to the States and territories participating in the Medicaid program (Section 2162).

EFFECTIVE DATE: October 1, 1981. These regulations are being published in final, for reasons described in the Supplementary Information below. However, we will consider any written comments mailed by December 30, 1981 and will revise the regulations if necessary.

Section 433.139 of these regulations contains reporting requirements subject to the Paperwork Reduction Act (Pub. L. 96-511) which have not been approved by the Office of Management and Budget. The reporting is not required until the Office of Management and Budget approval has been obtained. HCFA will publish a notice in the Federal Register when approval has been obtained, indicating the effective date of the reporting.

ADDRESS: Address comments in writing to: Administrator, Department of Health and Human Services, Health Care Financing Administration, P.O. Box 17076, Baltimore, Maryland 21235.

If you prefer, you may deliver your comments to Room 309-G Hubert H. Humphrey Building, 200 Independence Ave., SW., Washington, D.C., or to Room 789, East High Rise Building, 6401 Security Boulevard, Baltimore, Maryland.

In commenting, please refer to BPP-174-FC. Agencies and organizations are requested to submit comments in duplicate.

Comments will be available for public inspection, beginning approximately two weeks after publication, in Room 309-G of the Department's office at 200 Independence Ave., SW., Washington, D.C. 20201, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (202-245-7890).

Because of the large number of comments we receive, we cannot acknowledge or respond to them individually. However, if as a result of comments we believe that changes are needed in these regulations, we will publish the changes in the Federal Register and respond to the comments in the preamble of that document.

FOR FURTHER INFORMATION CONTACT:

Paul Riesel (for Medicaid reasonable charge limits), 301-597-1843.

Kathy Rama (for flexibility in collection of payments), 301-594-8221.

Robert Wren (for recertification), 301-594-9820.

SUPPLEMENTARY INFORMATION:

I. Removal of Reasonable Charge Limits

A. Background

Before the implementation of Pub. L. 97-35, the Omnibus Budget Reconciliation Act of 1981, a Medicaid agency's reimbursement level for noninstitutional services such as physicians' services, laboratory services, and supplies and equipment (including equipment servicing) could not exceed the reasonable charges established under Medicaid and Medicare. Section 1902(a)(30) of the Social Security Act required that State plans for medical assistance must provide assurance that payments were not in excess of reasonable charges consistent with efficiency, economy, and quality of care. Section 1903(i)(1) of the Act provided that Federal financial participation (FFP) was not made under the Medicaid program to the extent that a Medicaid payment exceeded the charge that was determined to be reasonable under section 1842(b)(3) of the Act. That section addresses charges allowed under the supplementary medical insurance portion (Part B) of the Medicare program. Thus, Medicaid's upper limits for payment were tied to the Medicare reasonable charge.

Specifically, the regulations to implement the former statutory provisions imposed the following rules:

1. For services furnished under both Medicare and Medicaid by practitioners such as physicians, the Medicaid payment could not exceed the lowest of the actual charge (42 CFR 447.341(b)(1)), the applicable Medicare reasonable charge (42 CFR 447.341(b)(2) and 447.342(b)), or the Medicaid agency's own median and prevailing charge calculations (42 CFR 447.341(b)(3) and (d)). The Medicaid agency's own median and prevailing calculations also applied as limits on Medicaid payments for services furnished by practitioners (such as physicians) only under Medicaid (i.e., when there is no applicable Medicare limit).

2. For other noninstitutional services and items that are furnished under both Medicare and Medicaid, and which are subject to the lowest charge level provision under 42 CFR 405.511, the Medicaid payment could not exceed the Medicare lowest charge level limitations (42 CFR 447.351(a) and (b)). The Medicaid agencies were also required to calculate and apply their own lowest charge level limitations (42 CFR 447.351(c)) to services and items subject to the lowest charge level limitation that are furnished only under Medicaid. However, no "Medicaid only" services were designated as being subject to this limitation.

3. For services and items that were neither classified as practitioner services nor as services subject to the lowest charge level limitation, Medicaid could pay no more than (a) the Medicare reasonable charge if they were furnished under both Medicare and Medicaid (42 CFR 447.352(a)); or (b) the Medicaid agency's own customary and prevailing charge calculations if they were furnished only under Medicaid (42 CFR 447.352(b)).

4. For laboratory services performed by outside laboratories but billed by a physician, Medicaid could pay no more than the lower of (a) the laboratory's reasonable charge for the service, or (b) the amount the laboratory charged the physician, when the physician indentified both the laboratory and the amount it charged for that service. When the physician did not identify the laboratory and its charge to the

physician, Medicaid could pay no more than the lowest estimated charge at which the service could have been secured from a laboratory serving the physician's locality (42 CFR 447.342(c), published August 24, 1981, at 46 FR 42669).

Some States have informed us that these requirements created problems for them because—

1. The requirement for States to make and apply their own reasonable charge calculations and to obtain and use Medicare reasonable charge data imposed unjustified administrative costs and burdens on States;

2. Reasonable charge limits have sometimes prevented States from improving access to care by paying higher amounts for services and items that are difficult for Medicaid beneficiaries to obtain; and

3. The Medicare reasonable charges vary from physician to physician, and from locality to locality. Their use as Medicaid payment limitations has resulted in the States being unable to apply a single payment rate Statewide unless that rate is set at or below the lowest Medicare reasonable charge level in the State.

B. New Legislation

Section 2174, Pub. L. 97-35 amended section 1902(a)(30) of the Act to remove the legislative requirements that payments under Medicaid not exceed reasonable charges, and deleted paragraph (1) of section 1903(i) of the Act to remove the legislative requirement that Medicaid use the reasonable charge established by Medicare as the upper limit for reimbursing noninstitutional services.

Congress removed the Medicaid and Medicare reasonable charge levels as a ceiling on Medicaid payments because it was aware of the problems cited above, and in recognition of States' need for flexibility in their Medicaid programs. Congress expects the removal of the administrative burdens imposed on States by the prior law to improve States' administration of their Medicaid programs and to provide States with the flexibility needed to create incentives to improve the availability and utilization of physicians services under Medicaid (House Budget Committee Report, No. 97-158, page 312). With the removal of the reasonable charge limits, States can structure their payment levels to fit their specific needs.

C. Provisions of the Regulations

We are making the technical changes in the Medicaid regulations needed to remove all references to reasonable charge limits for noninstitutional services under Medicaid, except for certain laboratory services, as explained below. Therefore, we are revising 42 CFR 447.200, adding a new subpart D to 42 CFR Part 447, containing revisions to §§ 447.250, and 447.342, and deleting §§ 447.341, 447.351 and 447.352 to reflect the elimination of these limits by Pub. L. 97-35.

We are adding a new § 447.304 to clarify that when primary payment is made by Medicare for services to a beneficiary eligible under both programs, and Medicaid is responsible only for the deductible and coinsurance payments (crossover claims), Medicare upper limits will still generally apply. That is because in the crossover claim situation, most States require that a physician or other provider must accept assignment of the Medicare claim in order to receive payment from Medicaid with respect to deductibles and coinsurance. A person who accepts assignments under Medicare is prohibited from accepting more than the Medicare reasonable charge. Because Congress did not remove the reasonable charge limits on Medicare reimbursement, in this situation, the provider would not be able to accept any additional payment, even if Medicaid were willing to pay more than the Medicare limit.

We are also revising § 447.342, which contains the limits for payment of laboratory services when billed by a physician. The regulations cover two situations: one in which the laboratory services are performed by or under the supervision of a physician, and the other in which the laboratory services are performed by an outside laboratory. By virtue of amending section 1902(a)(30) of the Act to remove the limitation of Medicare reasonable charges, Congress removed that limit with respect to the first situation. However, Congress did not amend section 1902(a)(43) of the Act which specifically provides that payment to physicians for laboratory services performed by an outside laboratory may not exceed the payment authorized under section 1842(h) of the Act (Medicare). Therefore, we are retaining that limitation (see § 447.342(c)).

II. Collection of Third Party Payments

A. Background and Legislation

Under section 1902(a)(25) of the Act, States are required to take reasonable measures to determine the legal liability of third parties to pay for health care and services provided to Medicaid beneficiaries. The States are further required to treat the legal liability of a third party as a resource of the beneficiary and to seek reimbursement from the third party.

Current regulations (42 CFR 433.139) provide that States must seek reimbursement from liable third parties (defined in § 433.136 as "any individual, entity or program * * *") within 30 days after the end of the month in which the State makes a payment to a provider of health care services if the State chooses to pay the provider before seeking reimbursement from the third party. If the State learns of the existence of a liable third party after it has paid a claim, the regulations require the State to seek reimbursement from the third party within 30 days after the end of the month in which it learned of the existence of the liable third party.

In section 2182 of the Omnibus Budget Reconciliation Act of 1981, Congress amended section 1902(a)(25) of the Act to provide that third party liabilities are not to be collected by States if the amount of reimbursement a State can reasonably be expected to recover is less than the cost to the State of the recovery. The provision is intended to correct situations in which States are obligated by law to pursue claims against liable third parties even if those efforts are not cost effective. Cost-ineffective recovery attempts are also inconsistent with the general requirements for proper administration that are contained in section 1902(a)(4) of the Act.

B. Provisions of the Regulations

We are amending 42 CFR 433.139 to state that, in any case in which a State is obligated to seek reimbursement from a liable third party, it may suspend or terminate the effort if the amount it can reasonably expect to recover is less than the cost of the recovery. We are not specifying a Federal standard regarding the amount for which the State should forego collection efforts. Rather, we are leaving that to the discretion of each state. However, we are requiring that the State plan specify the threshold amount (or other guideline) the State uses for this determination, or describe the process by which the determination is made, and that the plan specify the dollar amount or time period the State uses to accumulate billings from a particular liable third party for this purpose.

III. Recertification—Physician Assistants and Nurse Practitioners

A. Background

States are required, under their Medicaid State plan, to have methods and procedures to assure the proper

utilization of care and services. (See section 1902(a)(30) of the Act.) If a State does not make a satisfactory showing to the Secretary that it has such a utilization program in operation for inpatient services in hosptials (including institutions for tuberculosis and hospitals for mental diseases), skilled nursing facilities and intermediate care facilities, Federal matching funds in expenditures for long-stay inpatient services are decreased. (See section 1903 (g)(1) and (g)(5) of the Act.)

A satisfactory showing by the State must include a physician certification of the need for inpatient services at the time of admission (or at the time the individual applies for medical assistance, if later), and recertification of that need at least every 60 days thereafter during the patient's stay. The physician certification and recertification requirement is based on the concept that the physician is a key figure in determining appropriate utilization of health services. It is a physician who decides whether an individual should be admitted for inpatient services, orders tests, drugs and treatment, and determines the length of stay in an inpatient facility.

B. New Legislation

Section 2183 of Pub. L. 97-35, amends section 1903(g)(1)(A) of the Act to allow physician assistants and nurse practitioners, under the supervision of a physician, to recertify the continued need for inpatient services. It also extends the period of time for recertification of care for patients receiving services in public institutions for the mentally retarded or persons with related conditions (ICF/MR) from once every 60 days to once every 12 months.

Although Congress agrees that it is necessary that a physician perform the initial certification to insure the most accurate diagnosis and plan of care, it finds that physician assistants and nurse practitioners, under the supervision of physicians, are well qualified to perform the recertification of the patient's need for continued inpatient care. Those professionals have the proper basic skills needed to perform the many tasks involved in recertification and can be trained in any additional skills that are required.

As to the 12-month period for recertification for a patient in a public institution for the mentally retarded (ICF/MR), Congress believes that the longer recertification period is reasonable and appropriate in view of the likelihood that the patient's condition will change slowly over an extended period of time. (H.R. Report 97-158, Vol. II, page 333) (The amendment Congress made applies only to public institutions for the mentally retarded and not to private institutions. Because the amendment refers to section 1905(d) of the Act, which pertains only to public ICF/MRs, the legislation gives us no authority to extend the recertification period with respect to private institutions. Although it is unclear why Congress chose to limit this portion of the amendment to public institutions, the latest data available for ICF/MRs indicate that, as of June 30, 1979, 97,503 patients were receiving ICF/MR care in public institutions and 18,272 were receiving such care in private institutions. Thus, relatively few ICF/MR patients would be unaffected by the change in recertification period.)

Congress emphasized that this provision in no way indicates that one year is the appropriate length of stay for a person in an ICF/MR. The appropriate length of stay for a patient in an ICF/MR is left to the judgment of the professional staff responsible for the patient's plan of care and rehabilitation. Congress considered this amendment an effective way of reducing costs while maintaining quality of care. (H.R. Report 97-158, Vol. II, Page 334)

C. Provisions of the Regulations

Section 2183 of Pub. L. 97-35 states that recertification of the need for continued inpatient services may be performed by a physician assistant or nurse practitioner under the supervision of a physician, and that the recertification period in a public institution that is an ICF/MR must at least once every 12 months.

Physician Assistant and Nurse Practitioner.—"Physician assistant" and "nurse practitioner" are currently defined in Medicaid rural health clinic regulations at 42 CFR 481.2. Those definitions have served us well in the rural health clinic setting. In addition, the use of established definitions will assure the consistency of Federal standards within the Medicaid program. Therefore, we have cross-referenced the current definitions in these regulations to the definitions of physician assistant and nurse practitioner in 42 CFR 481.2.

We are also requiring that the recertification of inpatient services by physician assistants and nurse practitioners be within the scope of their practice as defined under State law. Although the provision is not expressly stated in section 2183 of the Omnibus Budget Reconciliation Act of 1981, it is cited in both the House Report of the Committee on the budget which accompanied H.R. 3982 (a precursor to Pub. L. 97-35) and the Conference Report. (See H.R. Report 97-158, Vol. II, Report of the Committee on the Budget, page 333 and the Omnibus Budget Reconciliation Act of 1981 Conference Report, page 969) Thus, we believe this added requirement to be the intent of Congress.

Under the Supervision of a Physician.—We do not believe that Congress intended that the physician necessarily be on the premises, or provide over-the-shoulder supervision of the physician assistant or nurse practitioner as those individuals perform the tasks involved in recertifying the need for inpatient care. That is because Congress expressed its confidence in the qualifications of those individuals in the recertification process. Therefore, our regulations do not require "direct" supervision. We believe that Congress intended the physician supervision of physician assistants and nurse practitioners involved in the recertification process to be general in nature, to free the physician to perform those procedures that require the skills of his or her profession.

In many cases, the attending physician would be the supervising physician. However, where that is not the case, and the recommendation (with regard to the need for continued care) of the physician assistant or nurse practitioner differs from that of the attending physician, we believe that it would be reasonable for States to allow the attending physician's judgment to prevail since he or she is legally responsible for the patient's condition.

Recertification in hospitals, SNFs and ICFs.—We have amended 42 CFR 456.60, 456.160, 456.260, and 456.360 to state that physician assistants and nurse practitioners may recertify the need for continued inpatient stays in these institutions.

Recertification in Public Institutions for the Mentally Retarded or Persons with Related Conditions.—We have also amended 42 CFR 456.360 to state that the recertification in these institutions must be made at least once every 12 months.

Other Technical Amendments.—We have also made technical amendments to 42 CFR 441.155, 456.1 and 456.652 to reflect the new flexibility in the law.

IV. Northern Mariana Islands

A. New Legislation

Section 2162 of Pub. L. 97-35 amends section 1101(a)(1) of the Act by adding the Northern Mariana Islands to the list of geographical areas that are included in the term "State" when used in reference to the Medicaid program.

Section 2162 also amends section 1905(b) of the Act by adding the Northern Mariana Islands to the list of the localities entitled to a designated 50 percent Federal medical assistance percentage.

Thirdly, that section of Pub. L. 97-35 amends section 1108(c) of the Act by increasing the limits on payments under Medicaid to Puerto Rico, the Virgin Islands, and Guam, and by adding a limit on payment for the Northern Mariana Island. Section 1108(c) now specifies that the total amount certified by the Secretary under Medicaid for a fiscal year will not exceed the following amounts:

(1) Puerto Rico—$45,000,000.
(2) Virgin Islands—$1,500,000.
(3) Guam—$1,400,000.
(4) Northern Mariana Islands—$350,000.

This amendment applies to fiscal years beginning with 1982.

B. Provisions of the Regulations

The following are technical changes required to implement section 2162 of Pub. L. 97-35.

We are amending 42 CFR 430.1 by revising the definition of "State" to include the Northern Mariana Islands.

We are also making technical amendments to § 433.10 to state that the Federal medical assistance percentage is set by statute at 50 percent.

We have added a reference to the Northern Mariana Islands to the title of 42 CFR Part 435, Eligibility in the States and District of Columbia, for the following reason. Medicaid eligibility has been closely linked to eligibility for Federal Supplemental Security Income (SSI) payments since the 1972 amendments to the Social Security Act. Guam, Puerto Rico, and the Virgin Islands are ineligible for Federal SSI payments (section 1614(e) of the Act), and their Medicaid eligibility provisions differ from those of the States. Thus, Medicaid eligibility regulations for Guam, Puerto Rico, and the Virgin Islands were placed in a separate Part 436 in the Medicaid Regulations. The Northern Mariana Islands, on the other hand, are eligible for Federal SSI payments effective January 9, 1978, as specified in 20 CFR 416.120(c)(9). Therefore, Medicaid eligibility provisions for the Northern Marianas as well as for the 50 States and the District of Columbia, are those in 42 CFR Part 435.

Waiver of Proposed Rulemaking

These amendments implement the clear language of sections 2162, 2174, 2182 and 2183 of Pub. L. 97-35. Consequently, we are publishing these regulations in final form because the Congress intended to provide States with flexibility in the administration of the Medicaid program effective October 1, 1981.

In our view, publication of a notice of proposed rulemaking for these amendments is unnecessary for the immediate and proper implementation of these provisions, and would not contribute to the clarification of any issues. Moreover, the delay caused by such a notice would not serve the public interest. We therefore find good cause to waive proposed rulemaking procedures. We will however, consider any comments on these regulations that are mailed by the date specified above in the Effective Date section, and make any further changes that may be necessary.

For the reasons cited above, and in order to relieve States of administratively burdensome requirements and to provide them with the flexibility they need to tailor their programs to individual conditions and resources, we find good cause to waive a delayed effective date.

Impact Analysis

Executive Order 12291

The Secretary has determined that these final regulations do not meet the criteria for a "major rule" as defined in section 1(b) of Executive Order 12291.

These rules implement several provisions of Pub. L. 97-35, and are essentially technical in nature. The intent of Congress in enacting these sections was to remove administrative burdens.

Regulatory Flexibility Analysis (RFA)

We certify that a regulatory flexibility analysis is not required under section 604 of the Regulatory Flexibility Act (Pub. L. 96-354).

PART 430—GRANTS TO STATES FOR MEDICAL ASSISTANCE PROGRAMS

42 CFR Chapter IV, Subchapter C is amended as set forth below.

A. Part 430 is amended as follows:

1. The authority citation for Part 430 is revised to read as follows:

Authority: Secs. 1101 and 1102 of the Act (42 U.S.C. 1301 and 1302)

2. Section 430.1 is amended by revising the definition of "State" as follows:

§ 430.1 Definitions.

In this subchapter, unless the context indicates otherwise—

* * * * *

"State" means the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and the Northern Mariana Islands;

* * * * *

PART 433—STATE FISCAL ADMINISTRATION

B. Part 433 is amended as follows:

1. The authority citation for Part 433 reads as follows:

Authority: Secs. 1102, 1902(a)(4), 1902(a)(25), 1903(d)(2), 1903(o), 1903(p), and 1912 of the Social Security Act (42 U.S.C. 1302(a)(4), 1396a(a)(25), 1396b(d)(2), 1396b(o), 1396b(p), and 1396k), unless otherwise noted.

2. Section 433.10 is amended by revising paragraph (b) to read as follows:

§ 433.10 Rates of FFP for program services.

* * * * *

(b) *Federal medical assistance percentage (FMAP)*—(1) *Computation.* The FMAP is determined by the formula described in sec. 1905(b) of the Act. Under the formula, if a State's per capita income is equal to the national average per capita income, the Federal share is 55 percent. If a State's per capita income exceeds the national average, the Federal share is lower, with a statutory minimum of 50 percent. If a State's per capita income is lower than the national average, the Federal share is increased, with a statutory maximum of 83 percent. The formula used in determining the State and Federal share is as follows:

State share=(State per capita income)^2 (National per capita income)^2 × 45 percent

Federal share=100 percent minus the State share (with a minimum of 50 percent and a maximum of 83 percent)

The formula provides for squaring both the State and national average per capita incomes; this procedure magnifies any difference between the State's income and the national average. Consequently, Federal matching to lower income States is increased, and Federal matching to higher income States is decreased, within the statutory 50-83 percent limits. The FMAP for Puerto Rico, the Virgin Islands, Guam and the Northern Mariana Islands is set by statute at 50 percent and is subject to dollar limitations specified in section 1108 of the Act.

* * * * *

3. Section 433.139 is amended by adding a new paragraph (c) to read as follows:

§ 433.139 Payment of claims.

* * * * *

(c) An agency must suspend or terminate an effort to seek reimbursement from a liable third party if it determines that the effort would not be cost effective because the amount it reasonably expects to recover will be less than the cost of recovery. The State plan must—

(1) (i) Specify the threshold amount or other guideline that the agency uses in determining whether to seek reimbursement from a liable third party; or

(ii) Describe the process by which the agency determines that seeking reimbursement would not be cost effective; and

(2) Specify a dollar amount or period of time for which it will accumulate billings with respect to a particular liable third party, in making the decision whether to seek recovery.

PART 435—ELIGIBILITY IN THE STATES, DISTRICT OF COLUMBIA AND THE NORTHERN MARIANA ISLANDS

C. Part 435 is amended as follows:

1. The authority citation for Part 435 reads as follows:

Authority: Sec. 1102 of the Social Security Act, (42 U.S.C. 1302), unless otherwise noted.

2. The title of Part 435 and the introductory language of § 435.2 are amended to read as follows:

PART 435—ELIGIBILITY IN THE STATES, DISTRICT OF COLUMBIA AND THE NORTHERN MARIANA ISLANDS

* * * * *

§ 435.2 Purpose and applicability.

This part sets forth, for the 50 States, the District of Columbia and the Northern Mariana Islands—

* * * * *

PART 441—SERVICES: REQUIREMENTS AND LIMITS APPLICABLE TO SPECIFIC SERVICES

D. Part 441 is amended as follows:

1. The authority citation for Part 441 reads as follows:

Authority: Sec. 1102 of the Social Security Act, (42 U.S.C. 1302).

2. Section 441.155 is amended by revising paragraph (d)(1) to read as follows:

§ 441.155 Individual plan of care.

* * * * *

(d) The development and review of the plan of care as specified in this section satisfies the utilization control requirements for—

(1) Recertification under §§ 456.60(b), 456.160(b), 456.260(b), and 456.360(b) of this subchapter; and

* * * * *

PART 447—PAYMENT FOR SERVICES

E. Part 447 is amended as follows:

1. The table of contents for part 447 is amended by designating §§ 447.321 through 447.371 as Subpart D, removing §§ 447.341, 447.351 and 447.352, changing the center headings, and revising § 447.342.

PART 447—PAYMENTS FOR SERVICES

Subpart D—For Other Institutional and Noninstitutional Services

Sec.
447.300 Basis and purpose.
447.302 State plan requirements.
447.304 Adherence to upper limits FFP.

Outpatient Hospital and Clinic Services

447.321 Outpatient hospital services and clinic services: Upper limits of payment.

Other Inpatient and Outpatient Facilities

447.325 Other inpatient and outpatient facility services: Upper limits of payment.

Drugs

447.331 Drugs: Upper limits of payment.
447.332 Cost of drugs.
447.333 Dispensing fee.
447.334 Upper limits for drugs furnished as part of services.

Clinical Laboratory Services

447.342 Physician billing for clinical laboratory services.

Prepaid Capitation Plans

447.361 Prepaid capitation plans: Upper limits of payment.

Rural Health Clinic Services

447.371 Services furnished by rural health clinics.

Authority: Sec. 1102 of the Social Security Act, (42 U.S.C. 1302), unless otherwise noted.

2. Section § 447.200 is revised to read as follows:

§ 447.200 Basis and purpose.

This subpart prescribes State plan requirements for setting payment rates to implement, in part, section 1902(a)(30) of the Act, which requires that payments for services be consistent with efficiency, economy, and quality of care.

3. Sections 477.321, 447.325, 447.331 through 447.334, 447.342, 447.361 and 447.371 are designated as Subpart D. Sections 447.300, 447.302 and 447.304 are added to Subpart D, the heading and paragraph (a) of § 447.342 are revised and § 447.342(b) is removed and reserved, §§ 447.341, 447.351, and 447.352 are removed as follows:

Subpart D—Payment Methods for Other Institutional and Noninstitutional Services

§ 447.300 Basis and purpose.

In this subpart, §§ 447.302 through 447.334 and 447.361 implement section 1902(a)(30) of the Act, which requires that payments be consistent with efficiency, economy and quality of care.

Section 447.342 of this subpart implements section 1902(a)(43) of the Act, which permits the State plan to provide for payment to a physician for laboratory services which the physician did not personally perform or supervise. Section 447.371 implements section 1902(a)(13)(F) of the Act, which requires that the State plan provide for payment for rural health clinic services in accordance with regulations prescribed by the Secretary.

§ 447.302 State plan requirements.

A State plan must provide that the requirements of this subpart are met.

§ 447.304 Adherence to upper limits; FFP.

(a) The Medicaid agency must not pay more than the upper limits described in this subpart.

(b) In the case of payments made under the plan for deductibles and coinsurance payable on an assigned Medicare claim for noninstitutional services, those payments may be made only up to the reasonable charge under Medicare.

(c) FFP is available in expenditures for payments for services that do not exceed the upper limits.

Note.—The Secretary may waive any limitation on reimbursement imposed by Subpart D of this part for experiments conducted under section 402 of Pub. L. 90-428, Incentives for Economy Experimentation, as amended by section 222(b) of Pub. L. 92-603, and under section 222(a) of Pub. L. 92-603.

* * * * *

Clinical Laboratory Services

§ 447.342 Physician billing for clinical laboratory services.

(a) This section applies when a State plan provides for payments to physicians for clinical laboratory services.

(b) [Reserved]

(c) A state plan may provide for payment to a physician who bills for clinical laboratory services performed by an outside laboratory. Under these circumstances, the plan must provide that the agency will not pay the physician more than the amount that would be authorized under Medicare in

accordance with §.405.515 (b), (c), and (d) of this chapter.

PART 456—UTILIZATION CONTROL

F Part 456 is amended as follows,

1. The table of contents is amended by revising the headings for §§ 456.60, 456.160, 456.260, and 456.360 as follows:

PART 456—UTILIZATION CONTROL

* * * * *

Sec.

456.60 Certification and recertification of need for inpatient care.

456.160 Certification and recertification of need for inpatient care.

456.260 Certification and recertification of need for inpatient care.

456.360 Certification and recertification of need for inpatient care.

Authority: Sec. 1102 of the Social Security Act, 49 Stat. 647 (42 U.S.C. 1302).

2. Section 456.1 is amended by revising paragraph (b)(2)(i) to read as follows:

§ 456.1 Basis and purpose of part.

* * * * *

(b) The requirements in this part are based on the following sections of the Act. Table 1 shows the relationship between these sections of the Act and the requirements in this part.

* * * * *

(2) *Penalty for failure to have an effective program to control utilization of institutional services.* * * *

(i) Under section 1903(g)(1)(A), a physician must certify at admission, and a physician (or physician assistant or nurse practitioner under the supervision of a physician) must periodically recertify, the individual's need for inpatient care.

* * * * *

3. Section 456.60 is revised to read as follows:

§ 456.60 Certification and recertification of need for inpatient care.

(a) *Certification.*

(1) A physician must certify for each applicant or recipient that inpatient services in a hospital are or were needed.

(2) The certification must be made at the time of admission or, if an individual applies for assistance while in a hospital, before the Medicaid agency authorizes payment.

(b) *Recertification.*

(1) A physician, or physician assistant or nurse practitioner (as defined in § 481.2 of this chapter) acting within the scope of practice as defined by State law and under the supervision of a physician, must recertify for each applicant or recipient that inpatient services in a hospital are needed.

(2) Recertifications must be made at least every 60 days after certification.

4. Section 456.160 is revised to read as follows:

§ 456.160 Certification and recertification of need for inpatient care.

(a) *Certification.*

(1) A physician must certify for each applicant or recipient that inpatient services in a mental hospital are or were needed.

(2) The certification must be made at the time of admission or, if an individual applies for assistance while in a mental hospital, before the Medicaid agency authorizes payment.

(b) *Recertification.*

(1) A physician, or physician assistant or nurse practitioner (as defined in § 481.2 of this chapter) acting within the scope of practice as defined by State law and under the supervision of a physician, must recertify for each applicant or recipient that inpatient services in a mental hospital are needed.

(2) Recertification must be made at least every 60 days after certification.

5. Section 456.260 is revised to read as follows:

§ 456.260 Certification and recertification of need for inpatient care.

(a) *Certification.*

(1) A physician must certify and recertify for each applicant or recipient that SNF services are or were needed.

(2) The certification must be made at the time of admission or, if an individual applies for assistance while in a SNF, before the Medicaid agency authorizes payment.

(b) *Recertification.*

(1) A physician, or physician assistant or nurse practitioner (as defined in § 481.2 of this chapter) acting within the scope of practice as defined by State law and under the supervision of a physician, must recertify for each applicant or recipient that SNF services are needed.

(2) Recertification must be made at least every 60 days after certification.

6. Section 456.360 is revised to read as follows:

§ 456.360 Certification and recertification of need for inpatient care.

(a) *Certification.*

(1) A physician must certify for each applicant or recipient that ICF services are or were needed.

(2) The certification must be made at the time of admission or, if an individual applies for assistance while in an ICF, before the Medicaid agency authorizes payment.

(b) *Recertification.*

(1) A physician, or physician assistant or nurse practitioner (as defined in § 481.2 of this chapter) acting within the scope of practice as defined by State law and under the supervision of a physician, must recertify for each applicant or recipient that ICF services are needed.

(2) Recertification must be made at least—

(i) Every 12 months after certification in a public institution for the mentally retarded or persons with related conditions; and

(ii) Every 60 days after certification in an ICF other than a public institution for the mentally retarded or persons with related conditions.

7. Section 456.652 is amended by revising paragraph (a)(1) to read as follows:

§ 456.652 Requirements for an effective utilization control program.

(a) *General requirements.* In order to avoid a reduction in FFP, the Medicaid agency must make a satisfactory showing to the Administrator, in each quarter, that it has met the following requirements for each recipient:

(1) Certification and recertification of the need for inpatient care, as specified in §§ 456.60, 456.160, 456.260, 456.360 and 456.481.

* * * * *

(Catalog of Federal Assistance Program No. 13.714, Medical Assistance Program)

Dated: September 15, 1981.

Carolyne K. Davis,

Administrator, Health Care Financing Administration.

Approved: September 22, 1981.

Richard S. Schweiker,

Secretary.

[FR Doc. 81-28334 Filed 9-30-81; 8:45 am]

BILLING CODE 4110-35-M

Thursday
October 1, 1981

Part IX

Department of Health and Human Services

Health Care Financing Administration

Professional Standards Review Organizations

DEPARTMENT OF HEALTH AND HUMAN SERVICES
Health Care Financing Administration

42 CFR Parts 431, 432, 433, 456, 462, 463, 466, 473, 478, and 480

Professional Standards Review; Professional Standards Review Organizations (PSRO)

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Interim final regulation with a comment period.

SUMMARY: This interim final rule is required to conform current regulations to certain provisions of the Omnibus Reconciliation Act of 1980 (Pub. L. 96-499) and the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97-35). To conform with current statutory authority, this rule makes technical changes to Parts 431, 432, 433, 456, 462, 463, 466, 473, 478, and 480 of Chapter 42 of the Code of Federal Regulations.

The Omnibus Reconciliation Act of 1980 (Pub. L. 96-499) made several adjustments to the PSRO program. In conformance with that Act, this rule changes PSRO membership and advisory group requirements.

The Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97-35) has further modified the PSRO program. In conformance with that Act, this rule changes the agreement requirements between HCFA and each PSRO. Accordingly, such agreements may be for any period not to exceed 12 months (42 CFR 462.11(a)(2)), and the procedures for termination or non-renewal of the agreement are modified.

The Act (Pub. L. 97-35) also changed the scope and responsibility of the PSRO program. PSROs are no longer required to review care paid for by the Medicaid and Maternal and Child Health and Crippled Children's Services programs (Titles XIX and V of the Social Security Act), but may conduct such review at the option of the individual States. These changes apply to PSROs entering into or renewing their agreement on or after October 1, 1981. A PSRO with a current agreement which was entered into before October 1, 1981 will continue to have responsibility for the review of health care services provided to recipients of the Medicaid or Maternal and Child Health and Crippled Children's Services programs (Titles XIX and V of the Social Security Act) until the next renewal of that agreement or in accordance with instructions in the current grants.

DATES: These regulations are effective on October 1, 1981. Although we are issuing this as an interim final rule for reasons stated in the Supplementary Information, we will consider any comments mailed by November 30, 1981.

Section 431.630 of this regulation contains reporting or recordkeeping requirements which have not been approved by OMB. The reporting and/or recordkeeping referenced in these sections is not required until OMB approval has been obtained. HCFA will publish a further notice in the Federal Register when OMB approves or disapproves these requirements.

ADDRESSES: Address comments in writing to: Administrator, Department of Health and Human Services, Health Care Financing Administration, P.O. Box 17082, Baltimore, Maryland 21235.

If you prefer, you may deliver your comments to Room 309-G Hubert H. Humphrey Building, 200 Independence Ave., SW., Washington, D.C., or to Room 789, East High Rise Building, 6401 Security Boulevard, Baltimore, Maryland, 21235. In commenting, please refer to HSQ-105-FC. Agencies and organizations are requested to submit comments in duplicate.

Comments will be available for public inspection, beginning approximately two weeks after publication, in Room 309-G of the Department's office at 200 Independence Ave., SW., Washington, D.C., 20201 on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m., (202) 245-7890.

Because of the large number of comments we receive, we cannot acknowledge or respond to them individually. However, if as a result of comments, we believe that changes are needed in these regulations, we will publish the changes in the Federal Register and respond to public comments in that document.

FOR FURTHER INFORMATION CONTACT:
Geraldine L. Ellis (301) 594-1432
David McNally (for Part 433) (301) 597-1397

SUPPLEMENTARY INFORMATION: Establishment of Professional Standards Review Organizations (PSROs) was mandated by Congress in the 1972 Amendments to the Social Security Act (Pub. L. 92-603). The purpose of the PSRO program was to assure that health care services and items for which payment may be made in whole or in part under the Medicare, Medicaid, and Maternal and Child Health and Crippled Children's Services program (Titles XVIII, XIX, and V of the Act) are medically necessary; conform to appropriate professional standards; and are delivered in the most effective, efficient, and economical manner consistent with quality care.

The Omnibus Reconciliation Act of 1980 (Pub. L. 96-499) made several adjustments to the PSRO program. In conformance with that Act, this rule deletes the requirement that PSROs have formal advisory groups (42 CFR Part 480), allows PSROs to accept as members health care practitioners, other than physicians, who have independent hospital admitting privileges (42 CFR 462.4), and requires advisory groups to Statewide Professional Standard Review Councils to include a registered nurse and a doctor of dental surgery or dental medicine (42 CFR 478.102).

Although the basic purpose of the PSRO program is unchanged, the scope of its review authority has been altered by Section 2113 of the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97-35). As a result, PSROs are no longer required to perform review of services furnished to Medicaid recipients. States now have the option of contracting with PSROs for the performance of medical or utilization review functions. This allows the individual States the flexibility of determining whether it is to their benefit to contract with a local PSRO for these services or to utilize another method to accomplish the utilization control required by Title XIX. If a State elects to contract with a PSRO, the PSRO is obligated to agree to perform review as long as it is not inconsistent with the PSRO's responsibilities to perform Medicare review. In addition, any State contracting with a PSRO is eligible for Federal Financial Participation (FFP) at the rate of 75 percent for all funds expended by the PSRO for these purposes (42 CFR 433.15), as required by section 1903(a)(3)(C) of the Act (added by section 2113(n)(2) of Pub. L. 97-35). States contracting with review organizations not designated as PSROs under Part B of Title XI of the Act are eligible for FFP at the rate of 50 percent.

To effect these changes, all references to the Medicaid and the Maternal and Child Health and Crippled Children's Services programs (Titles XIX and V of the Social Security Act) as a mandatory review responsibility of the PSRO have been deleted. Similarly, since the PSRO does not have mandatory responsibility for Medicaid review, the requirement for State assessment or State approval of an individual PSRO's plan or performance has been deleted. These changes apply to agreements between HCFA and a PSRO entered into on or after October 1, 1981. A PSRO with a current agreement which was entered into before October 1, 1981 will continue to have responsibility and authority to review health care services provided or

proposed to be provided to recipients of the Medicaid and Maternal and Child Health and Crippled Children's Services programs until the next renewal date of that agreement or in accordance with instructions in the current grant.

In addition, the regulations have been amended to require a State, electing to contract with a PSRO, to submit a written amendment to the State plan. This requirement is based on section 1902(a)(4) of the Act, which requires State plans to provide such methods of administration as are found by the Secretary to be necessay for the proper and efficient operation of the plan. Requiring a State plan amendment is necessary to enable HCFA and the State to determine the degree to which the State will be relieved of medical and utilization review responsibility, pursuant to new section 1902(d) of the Act (Section 2113(m) of Pub. L. 97-35), and to enable HCFA and the State to schedule audits of the PSROs. The amendment must specify the specific time period covered by the contract and the services and providers subject to PSRO review. It must also specify that the State agency or HHS will be permitted to audit and inspect PSRO records relative to the contract. These records must be retained by the PSRO in accordance with 45 CFR Part 74. The plan must also specify that the State will monitor and evaluate PSRO performance, in a manner sufficient to assure that the PSRO is adequately fufilling its obligations under the contract. The State plan must identify specifically the types of services being reviewed by the PSRO; that is, hospital services, services in a skilled or intermediate care facility, or other services agreed upon. The State plan should also indicate if the review will be conclusive for payment purposes.

The review to be performed by the PSRO must not be inconsistent with the review conducted by the PSRO of Title XVIII services under its agreement with HCFA and must be sufficient in scope to satisfy the intention of the utilization control provision of the Act, consistent with section 1155(a)(1) of the Act, as amended by section 2113(d)(2) of Pub. L. 97-35. A State may be deemed to have satisfied requirements for utilization control specified in 42 CFR Part 456 with respect to those services or providers the PSRO contracts with the State to review pursuant to section 1902(d) of the Act.

Additionally, section 2111 of Pub. L. 97-35, amending section 1155(e) of the Act, modified the PSRO program regarding delegation of review. In conformance with that Act, this rule allows the PSRO the option of delegating review functions to a hospital review committee but does not require delegation (42 CFR 466.1(a)(2)). Section 2112 of Pub. L. 97-35 also eliminated certain distinctions between conditional and fully designated PSROs with respect to their agreements with HCFA. The regulations concerning the duration, renewal, and termination of agreements and grants, as well as the regulations involving the reevaluation of a PSRO's capability, have been changed to indicate that PSROs will be assessed periodically, that an agreement between the Secretary and a PSRO may not exceed 12 months, and that the agreement can be terminated upon 90 days' notice by the Secretary to the organization. Additionally, the regulations have been amended to indicate that when HCFA determines that a PSRO agreement should be terminated or not renewed, the PSRO, either conditionally or fully designated, will not be entitled to a formal hearing but will be entitled to an informal meeting in accordance with 42 CFR 462.12. If the agreement to be terminated was entered into before August 13, 1981, the date of enactment of Pub. L. 97-35, and involves a fully designated PSRO, the PSRO is entitled to a formal hearing in accordance with current procedures. In all cases, in accordance with section 2112(a)(2)(B) of Pub. L. 97-35, the decision of the Secretary is final and is not subject to judicial review.

42 CFR 432.50 and 433.15 have been revised to delete references to a special rate of FFP for the salary and training of State surveyors. This special rate expired by the terms of the statute and regulations on September 30, 1980.

Waiver of Notice of Proposed Rulemaking

We have determined that good cause exists for publication of this rule without a prior notice and comment period. These changes are necessary to bring 42 CFR, Subchapter D, into conformance with the Social Security Act, and they are nondiscretionary. Since the Omnibus Reconciliation Act of 1980 (Pub. L. 96-499) and the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97-35) mandate the changes, we find good cause to waive the NPRM.

Executive Order Certification

The Secretary has determined, in accordance with Executive Order 12291, that the final rule does not constitute a "major rule" because it will not have an annual economic effect of $100 million or more; result in a major increase in costs or prices for consumers, industries, any governmental agencies, or any geographic regions; or have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. The major expected effects of this rule are that States will have more flexibility in choosing review methods and that Federal costs will be reduced as inefficent and ineffective PSROs are identified.

Regulatory Flexibility Act

The Secretary certifies, pursuant to Section 605(b) of the Regulatory Flexibility Act, that the regulation in this notice will not have a significant economic impact on a substantial number of small entities including: 1) small businesses as defined under section 3 of the Small Business Act; 2) not-for-profit enterprises independently owned and operated and not dominant in their fields; or 3) governmental jurisdictions serving less than 50,000 persons. The reason for the negative certification is that PSROs are not considered subject to the provisions of the Regulatory Flexibility Act.

PART 431—STATE ORGANIZATION AND GENERAL ADMINISTRATION

42 CFR Part 431 is amended as follows:

Section 431.630 is revised as follows:

§ 431.630 Coordination of Medicaid with Professional Standards Review Organizations.

The State plan must provide that the Medicaid agency will comply with provisions of Part 463 of this chapter, relating to the activities of PSROs.

(a) The State plan may provide for the review of Medicaid services by a PSRO designated under Part B of Title XI of the Act. Medicaid requirements for medical and utilization review shall be deemed to be met for those services or providers subject to such contracted review.

(b) The State plan must specify how the contract with the PSRO satisfies the requirements that:

(1) The provisions of paragraphs (a), (b), (c), (g), (h), (i), (m), and (n) of § 431.503 of this subchapter are met;

(2) A monitoring and evaluation plan is in effect by which the State will assure satisfactory performance by the PSRO;

(3) The services and providers subject to PSRO review are identified; and

(4) The review activities performed by the PSRO are not inconsistent with those activities performed for the review of Title XVIII services, including a

description of whether and to what extent PSRO determinations will be considered conclusive for payment purposes.

PART 432—STATE PERSONNEL ADMINISTRATION

42 CFR Part 432 is amended as follows:

Section 432.50(b) is amended by removing and reserving paragraph (4) as follows:

§ 432.50 FFP: Staffing and training costs.

* * * * *

(b) *Rates of FFP* * * *

* * * * *

(4) [Reserved]

* * * * *

PART 433—STATE FISCAL ADMINISTRATION

42 CFR Part 433 is amended as follows:

Section 433.15(b) is amended by removing and reserving paragraph (b)(1), redesignating paragraph (b)(6) as (b)(7), and adding new paragraph (b)(6) as follows:

§ 433.15 Rates of FFP for administration.

* * * * *

(b) *Activities and rates* * * * (1) [Reserved]

* * * * *

(6)(i) Funds expended for the performance of medical and utilization review by a Professional Standards Review Organization under a contract entered into under Section 1902(d) of the Act; 75: percent (Section 1903(a)(3) of the Act).

(ii) If a State contracts for medical and utilization review with any individual or organization not designated under Part B of Title XI of the Act, funds expended for such review will be reimbursed as provided in paragraph (b)(7) of this section.

(7) All other activities the Secretary finds necessary for proper and efficient administration of the State plan: 50 percent. (Section 1903(a)(7).) (See also § 455.300 of this subchapter for FFP at 90 percent for State Medicaid fraud control units under section 1903(a)(6).)

PART 456—UTILIZATION CONTROL

42 CFR Part 456 is amended as follows:

Section 456.2 is revised as follows:

§ 456.2 State plan requirements

(a) A State plan must provide that the requirements of this part are met.

(b) These requirements may be met by the State by:

(1) Assuming direct responsibility for assuring that the requirements of this Part are met; or

(2) Deeming, if the State contracts with a PSRO in accordance with § 431.630 of this subchapter.

(c) In accordance with § 431.15 of this subchapter, FFP will be available for expenses incurred in meeting the requirements of this Part.

PART 462—PROFESSIONAL STANDARDS REVIEW

42 CFR Part 462 is amended as follows:

1. The table of contents to Part 462 is amended by revising the title of § 462.11; adding a new § 462.12; and redesignating §§ 462.12 through 462.15 as §§ 462.13 through 462.16 as follows:

Sec.
462.1 Scope and applicability.
462.2 Definitions.
462.3 Eligibility for grants.
462.4 Requirements for designation as a priority PSRO.
462.5 Requirements for designation as an alternate PSRO.
462.6 Application requirements for conditional designation.
462.7 [Reserved]
462.8 Conditional designation as a PSRO.
462.9 [Reserved]
462.10 Limitation on period of conditional designation.
462.11 Duration, renewal and voluntary termination or nonrenewal of grants.
462.12 Involuntary termination or nonrenewal of grants.
462.13 Use of grant funds.
462.14 Publications and copyrights.
462.15 Applicability of 45 CFR Part 74.
462.16 Additional terms and conditions.

Authority. Secs. 1152, 1154, and 1155(f) (2) and (3), Social Security Act, 36 Stat. 1430, 1431, 1432, 1435 (42 U.S.C. 1320c-1, 1320c-3, 1320c-4(f) (2) and (3)); sec. 1102, Social Security Act, 49 Stat. 647 (42 U.S.C. 1302), unles otherwise noted.

2. Section 462.4 is amended by revising paragraphs (a)(3), (a)(5), and (c)(1) to read as follows:

§ 462.4 Requirements for designation as a priority PSRO.

To be eligible for designation as a priority PSRO, an organization must meet the following requirements:

(a) *Composition of the organization.* * * *

(3) Be composed of:

(i) Licensed physicians engaged in the active practice of medicine, surgery, or osteopathy in the PSRO area; and

(ii) If the PSRO chooses, other health care practitioners who have independent admitting privileges and are engaged in the practice of their professions in the PSRO area.

* * * * *

(5) Maintain open membership for all eligible persons who voluntarily choose to become members and so inform the PSRO in writing.

(i) All physicians engaged in the active practice of medicine, surgery or osteopathy in the PSRO area are eligible to become members.

(ii) If the PSRO chooses, other health care practitioners who have independent admitting privileges and are engaged in the practice of their professions in the PSRO area can become members.

* * * * *

(c) *Composition of the governing body.* (1) A majority of the governing body must be members but the governing body may include non-members, such as consumers, health care practitioners other than physicians, and other physicians.

* * * * *

3. Section 462.6 is amended by removing and reserving paragraph (b)(4) and revising paragraph (b)(7)(i) as follows:

§ 462.6 Application requirements for conditional designation.

* * * * *

(b) *Initial application.* An organization not previously designated as a PSRO shall include in its application:

* * * * *

(4) [Reserved]

* * * * *

(7) A plan for insuring administrative coordination of the applicant's activities with:

(i) Medicare fiscal intermediaries, carriers, and HCFA Office of Direct Reimbursement, as provided in part 463 of this chapter; and

* * * * *

4. Section 462.8 is amended by revising paragraph (b)(2) as follows:

§ 462.8 Conditional designation as a PSRO.

* * * * *

(b) HCFA's determination will be based on the following factors:

* * * * *

(2) Comments and recommendations submitted by appropriate Medicare fiscal agents in accordance with the procedures for evaluation of capability contained in § 463.2 of this chapter.

5. Section 462.11 is amended by revising paragraphs (a) and (b) (2) and adding new paragraphs (c) and (d) as follows:

§ 462.11 Duration, renewal, and voluntary termination or nonrenewal of grants.

(a) *Grant period.* The initial grant to a PSRO, whether conditional or fully designated, will be for a term not to exceed 12 months.

(b) *Renewal* * * *

(2) If HCFA determines that a conditionally designated PSRO has made satisfactory progress in carrying out its formal plan and remains qualified for conditional designation, or that a fully designated PSRO has performed in a satisfactory manner and remains qualified for full designation, it will renew the grant for an additional period not to exceed 12 months, provided it is in the best interest of the Federal government.

(c) *Voluntary termination or nonrenewal.* If a PSRO determines that it does not want to have its grant renewed, if must notify HCFA not later than 90 days before the expiration of its grant. HCFA may permit notice of less than 90 days if it determines that an earlier termination date would not unduly interrupt the system of peer review established by the PSRO nor unduly interfere with the effective and efficient administration of the PSRO program.

(d) *Transfer of records.* If a grant to a PSRO is terminated or is not renewed, the PSRO shall transfer to HCFA or a successor PSRO any information (acquired or developed in carrying out PSRO duties and functions) that is requested by HCFA.

6. Part 462 is amended by redesignating §§ 462.12 through 462.15, as §§ 462.13 through 462.16 and by adding a new § 462.12 to read as follows:

§ 462.12 Involuntary termination or nonrenewal of grants.

(a) *Reevaluation factors.* Periodically, the Secretary will reevaluate a PSRO's capability to perform review functions. He will consider:

(1) The progress of the PSRO in carrying out its formal plan;

(2) Any comments or recommendations submitted by the Medicare fiscal agents; and

(3) Other relevant factors as determined by the Secretary.

(b) *Notice of tentative determination and intended action.* If, after such reevaluation, the Secretary has reason to believe that the PSRO is not performing in a satisfactory manner the duties and functions which it was found capable of performing, he will notify the PSRO of the grounds for this belief and of the action that he proposes to take. This action may include:

(1) Placing restrictions upon the exercise of review responsibility or the performance of certain duties and functions by the PSRO, including revision of the conditional PSRO's phase-in timetable;

(2) Requiring the PSRO to take corrective action, including the acceptance of technical assistance to improve its performance;

(3) Suspending the authority of the conditional PSRO to make conclusive determinations;

(4) Terminating the agreement with the PSRO upon 90 days notice to the PSRO, pursuant to sections 1152(d) and 1154(d) of the Act;

(5) Not renewing the agreement;

(6) Any other action the Secretary may deem appropriate.

(c) *Notice to State and Medicare fiscal agencies.* The Secretary will, as soon as practicable:

(1) Notify the Medicare fiscal agents, affected health care institutions, and the Medicaid State agency (if the PSRO has a contract under Title XI Part B of the Act) of his belief and intended action under paragraph (b) of this section; and

(2) Solicit their comments on the action he proposes to take.

(d) *Informal meeting and decision.* (1) The notice to the PSRO under paragraph (b) of this section shall offer the PSRO an opportunity:

(i) To respond to any comments of the Medicare fiscal agents;

(ii) To submit written material; and

(iii) To meet informally with an official designated by the Secretary to show cause why the action proposed by the Secretary should not be taken.

(2) If the PSRO does not submit written material or request an informal meeting within 30 days after receipt of the Secretary's notice, the Secretary's tentative decision shall become final and he will so notify the PSRO, Medicare fiscal agent(s), affected health care institutions, and Medicaid State agency (if the PSRO has a contract under Title XI Part B of the Act) and state the basis for his decision.

(3) If the PSRO submits written material within 30 days, the Secretary will consider this material prior to making a final decision.

(4) If the PSRO request an informal meeting within 30 days after receipt of the Secretary's notice, a meeting will be scheduled as soon as practicable.

(5) After this meeting, the official designated by the Secretary will render promptly a recommended decision to the Secretary.

(6) The Secretary will adopt, revise or set aside the recommended decision and will notify the PSRO, appropriate agencies and affected health care institutions of his decision, the effective date, and the basis for it.

(e) *Effect of decision of the Secretary.* The decision of the Secretary is final and is not subject to judicial review.

Part 463—Review Responsibility and Authority of Professional Standards Review Organizations (PSRO's)

42 CFR Part 463 is amended as follows:

1. The table of contents to Part 463 is amended by removing § 463.11 from Subpart A, by removing and reserving § 463.27 from Subpart C, and removing and reserving Subpart D.

§ 463.1 [Amended]

Section 463.1 is amended by removing the definitions for "Combined facility," "Intermediate care facility (ICF)," "Intermediate care facility for the mentally retarded (ICF–MR)," "Medicaid State agency," and "Title V State agency."

* * * * *

3. Section 463.2 is amended by removing paragraphs (a) (2), (3), (4), (e) (3) and (4); by removing and reserving paragraphs (b)(2), (c), (d), and (e)(1)(ii); and by revising paragraphs (a) and (e)(2) as follows:

§ 463.2 Evaluation of capability.

(a) *Formal plan.* An organization wishing to be designated as a conditional PSRO shall submit to the Secretary a formal plan detailing the necessary tasks and a phase-in timetable for the orderly assumption and implementation of review responsibility.

* * * * *

(b) *Evaluation by the Secretary.* The Secretary will evaluate the capability of the organization to exercise review responsibility and determine whether to designate it as a conditional PSRO, on the basis of the following factors:

(1) The formal plan, and any modification or amendments submitted by the organization;

(2) [Reserved]

(c) [Reserved]

(d) [Reserved]

(e) *Extension of PSRO review activities.* (1) Once designated, the conditional PSRO shall submit to the Secretary, at least once a year, any modification to the formal plan; and any amendments to extend the PSRO's review activities to:

(i) Skilled nursing facilities, as defined in section 1861(j) of the Act;

(ii) [Reserved]

(iii) Ambulatory care services.

(2) Paragraphs (a) and (b) of this section (relating to the Secretary's evaluation of an organization's capability to be designated as a conditional PSRO) apply to any amendments to extend a PSRO's review activities to these facilities and services.

4. Section 463.3 is amended by revising paragraphs (b)(2) and (c) to read as follows:

§ 463.3 Notification of designation and capability.

* * * * *

(b) *Review not conclusive for claims payment.* (1) The notification under paragraph (a)(2) of this section may include a time limited authorization for the PSRO to perform review which is not conclusive for purposes of claims payment.

(2) During this time, the Title XVIII requirements regarding utilization review, physician certifications, and State agency surveys and certifications shall be deemed to be satisfied.

(c) *Notice to fiscal and survey agencies.* (1) The Secretary will notify the appropriate State survey agency and the Medicare fiscal agents of the PSRO's approved phase-in timetable at the time of designation.

* * * * *

5. Section 463.4 is amended by revising paragraph (c)(1) to read as follows:

§ 463.4 General requirements

* * * * *

(c) *Public access.* The PSRO shall maintain and make available for public inspection, at its principal business office:

(1) A copy of each MOU (or other administrative procedures) with Medicare fiscal agents; and

(2) A copy of its current approved phase-in timetable.

* * * * *

6. Section 463.5 is revised as follows:

§ 463.5 Coordination with Medicare fiscal agents.

(a) *Procedures for MOUs.* If a Medicaid or Title V State agency or Medicare fiscal agent notifies the PSRO that it wishes a written memorandum of understanding incorporating their administrative procedures:

(1) The SPRO and the fiscal agent shall negotiate in good faith in an effort to reach written agreement.

(2) If they cannot reach agreement, the Secretary will assist them in resolving matters in dispute.

(3) The PSRO is required to incorporate its procedures into an MOU approved by the Secretary, before it may make conclusive determinations for the Medicare program, unless the Secretary finds that the agency or agent has:

(i) Refused to negotiate in good faith or in a timely manner; or

(ii) Insisted on including the MOU provisions which are not consistent with the provisions of the Act.

(4) The MOU shall include procedures for:

(i) Informing Medicare fiscal agents of PSRO approval or disapproval of health care services and items;

(ii) Exchanging data or information;

(iii) Modifying the procedures when additional PSRO review responsibility is authorized by the Secretary; and

(iv) Dealing with any other matters that are necessary for coordination.

(5) [Reserved]

(6) [Reserved]

(b) [Reserved]

(c) *Action by the Secretary.* (1) At least 30 days prior to the timetable date for initial assumption of review responsibility, the PSRO shall submit to the Secretary for approval its MOUs or administrative procedures, including any comments by the agencies or agents.

(2) If the Secretary approves the MOUs or procedures, the PSRO shall follow them.

(3) If the Secretary disapproves the MOUs or procedures, he will:

(i) Notify in writing the PSRO and the appropriate agencies and agents, stating the reasons for disapproval; and

(ii) Require the PSRO to revise its MOUs or procedures and, if necessary, modify its timetable.

(d) *Modification of MOUs.* the MOUs or procedures may be modified, with the Secretary's approval:

(1) Through a revised MOU with the agent(s); or

(2) In the case of procedures, by the PSRO, after providing opportunity for comment by the agencies and agents.

7 Section 463.8 is amended by revising paragraph (c)(1) as follows:

§ 463.8 Notices regarding assumption of responsibility.

* * * * *

(c) *Effect of delay in PSRO's assumption of responsibility.* (1) The activities required under title XVIII of the Act, as specified in Subpart C of this part, shall continue in effect in the institution until the PSRO is able to assume responsibility.

* * * * *

8. Section 463.10 is amended by revising paragraph (a)(1), removing and reserving paragraphs (a)(2) and (b), and removing paragraphs (d), (e), and (f) as follows:

§ 463.10 Monitoring.

(a) *Use of appropriate agencies and agents.* (1) The Secretary will periodically evaluate the review performance of conditional PSRO's. He may arrange to have Medicare fiscal agents or State agencies assist him in monitoring the activities of a conditional PSRO.

(2) [Reserved]

(3) If monitoring is authorized, the PSRO shall take all necessary and appropriate actions to facilitate monitoring activities.

(b) [Reserved]

(c) *Meetings.* (1) If a monitoring agency considers that PSRO performance is not effective, it shall.

(i) Notify the PSRO and meet with it to discuss methods for improving effectiveness; and

(ii) Promptly notify the Secretary of any serious problems and of the results of its meeting with the PSRO.

(2) The Secretary may decide to reevaluate the PSRO's capability or take other appropriate action.

§ 463.11 [Removed]

9. Section 463.11 is removed.

10. Section 463.15 is revised to read as follows:

§ 463.15 Basic requirement.

No Federal funds appropriated under Title XVIII of the Act shall be used (directly or indirectly) for the payment of any claim for services or items provided in a health care institution where a PSRO is exercising review responsibility for those services unless the conditions of this subpart are met.

11. Section 463.16 is amended by revising paragraph (c) to read as follows:

§ 463.16 Effect of PSRO action.

* * * * *

(c) *Conclusive effect on payment agencies.* Unless services or items have been disapproved by the PSRO or disapproved under section 1159 of the Act, payment shall not be denied by a Medicare fiscal agent on the grounds that the services:

(1) Were not medically necessary; or

(2) Were not of a quality which meets professionally recognized standards of health care; or

(3) Were provided inappropriately on an inpatient health care facility of a different type.

12. Section 463.17 is revised to read as follows:

§ 463.17 Duration of payment after PSRO disapproval.

In any case in which a PSRO disapproves institutional care provided or proposed to be provided to a Medicare beneficiary:

(a) Payment may be made for the services furnished before the second day after the day on which the provider received notice of the disapproval; or

(b) If the PSRO determines that more time is required in order to arrange post discharge care, payment may be made for the services furnished before the fourth day after the day on which the provider received the notice.

13. Section 463.18 is revised to read as follows:

§ 463.18 Coverage determinations.

Nothing in this part shall be construed as precluding the Secretary, Medicare fiscal agent, in the proper exercise of its duties and functions, from reviewing claims to determine whether they meet the coverage requirements of Title XVIII. (See § 463.26 (b) and (c).)

Subpart C—Correlation of Title XI Functions With Functions Required Under Title XVIII of the Act.

14. Part 463, Subpart C is amended by revising the title as set forth above.

15. Section 463.27 is removed and reserved as follows:

§ 463.27 [Reserved]

PART 463, SUBPART D [REMOVED]

16. Part 463, Subpart D is removed in its entirety.

PART 466—PSRO HOSPITAL REVIEW

42 CFR Part 466 is amended as follows:

1. Section 466.1 is amended by revising paragraph (a) as follows:

§ 466.1 Statutory provisions and applicability.

(a) *Statutory provisions.* (1) Section 1155(a) of the Social Security Act requires that each PSRO assume, at the earliest date practicable after designation of a PSRO by HCFA, responsibility for the review of the professional activities of institutional and non-institutional providers and physicians and other health care practitioners in the provision of health care services under the Medicare program. The purpose of PSRO review is to determine whether:

(i) The services and items are or were medically necessary;

(ii) The quality of the services meets professionally recognized standards of health care; and

(iii) Those services and items proposed to be provided on an inpatient basis could, consistent with the provision of appropriate medical care, be effectively provided on an outpatient basis or more economically in an inpatient health care facility of a different type.

* * * * *

(2) Section 1155(e) of the Act allows PSROs to use the services, and accept the findings, of hospital review committees that demonstrate their capacity to carry out review functions in a timely and effective manner and provides that the Secretary may, for good cause, disapprove such acceptance.

* * * * *

2. Section 466.2 is amended by revising the following definition and removing the definition for "Intermediate care facility (ICF)."

§ 466.2 Definitions.

* * * * *

"Federal program patient" means a patient who is or may be eligible to have payment made on his behalf under the Medicare program.

* * * * *

3. Section 466.10 is amended by revising paragraphs (b) and (d) as follows:

§ 466.10 General requirements for concurrent review.

* * * * * *

(b) *Basis for determination of appropriateness.* In the case of Medicare beneficiaries, the PSRO must determine whether a particular level of care is appropriate in accordance with the level-of-care provisions in sections 1814 and 1861 of the Act, 42 CFR 405.116, 405.126–405.128a, and pertinent guidelines issued by HCFA.

* * * * *

(d) *Coverage determinations.* Nothing in §§ 466.10 through 466.16 shall be construed as precluding a Medicare intermediary or carrier in the proper exercise of its duties and functions, from:

(1) Reviewing claims to determine whether they meet the pertinent coverage requirements of Medicare; or

(2) Requesting the PSRO to make a retrospective determination regarding the medical necessity and appropriateness of specific health care services in the application of coverage requirements.

* * * * *

4. Section 466.12 is amended by revising paragraph (f)(2) to read as follows:

§ 466.12 Continued stay review.

* * * * *

(f) *PSRO responsibilities.* * * *

(2) The PSRO shall maintain, at its principal business office, and make available to HCFA, fiscal intermediaries, and other interested parties, copies of:

(i) Its physician certification requirements; and

(ii) Its procedures for informing physicians and other appropriate health care practitioners of those requirements.

5. Section 466.16 is amended by removing and reserving paragraph (c) and revising paragraph (e) as follows:

§ 466.16 Notice of adverse determination.

* * * * *

(c) [Reserved]

* * * * *

(e) *Notice to payers.* The PSRO must provide prompt written notice of an adverse determination to the Medicare intermediary or carrier.

* * * * *

6. Section 466.21 is amended by revising paragraph (a)(1) to read follows:

§ 466.21 Reviewer qualifications and participation.

(a) *Staff privileges.* (1) Each person who makes a determination about health care services provided, or proposed to be provided, must have active staff privileges in at least one of the hospitals participating in the Medicare program in the PSRO area.

* * * * *

7. Section 466.32 is amended by revising paragraph (c) to read as follows:

§ 466.32 Details of delegated review plan.

The delegated review plan must include:

* * * * *

(c) A description of the coordination procedures developed with Medicare fiscal agents including the mechanisms for notifying these agents of delegated review determinations that impact on claims payment;

* * * * *

8. Section 466.33 is amended by revising paragraph (b)(2) to read as follows:

§ 466.33 Determination and notice of hospital capability.

* * * * *

(b) *Basis for determination.* In making a determination of capability, the PSRO must use written evaluation factors which have been approved by HCFA. These evaluation factors must measure the capability of the hospital review committee to perform review activities effectively and efficiently. They must include at least:

(1) The degree to which the proposed organization for review and review mechanisms provides the capability to meet the objectives of the PSRO's approved formal plan;

(2) The adequacy of the hospital's performance in Medicare utilization review activities. In evaluating this factor the PSRO shall consider information;

(i) Obtained from the State survey agency and the appropriate Medicare intermediaries, and

(ii) Obtained through site visits to the hospital;

* * * * *

9. Section 466.38 is amended by revising paragraph (c) to read as follows:

§ 466.38 Monitoring by HCFA.

* * * * *

(c) *Disapproval by HCFA.* HCFA may disapprove a delegation for good cause, after taking into consideration any comments submitted by Medicare fiscal agents regarding:

(1) The appropriateness of delegation of review to a hospital; or

(2) The effectiveness of performance of delegated review functions by that hospital.

* * * * *

10. Section 466.62 is amended by removing paragraph (c)(3) and revising paragraph (d) as follows:

§ 466.62 Reimbursement to delegated hospitals.

* * * * *

(c) *Reimbursement.*

* * * * *

(3) [Reserved]

(d) *PSRO Monitoring.* (1) The PSRO is responsible for monitoring the total cost of delegated review and the delegated review activity to assure the hospital's conformance with the review plan. Payment of the unit cost rate per admission is contingent on the hospital executing the approved review plan. The PSRO may withdraw delegation if the hospital does not perform review consistent with the plan.

(2) The hospital must maintain records, and submit reports regarding its review activities and costs to the PSRO or to HCFA as required by HCFA. Fiscal intermediaries are responsible for audits of review costs for hospitals participating in the Medicare Program.

PART 473—HEARINGS AND APPEALS ON PSRO DETERMINATIONS

42 CFR Part 473 is amended as follows:

Section 473.2 is amended by revising paragraph (a) to read as follows:

§ 473.2 Right to reconsideration, review and hearing.

(a) Any beneficiary who is entitled to benefits under Title XVIII of the Act, or a provider or practitioner who is dissatisfied with a determination, with respect to a claim, made by a Professional Standards Review Organization in carrying out its responsibilities for the review of professional activities in accordance with paragraphs (1) and (2) of section 1155(a) of the Act shall, after being notified of such determination, be entitled to a reconsideration thereof by the Professional Standards Review Organization, and, where the Professional Standards Review Organization reaffirms such determination in a State which has established a Statewide Professional Standards Review Council, and where the matter in controversy is $100 or more, such determination shall, upon the written request of the dissatisfied party, be reviewed by professional members of such Council and, if the Council so determines, revised.

* * * * *

PART 478—STATEWIDE PROFESSIONAL STANDARDS REVIEW COUNCILS

42 CFR Part 478 is amended as follows:

1. Section 478.4 is amended by revising paragraph (f)(1) to read as follows:

§ 478.4 Qualifications and selection of Statewide Council members.

* * * * *

(f) *Qualifications of public representatives.* Each public representative shall be:

(1) Knowledgeable by education and/or experience about health care that is provided in the State under Title XVIII of the Act;

* * * * *

2. Section 478.6 is amended by revising paragraphs (c)(2) and (f) as follows:

§ 478.6 Duties and functions.

* * * * *

(c) *Data gathering procedures and operating procedures.* Each Statewide Council shall, at the request of the Secretary or the PSROs, assist in:

* * * * *

(2) Coordinating PSRO data activities in the State with other programs of the Department of Health and Human Services, including Cooperative Health Systems, Health Systems Agencies, and the programs under Title XVIII of the Act.

* * * * *

(f) *Assistance in assuring practitioner and provider compliance.* (1) Each Statewide Council shall help assure compliance with the obligations imposed by section 1160(a) of the Act on practitioners and other providers of health care services for which payment may be made under Title XVIII of the Act.

(2) In order to carry out this responsibility, the Council shall, in accordance with section 1160(c) of the Act:

(i) Use whatever authority or influence it may possess as a professional organization:

(ii) Enlist the support of other professional or governmental organizations;

(iii) Use educational and other appropriate means; and

(iv) Work cooperatively with PSROs in the State.

* * * * *

3. Section 478.102 is amended by revising paragraph (a)(3) to read as follows:

§ 478.102 Membership.

(a) *Composition, terms and qualifications.* * * *

(3) The membership of each Advisory Group shall consist of representatives of health care practitioners (other than physicians of hospitals and of other health care facilities which provide within the State health care services for which payment, in whole or in part, may be made under Title XVIII of the Act and who are knowledgeable about the types of health care services being reviewed in the State. In addition, the membership of each Advisory Group shall meet the following requirements:

(i) *Representatives of health care practitioners (other than physicians).* At least one-half of the members of each Advisory Group shall be representatives of health care practitioners (other than physicians), including at least one registered professional nurse and at least one doctor of dental surgery or dental medicine. For purposes of this subpart, health care practitioners (other than physicians) are those health professionals who do not hold a Doctor of Medicine or Doctor of Osteopathy degree, meet all applicable State or Federal requirements for practice of their profession, and are actively involved in the delivery of patient care or services which are directly or indirectly paid for under Titles V, XVIII and/or XIX of the Act. Each such

representative shall practice his or her profession in the State.

(ii) *Representatives of hospitals.* One or more members of each Advisory Group shall be representatives of hospitals. Each such representative shall be actively involved in the administration of or provision of services in a hospital which is located in the State and which has in effect arrangements for reimbursement for services under Title XVIII of the Act.

(iii) *Representatives of other health care facilities.* One or more members of each Advisory Group shall be representatives of health care facilities other than hospitals. At least one such member shall be a representative of a skilled nursing facility (as defined in section 1861(j) of the Act). Each such representative shall be actively involved in the administration of or provision of, services in a health care facility other than a hospital which is located in the State and which has in effect arrangements for reimbursement for services under Title XVIII of the Act.

PART 480—ADVISORY GROUPS TO PSRO's

42 CFR Part 480 is removed.

(Sections 1102, 1152, 1153, 1154, 1155, 1158, 1159, 1162, 1168, 1902, and 1903 of the Social Security Act (42 U.S.C. 1302, 1320c-1, 1320c-2, 1320c-3, 1320c-4, 1320c-7, 1320c-8, 1320c-11, 1320c-17, 1396a, and 1396o))

Catalog of Federal Domestic Assistance Programs No. 13.714—Medical Assistance Programs; 13.773—Medicare Hospital Insurance; 13.774—Medicare Supplementary Medical Insurance.

Dated: September 15, 1981.

Carolyne K. Davis,

Administrator, Health Care Financing Administration.

Approved: September 22, 1981.

Richard S. Schweiker,

Secretary.

[FR Doc. 81-28335 Filed 9-30-81; 8:45 am]

BILLING CODE 4110-35-M

federal register

Thursday
October 1, 1981

Part X

Department of Justice

Bureau of Prisons

Control, Custody, Care, Treatment and Instruction of Inmates

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 512

Control, Custody, Care, Treatment and Instruction of Inmates

AGENCY: Bureau of Prisons, Justice.

ACTION: Final rule.

SUMMARY: This document contains a final rule relating to the control, custody, care, treatment, and instruction of inmates. Included is the final rule on Research. The rule requires that a prospective researcher obtain approval from the Director, Bureau of Prisons prior to conducting research within the Bureau of Prisons. A research project must present no more than minimal risk to the subject, and must respect the rights, health, and human dignity of the individuals involved. This document is intended to provide the public with notice of the rule in this area, not just changes from prior policy.

EFFECTIVE DATE: November 1, 1981.

ADDRESS: Office of General Counsel, Bureau of Prisons, Room 760, 320 1st Street, N.W., Washington, D.C. 20534.

FOR FURTHER INFORMATION CONTACT: Mike Pearlman, Office of General Counsel, Bureau of Prisons, phone 202/724/3062.

SUPPLEMENTARY INFORMATION: In this document the Bureau of Prisons is publishing its final rule on Research. This subject was published in the Federal Register as a proposed rule January 12, 1979 (at 44 FR 2979 et seq.). Interested persons were invited to submit comments on the proposed rule and public comments were received from various sources. On the basis of these comments and internal staff review of Bureau policies, some changes have been made. Members of the public may submit further comments concerning this rule by writing the previously cited address. These comments will be considered but will receive no further response in the Federal Register.

The Bureau of Prisons has determined that this is not a major rule for the purpose of EO 12291. The Bureau of Prisons has determined that EO 12291 does not apply to this set of rulemaking since the rule involves agency management. After review of the law and regulations, the Director, Bureau of Prisons has certified that this rule, for the purpose of the Regulatory Flexibility Act (Pub. L. 96-354), does not have a significant impact on a substantial number of small entities.

Summary of Changes/Comments

1. Section 512.10—The final rule is revised to clearly state that prospective researchers must obtain approval prior to conducting research within the Bureau of Prisons.

2. Section 512.11—Section 512.11(a) is expanded to recognize that program audits undertaken by employees for administrative purposes only are not defined as research projects. Section 512.11(d)(2) is new and adds as examples of non-routine proposals research conducted at the Regional Office or at two or more institutions within the same region. Proposed § 512.11(d)(2)-(d)(6) becomes final § 512.11(d)(3)-(d)(7). New subsections (d)(3) and (d)(4) add the language "at least two" as a characteristic of non-routine proposals. The word "Governmental" is added to final § 512.11(d)(4). Final § 512.11(d)(7) adds the word "and" in recognition that both financial and staff support may be required. Section 512.11(f) is expanded to acknowledge that a researcher must meet the qualifications of § 512.12. Section 512.11(g) is reworded but there is no change in substance. Section 512.11(h) is new and adopts a suggestion that the Bureau rule incorporate the Department of Health and Human Services (formerly HEW) definition of "minimal risk"

A comment objected to § 512.11(d)(5), that research projects may involve "follow-up" of an inmate after release from confinement. This is true, and is considered necessary, since such follow-up is often essential to learn of the project's effectiveness.

3. Section 512.12—Section 512.12(b) substitutes the word "project" for "research" Reference to Part 549, Subpart E is deleted from final § 512.12(c). Section 512.12(d) is new and states that the project must present no more than "minimal risk", and requires that the rights, health, and human dignity of individuals be respected. Proposed § 512.12(d)-(h) becomes final § 512.12(e)-(i). Final § 512.12(g) deletes the proposed rule language of "other than Bureau of Prisons research personnel", as only people involved in the research study may have access to this information.

We disagree with a comment that "the qualifications of a researcher noted in § 512.12(d) (proposed) is left undefined". The rule on research specifies controls on both projects and researchers. Subsection (d), now final subsection (e), is one aspect of the rule, and clearly states the expectation that the researcher have academic preparation or expertise in the area of the proposed research. A comment on proposed § 512.12(e), now final subsection (f), that the rule should specify the Bureau's liability for any person participating in a research project fails to recognize that the rule refers only to responsibility of the researcher, not to the responsibility or liability of the Bureau of Prisons. That is a separate issue and we do not agree that the Bureau of Prisons would be liable in all such instances.

4. Section 512.13—Subsection (a) identifies the term "subjects" to include both staff and inmates. The Bureau agrees with a comment that the researcher be required to provide further information on possible risks and discomforts. To this end, subsection (b) now requires that the researcher include a detailed description of all possible risks and discomforts and the likelihood of such occurring.

A commenter misreads § 512.13 as authorizing the Warden to approve research projects. Section 512.14 clearly states that only the Director may approve a research project.

5. Section 512.14—The first paragraph of § 512.14 is new. This paragraph provides further information on the processing of research proposals. The rule specifies that research proposals must be reviewed by at least one research committee, except as provided in new § 512.14(d), at either the institutional, Regional Office, or Central Office level.

A commenter who favored a "review board" (committee) suggested that the committee review various aspects of the proposal, including the risk involved, the scientific merit/necessity of the research, the procedures for selecting subjects, and the qualifications of the researchers. Section 512.13, Content of Research Proposal, is believed to adequately address these concerns. The commenter also suggested that committee membership include persons with no association with the Bureau of Prisons, a prisoner or prisoner rights advocate, and a person qualified to assess the scientific merit of, and need for the research. The commenter referenced Health and Human Services (HHS) guidelines on research. While the Bureau's internal staff instructions provide for such individuals to sit on a research committee, this procedure is not necessary for all research proposals, nor do HHS guidelines always require full committee review. Bureau policy prohibits any research that poses greater than minimal risk. Further, and contrary to the apparent thrust of a comment, the institution (or Regional Office) may not approve any research proposal. The reviewing committee at

the institution and/or Regional Office level is not a decision-making body, but is to make recommendations on the merits of the research proposal, in accordance with the Bureau's rule on research. The Director of Research, Central Office, reviews research proposals and any recommendations prior to submission to the Director, Bureau of Prisons. Only the Director, Bureau of Prisons may approve a research proposal.

Proposed § 512.14(a) is deleted. Proposed § 512.14(a)(1) becomes final § 512.14(a) and specifies that routine proposals be first submitted to the research committee at the institutional level. New subsections (a)(1)–(a)(3) identify the responsibility of the Warden, Regional Director, and Director of Research, Central Office, in respect to routine research proposals. Proposed § 512.14(a)(2) is incorporated into final § 512.14(b) and (c) which expands the procedure for submitting and processing non-routine proposals. As revised, non-routine proposals for research conducted at a regional office or at two or more institutions within the same region are first submitted to the appropriate Regional Director, who will determine a review process. All other non-routine proposals are first submitted to the Director of Research, Central Office.

Final § 512.14(d) is new. It authorizes the Director of Research, Central Office to make a recommendation on a research project under an expedited review process. This subsection requires that the project be determined to meet the minimal risk standard, that it neither manipulate the subject's behavior nor involve unusual stress to the subject, that it does not involve a medical procedure, and that it is not of a sensitive nature. This provision adopts the intent of a recent rule (see 46 FR 8389, 8392) of the Department of Health and Human Services, and should allow an opportunity for a more efficient disposition of select proposals. While a committee may not formally review these proposals, internal instructions do provide that the Director of Research keep members of the Central Office Research Committee apprised of proposals considered under the expedited process.

Proposed § 512.14(b), now final § 512.14(e), is expanded to provide that the authority to approve or disapprove a research project may not be delegated. Proposed § 512.14(c), now final § 512.14(f), is revised to require that the Director, Bureau of Prisons notify, in writing, the involved institution(s), region(s), and prospective researcher of the final decision. Internal instructions to staff provide a suggested time frame for reviewing research proposals at each level (three weeks at the institution, two weeks at the Regional Office, and four weeks at the Central Office). Proposed § 512.14(d), now final § 512.14(g), is rewritten and states that staff response, either for approval or disapproval, to a preliminary proposal does not constitute a final decision. Deleted is the more restrictive proposed language stating that approval of a preliminary proposal does not constitute an authorization to conduct the research.

6. Section 512.15—Proposed § 512.19, now final § 512.15, is reworded. The intent is not changed.

7 Section 512.16—Proposed § 512.18, now final § 512.16, is reworded, although the intent is unchanged. Comments both supported and opposed the rule. Those opposed included one person who favored allowing an inmate to receive a mutually agreeable sum of money, and another who favored a more flexible strategy for incentives. A second commenter was concerned that the prohibition on incentives would prevent the conduct of "important and badly needed" correctional research. The Bureau of Prisons does not now believe it is wise to provide any incentives other than soft drinks and snacks given at the test setting. Participation in a research project is voluntary, and is not to be based on incentives. As written, the Bureau rule meets the intent of a Health and Human Services stipulation that incentives not be of such a magnitude as to affect the inmate's ability to clearly consider other aspects of the research.

8. Section 512.17—The final rule restates that the term "employees" includes "consultants". To meet the thrust of a comment, final § 512.17(a) inserts the limiting language "who are conducting authorized research projects." This language, and the deletion of the phrase "other than Bureau of Prisons research personnel" from § 512.12(g) ensures that research information is controlled. We agree, and believe provisions of the rule prohibit a researcher from revealing the identity of particular research subjects without consent of those persons. The revision to § 512.17(a) deletes the need to adopt a suggestion that the informed consent statement be revised to state that information gathered about inmates in the course of the research is available to employees without the inmate's consent. It is not the Bureau's intent to make this information available to all employees. It is to be available only to those involved in the authorized research project. The need for confidentiality of research records is recognized.

We disagree with a comment that objects to any research pertaining to information not available "to the public under the Freedom of Information or Privacy Act". Such a statement unnecessarily limits the conduct of research in worthwhile areas. Nor do we agree that any inmate involved "in research should have access to records which pertain to himself/herself and such research matters." The informed consent statement signed by the subject advises the subject that participation is voluntary. If at any time the subject is unable to receive desired information on the research project, the subject may elect to discontinue involvement in the research project without penalty or prejudice. Section 512.12(h) also requires that the researcher agree to adhere to the applicable provisions of the Privacy Act and regulations pursuant to this Act.

9. Section 512.18—Proposed §512.16 becomes final § 512.18. Proposed § 512.16(b) becomes final §512.18(a). The final rule requires the informed consent statement be in writing. Internal instructions adopt, at least in part, a suggestion that the consent process be composed of both an oral and written component. While both provisions are not mandated, internal instructions require that where a language or literacy problem prevents a person from understanding the informed consent statement, the statement must be read and explained to the subject. The statement itself clearly meets other concerns of the commenter that the person be aware of the opportunity to answer questions and that participation is voluntary.

In § 512.18(a) the word "project" is substituted for "activity". Based on this, the word "activity" is deleted from §512.18(a)(1). Proposed § 512.16(a) is now reflected in final § 512.18(a)(1). The final rule adds the phrase "without penalty or prejudice". Section 512.18(a)(2) is new and adopts a comment that the rule specify that participation in the research project has no effect on the participant's release date and parole eligibility. We see no merit to a suggestion that the rule specify that the U.S. Parole Commission not be informed of the inmate's involvement in any research program. No such notification is ordinarily made; however, occasions might exist; for example, an alleged injury incurred as part of the research participation, which would warrant reference in the inmate's file. We would note that the Parole Commission's presumptive parole concept does not ordinarily consider an

inmate's institutional stay in determining a release date. Proposed § 512.16(b)(2)-(b)(6) becomes final § 512.18(a)(3)-(a)(7). Final § 512.18(a)(8) is new and adopts a suggestion that the informed consent statement give a statement of benefits reasonably to be expected. Proposed § 512.16(b)(7)-(b)(9) becomes final § 512.18(a)(9)-(a)(11). Final § 512.18(a)(10) substitutes the phrase "questions about the research project" for "any questions about procedures". Final § 512.18(a)(11) clarifies the proposed rule by specifying that the researcher provide "additional information as needed to describe adequately the nature and risks of the research" We see no need for the informed consent statement to state that an inmate may not receive financial remuneration for participation in a research project. Section 512.16 clearly expresses this intent.

Proposed § 512.16(c) is reworded and becomes final § 512.18(b). Proposed § 512.16(e) and (e)(1) are reworded and become final § 512.18(c) and (c)(1). Section 512.18(c)(2) authorizes the Director of Research, Central Office, to require a signed statement of informed consent upon a determination that the research project or data collection instrument is of a sensitive nature. Deleted is the phrase "if a record is prepared from which a subject is identifiable" (proposed § 512.16(e)(2)). The final rule ensures that an appropriate reviewing official assesses the need for a signed statement of informed consent. Proposed § 512.16(d), now final § 512.18(d), is expanded to require that the individual's signed statement of consent be submitted to the appropriate research committee.

Commenters objected to provisions authorizing different procedures for employees than non-employees in reference to when a signed informed consent statement is required. The commenters favored the same requirements applying to both. Another comment favored the requirement that a signed consent be required only if the research involves more than minimal risk. The Bureau considers its present policy, as revised, sufficient. The determination of whether a proposal entails more than a minimal risk is highly subjective, dependent on the situation and who makes the determination. The different standards for employees as opposed to non-employees acknowledges that the agency exerts a lesser span of control over non-employees and the appropriateness of holding non-employees to a higher standard of documentation.

A commenter suggested that the informed consent statement differentiate between different types of research, for example, between medical and psychological research. The commenter suggests that having to describe the purpose of a questionnaire may negate its research value and that virtually no risk is entailed in administering a questionnaire. While the Bureau might agree there is a difference between types of research, we disagree with the view that the informed consent statement be modified. The individual subject has a right, regardless of the nature of research, to be informed of any research in which the individual is a direct participant.

We disagree with a comment that a signed statement of consent always be obtained. The rule requires the researcher to give a participant a written informed consent statement and proceeds to specify when this must be signed. It is not always necessary to have the signed statement, for example, where the research is limited to responding to a questionnaire. The same commenter advocates that the informed consent statement contain an entry that the inmate waives no rights to seek redress for a potential tort inflicted upon him as a result of the subject's association with the research. Such an entry is not necessary, as the Bureau policy on tort claims clearly states when a tort claim may be filed.

10. Section 512.19—Proposed § 512.15, now final § 512.19, is retitled "Monitoring Approved Research Projects" Final § 512.19(a) clarifies the proposed rule procedure for obtaining approval of any major methodological changes. The rule requires the researcher to notify the appropriate research committee of all planned methodological changes. When this committee determines the change is significant, the committee will be responsible for obtaining written approval of the Director of Research, Central Office prior to authorizing implementation of the change. Final § 512.19 (b) and (c) expands proposed § 512.15 (b) and (c) by identifying committees responsible for monitoring approved research projects and for specifying who is to be notified of violations. Inasmuch as the Bureau of Prisons only authorizes research that poses a minimal risk, there is no significant need to require, as suggested by a comment, that the monitoring committee have a specific composition and expertise. If the reviewing committee has questions or concerns, that committee may refer the issue to the Regional or Central Office for their review. Proposed § 512.15(d), now final § 512.19(d), identifies to whom the phrase "prove detrimental" applies—"to the inmate population, to the staff, or to the orderly operation of the institution".

We disagree with a comment that "monitoring of any research project should be made under the supervision of the Chief Judge of the U.S. District Court's designee as same may violate Rule 30(A) Federal Rules of Civil Procedure" Rule 30(a) refers to an inmate deposition for use in court. Section 512.19 is unrelated to such involvement but discusses monitoring of research and the authority of the Director, Bureau of Prisons to suspend or terminate a research project. Projects are monitored through a research committee, to ensure that interests are represented and that no "substantial rights" of the inmate are infringed.

11. Section 512.20—The final rule requires the researcher to provide the Director of Research, at least once a year, with an original and five copies of a report on the progress of the research. The proposed rule required submission of this report, but did not specify the number of copies. These copies ensure that participating areas are kept officially informed of the status of the research. In a similar respect, the final rule requires copies of the report of findings also be provided to the Regional Research Administrator and the chairperson(s) of research committees at institutions which provided data or assistance.

We consider as impractical a suggestion that the researcher provide each subject with a report of findings. If a participant wishes a copy of the report, a request may be made directly to the researcher or filed under the Freedom of Information Act.

We do not agree with a suggestion that the researcher file immediate reports if a research study results in any injury to a subject, as the phrase "any injury" is overbroad. It is expected that any significant injury will be reported, if not by the researcher, certainly by the injured person.

12. Section 512.21—Section 512.21(a) and (a)(1) is reworded. Final § 512.21(b) requires the researcher to provide six copies, as opposed to "a copy", of the material accepted for publication to the Director of Research. The final rule adopts a comment that the phrase "for informational purposes only" be inserted to clearly express the purpose for submission.

13. Section 512.22—Final § 512.22(a) restates (from § 512.11(b)) that a consultant is considered an employee within the scope of this rule. In response

to comment, the Bureau is aware that scientific journals (not the researcher) hold the copyright when an article is published. To this end, the internal form signed by the researcher is limited to documents which the researcher copyrights. The stipulation that employees may not copyright a work prepared as part of his or her official duties is a requirement mandated by 17 U.S.C. 105, not by the Bureau of Prisons. The Bureau's rule is not intended to prohibit an employee from disseminating information.

Conclusion

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 USC 552(a) and delegated to the Director of the Bureau of Prisons in 28 CFR 0.96 (t), 28 CFR Chapter V is amended as set forth. The effective date of these rules is November 1, 1981.

Dated: September 22, 1981.

Norman A. Carlson,

Director, Bureau of Prisons.

1. Subchapter A is amended by adding a new Part 512 to read as follows:

PART 512—RESEARCH

Subpart A—[Reserved]

Subpart B—Research

Sec.
512.10 Purpose and scope.
512.11 Definitions.
512.12 Requirements for research projects and researchers.
512.13 Content of research proposal.
512.14 Processing of proposals.
512.15 Institution rules.
512.16 Incentives.
512.17 Access to Bureau of Prisons records.
512.18 Informed consent.
512.19 Monitoring approved research projects.
512.20 Reports.
512.21 Publication of results of research project.
512.22 Copyright provisions.

Authority: 5 U.S.C. 301; 18 U.S.C. 4001, 4042, 4081, 4082, 5006–5024, 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

Subpart A—[Reserved]

Subpart B—Research

§ 512.10 Purpose and scope.

Prospective researchers must obtain approval as outlined in this rule before conducting research within the Bureau of Prisons. An individual who wishes to conduct a research project within the Bureau of Prisons shall submit a request to the Bureau providing specified information on the proposed research project. The Bureau of Prisons shall consider requests for authorization of routine and non-routine proposals as described in § 512.11(d) and (e).

§ 512.11 Definitions.

(a) For the purpose of this rule, a research project is the systematic collection of information about or from former or present inmates or employees, analysis of the information, and preparation of a report of findings. Routine statistical tabulations and program audits undertaken by employees for administrative purposes only are not defined as research projects.

(b) For the purpose of this rule, an employee is a member of the staff of the Bureau of Prisons or a consultant under contract to the Bureau of Prisons who performs duties in furtherance of an agency function under supervision provided by the Bureau.

(c) For the purpose of this rule, a non-employee is any person not defined as an employee under § 512.11(b).

(d) A non-routine proposal has one or more of the following characteristics.

(1) The proposed research will be conducted at the Central Office.

(2) The proposed research will be conducted at the Regional Office or at two or more institutions within the same region.

(3) Execution of the proposed research requires coordination between at least two regions of the Burearu of Prisons.

(4) Execution of the proposed research requires coordination between at least two divisions within a Governmental Department or between at least two Departments of the Federal Government.

(5) The proposal raises major issues of research policy.

(6) The proposed research involves follow-up of an inmate after release from confinement.

(7) Execution of the proposed research requires sizeable financial and/or staff support from the Bureau of Prisons.

(e) A routine proposal has none of the special characteristics which define a non-routine proposal.

(f) A researcher is a person who has met the qualifications of § 512.12 and has received written approval from the Director, Bureau of Prisons, to conduct a research project within the Bureau of Prisons.

(g) A subject is a current or former inmate or employee of the Bureau of Prisons about or from whom a researcher collects information during the conduct of a research project authorized under this rule.

(h) "Minimal risk" as defined by U.S. Department of Health and Human Services (see 45 CFR 46) means that the risks of harm anticipated in the proposed research are not greater, considering probability and magnitude, than those ordinarily encountered in daily life or during the performance of routine physical or pyschological examinations or tests.

§ 512.12 Requirements for research projects and researchers.

The Director, Bureau of Prisons, may authorize a researcher to conduct a research project, subject to the following conditions:

(a) The project has an adequate research design.

(b) The project will contribute to the advancement of knowledge about corrections.

(c) The project is consistent with the Bureau of Prisons' rule on Medical Experimentation and Pharmaceutical Testing.

(d) The project must present no more than minimal risk, as defined in § 512.11(h), to the subject. The rights, health and human dignity of individuals involved will be respected.

(e) The researcher has academic preparation or experience in the area of study of the proposed research.

(f) The researcher assumes responsibility for actions of a non-employee engaged to participate in the research project.

(g) The researcher agrees not to provide research information which identifies a subject to any person without that subject's prior written consent to release the information.

(h) The researcher agrees to adhere to applicable provisions of the Privacy Act of 1974 and regulations pursuant to this Act.

(i) The researcher who is a non-employee shall sign a statement in which the researcher agrees to adhere to the provisions of this rule.

§ 512.13 Content of research proposal.

In submitting the research proposal, the applicant shall provide the following information:

(a) Summary statement which includes the name(s) and vitae of the researcher(s); the title of the project; an abstract of the project; duration of the project; number of subjects (staff/inmate) required, including amount of time required from each; and an indication of risk or discomfort involved as a result of participation.

(b) Comprehensive statement which includes a detailed description of all possible risks and discomforts and a discussion of the likelihood that these risks and discomforts will actually occur; information on the purpose of the study; methodology to be employed;

anticipated results; their significance and perceived benefits; resources to be utilized; indication of whether Bureau of Prisons participation and cooperation are needed after completion of project; and appendices of all relevant research materials.

§ 512.14 Processing of proposals.

Except as specified in paragraph (d) of this section, all research proposals will be reviewed by at least one Research Committee at either the institutional, Regional Office, or Central Office level.

(a) Routine proposals are first submitted to the Research Committee at the institutional level.

(1) The Warden shall review the recommendations of the Research Committee, and shall submit institutional recommendations in writing to the appropriate Regional Director.

(2) The Regional Director shall review the recommendations submitted by the institution and shall, in turn, submit recommendations of the Regional Office in writing to the Director of Research in the Central Office.

(3) The Director of Research will coordinate materials for review by the Director of the Bureau of Prisons.

(b) Except as specified in paragraph (c) of this section, non-routine proposals are first submitted to the Director of Research, Central Office. The Director of Research shall determine a review process, to include, at a minimum, review by at least one appropriate Research Committee. The Director of Research shall review Research Committee and other recommendations made and shall submit them in writing to the Director, Bureau of Prisons.

(c) Non-routine proposals for research conducted at a Regional Office or at two or more institutions within the same region are first submitted to the appropriate Regional Director. The Regional Director or designee shall determine a review process, to include, at a minimum, review by a Research Committee and the Regional Research Administrator. The Regional Director shall review recommendations submitted and, in turn, shall submit the recommendations of the Regional Office to the Director of Research, Central Office. The Director of Research shall review recommendations made and shall submit them in writing to the Director, Bureau of Prisons.

(d) The Director of Research, Central Office, may exercise the authority of a required research committee and make a recommendation to the Director, Bureau of Prisons on a research proposal under an expedited review process when in the judgment of the Director of Research, Central Office, the research proposal is determined to meet the minimal risk standard and the research:

(1) Neither manipulates the subject's behavior nor involves stress to the subject;

(2) Does not involve a medical procedure; and

(3) Is not of a sensitive nature.

When the Director of Research, Central Office, determines that an expedited review process is appropriate, he/she shall document in writing the reasons for this determination.

(e) The Director, Bureau of Prisons, has final authority to approve or disapprove all research proposals. This authority may not be delegated.

(f) The Director, Bureau of Prisons shall notify in writing the involved region(s), institution(s), and the prospective researcher of the final decision on a research proposal.

(g) An applicant may submit a preliminary research proposal for review by staff. Staff response to the preliminary proposal does not constitute a final decision.

§ 512.15 Institution rules.

A researcher shall observe the rules of the institution or office in which the research is conducted. Staff of the responsible institution or office shall inform the researcher of the local rules.

§ 512.16 Incentives.

Incentives may be provided, but are restricted to soft drinks and snacks given at the test setting.

§ 512.17 Access to Bureau of Prisons records.

(a) Employees (includes consultants) of the Bureau of Prisons who are conducting authorized research projects shall have access to those records which relate to the subject and are necessary to purpose of the research project without having to obtain the subject's consent.

(b) A non-employee of the Bureau of Prisons is limited in access to information available under the Freedom of Information Act (5 U.S.C. 552).

§ 512.18 Informed consent.

(a) Before commencing a research project requiring participation by staff or inmates, the researcher shall give each participant a written Informed Consent Statement containing the following information:

(1) A statement that participation is completely voluntary and that the participant may withdraw consent and end participation in the project at any time without penalty or prejudice;

(2) A statement that participation in the research project will have no effect on the inmate participant's release date or parole eligibility;

(3) Identification of the researcher(s);

(4) Objectives of the research project;

(5) Procedures to be followed in the conduct of research;

(6) Purpose of each procedure;

(7) Anticipated uses of the results of the research;

(8) A statement of benefits reasonably to be expected;

(9) A declaration concerning discomfort and risk, including a description of anticipated discomfort and risk;

(10) An offer to answer questions about the research project; and

(11) Appropriate additional information as needed to describe adequately the nature and risks of the research.

(b) A researcher who is employee of the Bureau of Prisons shall add to the Informed Consent Statement a statement of the authority under which the research is conducted.

(c) A researcher who is an employee of the Bureau of Prisons shall obtain the subject's signature on the statement of informed consent in each of the following circumstances:

(1) If the activity of the subject requires something other than responding to a questionnaire or interview; or

(2) If the Director of Research determines the research project or data-collection instrument is of a sensitive nature.

(d) A researcher who is a non-employee of the Bureau of Prisons shall obtain the subject's signature on the statement of informed consent prior to initiation of the research activity. The signed statement shall be submitted to the appropriate research committee.

§ 512.19 Monitoring approved research projects.

(a) The researcher shall notify the appropriate Research Committee of all planned methodological changes in a research project. If the Research Committee considers the change to be significant, the Committee shall obtain written approval from the Director of Research, Central Office, prior to authorizing the implementation of the change.

(b) The Institution Research Committee shall monitor all research conducted at the institution and report any violations of research policy to the Warden, the Regional Director, and the Director of Research, Central Office.

(c) The Central Office Research Committee or, where appropriate, a Regional Office Research Committee

shall (1) monitor all research projects which are not conducted at an institution, and/or (2) perform a coordinating function for other projects (e.g. research conducted between regions, or Bureau-wide). The Regional or Central Office Research Committee shall report any violations of research policy, through the Director of Research, Central Office, to the Director, Bureau of Prisons.

(d) The Director, Bureau of Prisons, may suspend or terminate a research project if it is believed that the project violates research policy or that its continuation may prove detrimental to the inmate population, to the staff, or to the orderly operation of the institution.

§ 512.20 Reports.

At least once a year, the researcher shall provide the Director of Research, Central Office, with an original and five copies of a report on the progress of the research.

Within 10 days after preparation of the report of findings, the researcher shall distribute at least one copy of the report of findings to each of the following: the Director of Research, Central Office; the Regional Director; the Regional Research Administrator, and the Warden(s) and chairperson(s) of the research committee at institutions which provided data or assistance. The researcher shall include an abstract in the report of findings.

§ 512.21 Publication of results of research project.

(a) A researcher may publish in book form and in professional journals the results of a research project conducted under this rule.

(1) On publication of results, the researcher shall acknowledge the Bureau of Prisons participation in the research project.

(2) The researcher shall expressly disclaim approval or endorsement of the published material as an expression of the policies or views of the Bureau of Prisons.

(b) Prior to publication of the results of a research project conducted under this rule, the researcher shall provide six copies of the material accepted for publication, for informational purposes only, to the Director of Research in the Central Office of the Bureau of Prisons.

§ 512.22 Copyright provisions.

(a) An employee (includes consultant) of the Bureau of Prisons may not copyright a work prepared as a part of his or her official duties.

(b) Subject to a royalty-free, non-exclusive and irrevocable license, which the Bureau of Prisons reserves, to reproduce, publish, and translate and otherwise to use and to authorize others to publish and use such materials, a non-employee may copyright original materials developed as a result of research conducted under this rule.

(c) As a precondition to the conduct of research under this rule, a non-employee shall grant in writing to the Bureau of Prisons a royalty-free, non-exclusive, and irrevocable license to reproduce, publish, translate and otherwise to use and to authorize others to publish and use original materials developed as a result of research conducted under this rule.

[FR Doc. 81-28461 Filed 9-30-81; 8:45 am]
BILLING CODE 4410-05-M

Federal Register

Thursday
October 1, 1981

Part XI

Department of Health and Human Services

Office of the Secretary

Block Grant Programs; Final Rules on Implementation; Revocation of Categorical Health Grant Regulations; and Changes in Requirements

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

45 CFR Parts 16, 74, and 96

Block Grant Programs

AGENCY: Office of the Secretary, HHS.

ACTION: Interim Final Rules with Comment Period.

SUMMARY: These rules implement seven block grant programs established by the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97-35). The block grants replace a large number of programs now administered by the Federal Government, transfer primary responsibility for their administration to the States, and confer substantial discretion on the States as to use of the block grant funds.

DATE: Effective October 1, 1981.

ADDRESS: Comments on these rules should be submitted by November 30, 1981, to: Executive Secretariat, Attn: Charlotte Lewis, Department of Health and Human Services, Room 632-H, Humphrey Building, 200 Independence Avenue SW., Washington, D.C. 20201.

FOR FURTHER INFORMATION CONTACT: For information pertaining to the block grants generally, contact: Glenn Kamber, Deputy Executive Secretary (Regulations), Room 631-H, Humphrey Building, 200 Independence Avenue SW., Washington, D.C. 20201, (202) 245-3160.

For information on particular block grants, contact the following individuals:

Community services and social services:
Michio Suzuki, Deputy Director, Office of Program Coordination and Review, 200 Independence Avenue SW., Room 306E, Washington, D.C. 20201, (202) 245-7027.

Preventive health and health services:
For technical assistance: Tom G. Ortiz, Assistant to the Director for Field Activities, Centers for Disease Control, 255 E. Paces Ferry Road NW., Room 2055, Atlanta, Georgia 30333, (404) 329-3850.
For fiscal and grants management assistance: Leo A. Sanders, Chief, Grants Management Branch, Centers for Disease Control, 255 E. Paces Ferry Road NW., Room 107A, Atlanta, Georgia 30305, (404) 262-6575.

Alcohol and drug abuse and mental health services:
Richard A. Millstein, Acting Associate Administrator for Program Planning and Coordination, 5600 Fishers Lane, Room 13-C-05, Rockville, Maryland 20857, (301) 443-4564.

Maternal and child health services and primary care:
James Corrigan, Deputy Director, Bureau of Community Health Services, 5600 Fishers Lane, Room 7-05, Rockville, Maryland 20857, (301) 443-1363.

Low-income home energy assistance:
Norman Thompson, Deputy Director, Energy Group, Office of Energy Assistance, P.O. Box 23367, L'Enfant Plaza, Washington, D.C. 20024, (202) 245-2086.

SUPPLEMENTARY INFORMATION: The Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97-35) ("the Act") established seven block grant programs to be administered by the Secretary of Health and Human Services:

(1) The community service block grant is established by sections 671-683 of the Act and replaces the following programs now administered by the Community Services Administration under the Economic Opportunity Act of 1964:

Community Action/Local Initiative
Senior Opportunities and Services
Community Food and Nutrition

(2) Section 901 of the Act amends the Public Health Service Act by adding a new Title XIX, which contains three block grants. The preventive health and health services block grant established by section 901 replaces the following categorical grant programs:

Rodent Control
Fluoridation
High Blood Pressure
Health Incentive
Home Health
Emergency Medical Services
Risk Reduction/Health Education
Rape Crisis

(3) The second block grant established by section 901 is the alcohol and drug abuse and mental health services block grant, which replaces the following programs:

Alcoholism State Formula Grants
Alcohol Abuse and Alcoholism Project Grants and Contracts
Special Grants for Uniform Alcoholism Intoxication and Treatment Act
Drug Abuse State Formula Grants and Contracts
Drug Abuse Project Grants
Mental Health Services

(4) The third block grant established by section 901 is the primary care block grant, which replaces the following programs:

Community Health Centers
Primary Care Research and Demonstrations

(5) Section 2192 of the Act amends Title V of the Social Security Act to establish a maternal and child health services block grant. This block grant replaces the following programs:

Maternal and Child Health
Crippled Children Service
SSI Disabled Children
Hemophilia
Sudden Infant Death Syndrome
Lead-Based Paint Poisoning Prevention
Genetic Diseases
Adolescent Pregnancy

(6) Section 2352 of the Act amends Title XX of the Social Security Act to establish a social services block grant.

(7) A low-income home energy assistance program is authorized by sections 2601-2611 of the Act to replace the Home Energy Assistance Act of 1980.

The Secretary has determined that the Department should implement the block grant programs in a manner that is fully consistent with the congressional intent to enlarge the States' ability to control use of the funds involved. Accordingly, to the extent possible, we will not burden the States' administration of the programs with definitions of permissible and prohibited activities, procedural rules, paperwork and recordkeeping requirements, or other regulatory provisions. The States will, for the most part, be subject only to the statutory requirements, and the Department will carry out its functions with due regard for the limited nature of the role that Congress has assigned to us.

Transition to State Operation

Timing of Transition

States are eligible to receive funds under six of the seven block grants beginning October 1, 1981. The exception is the primary care block grant, which does not become effective until October 1, 1982.

Of the six block grants that become operative this year, four are subject to transition provisions that permit a State to initiate operation under the block grants on October 1, 1981, or at the beginning of any subsequent quarter (January 1, April 1, or July 1, 1982). The four block grant programs subject to these transition provisions are community services, preventive health and health services, alcohol and drug abuse and mental health services, and maternal and child health services. During the period that the State is not obtaining funds under the block grants, the Department will administer the existing programs. The transition period is fiscal year 1982 only; the Department has no authority to operate the existing programs replaced by these four block grants after September 30, 1982.

A State must assume operation of a block grant in its entirety. A State may not assume control over only a portion of the block grant while requesting the Department to operate some of the programs that Congress has replaced with that block grant.

The social services and low-income home energy assistance block grants are not subject to the transition provisions

in section 1743 of the Act because they do not come within the provisions of section 1741(b) of the Act. That section limits application of the transition provisions to funds that previously went to local governments or other eligible entities and in the future will go directly to the States. Since the social services and low-income home energy assistance funds previously went directly to the States, no transition is provided for. The two programs become effective on October 1, 1981.

In order to receive funds for the quarter beginning October 1, 1981, a State's application and related submission (discussed below) must be received by the Department by September 30, 1981, in the case of the community services, preventive health and health services, and alcohol and drug abuse and mental health services block grants. The Department will promptly review and act on all applications. Section 2194(b)(1) of the Act requires that a State notify the Department by September 15, 1981, of its request for funds under the maternal and child health services block grant if the State desires to begin receiving funds for the quarter beginning October 1, 1981.

The Department has worked extensively with the States to facilitate transition and carry out the congressional intent that the States qualify for the block grant funds as soon as possible. Since passage of the Act, Department program officials have been providing technical assistance to the States so they can meet the deadlines and requirements in the law.

Section 682(b) of the Act requires States to notify the Department prior to October 1, 1981, if they do not intend to seek community services block grant funds for the quarter beginning October 1 but instead desire the Secretary to operate the programs. Similar notice is required 30 days prior to the beginning of each subsequent quarter. If a State does not notify the Department as to whether it desires to obtain block grant funds or to have the Department administer the program during the quarter, we will consider the State to have requested the Department to operate the programs. There is no indication in the Act or its legislative history that Congress intended the programs to terminate if a State failed to notify the Secretary as to its desires, and the Department will therefore continue to operate the programs until otherwise advised by the State.

Policies During Continued Federal Operation

With respect to the four block grants subject to the transition provisions, the Department will operate the programs replaced by each block grant generally in accordance with current policies until a State qualifies for the block grant. Renewal grants may be made to current grantees as their grants expire during the course of fiscal year 1982. If such grants are made, they will ordinarily cover the same period of the grantee's operation as is now the practice (but not to exceed one year) although the amount of the grant will normally be reduced because of the reduced funds available. The 30-day consultation and State review process set forth in Office of Management and Budget Circular A-95 (41 FR 2052) will continue to be used. All awards will be made from FY 1982 funds. Thus, even though a grantee may in the third quarter of FY 1982 be awarded sufficient funds for one year's operation, such funds would not reduce the allotment of FY 1983 funds available to the State. The Department will remain responsible for monitoring and auditing all awards made by it even after the State has begun receiving funds under the block grant involved.

Current regulations governing the programs replaced by the block grants, including regulations published by the Community Services Administration in the Federal Register on August 31, 1981 (46 FR 43690) as corrected on September 3, 1981 (46 FR 44189), will remain in effect for the transition period. A document published elsewhere in this issue of the Federal Register reduces Federal requirements with respect to some of these programs.

Application Process

Required Submissions

The Act requires a State to make an annual submission to the Secretary with respect to each block grant prior to receiving funds. The Secretary is not prescribing any particular format for the submission or elaborating its contents beyond what is specified in the Act. Each State should simply insure that its submission satisfies the statutory requirements.

For all but one of the block grants, the submission consists of an application containing specified assurances and (for the community services and low-income home energy assistance block grants) a plan describing how the State will carry out the assurances or (for the health-related block grants) a description of the intended uses of the funds. The social services block grant requires only a report on intended uses of the funds. The Department will review the submissions to determine that they are complete and in accordance with statutory requirements. Funds will be made available to any State filing a complete submission.

Section 1742(a) of the Act requires the States to prepare an annual report on the proposed use of three block grant funds that contains certain specified information. We interpret this section as identifying information that a State is to include in the plan required to be submitted with respect to the community services block grant and in the description of the intended uses of funds required with respect to the preventive health and health services and alcohol and drug abuse and mental health services block grants.

Public Participation

The Act requires the States to subject the various plans and descriptions of intended uses to public comment. The manner in which a State obtains public comment is at the State's discretion so long as statutory requirements are met. Public comment must be obtained before the plan or description is made final.

The Act also requires the States to conduct public hearings on the proposed use and distribution of funds under the community services, preventive health and health services, alcohol and drug abuse and mental health services, primary care, and low-income home energy assistance block grants. The hearings must be conducted by the State legislature, except that the hearings with respect to the low-income home energy assistance block grant may be conducted by any unit of the State government. The manner in which these hearings are conducted is in the State's discretion so long as statutory requirements are met.

No hearings are required for a State to receive its first year's allotments. Although section 1742(c) of the Act establishes a general requirement for public hearings during the first year for block grants, that provision is superseded by the specific provisions elsewhere in the Act exempting the first year from the requirement for a public hearing.

Funding Information

Allotments to States

The Department will determine the amount of funds to be allocated as block grants to each State in accordance with the formulas established in the Act. The Office of Management and Budget (OMB) has authority to apportion to the Department through the course of a year

the congressional appropriation for the block grants. Consistent with OMB's apportionment of funds, the Department will assign allotments to the States through individual awards or a series of awards.

During the fiscal year beginning October 1, 1981, a special procedure will be followed. The size of the State allotments for this coming fiscal year cannot now be determined with certainty for several of the block grants because the allocation formulas are based on the amount of funds awarded for fiscal year 1981, which ends September 30, 1981. Thus, the correct amount of the allotments cannot be determined until after the end of the current fiscal year. Accordingly, on October 1, 1981, the Department may award each State that has qualified for a block grant a portion of its estimated total allotment under that block grant. After the precise allotments have been determined, a revision in the award would be made.

If a State does not assume operation of a block grant on October 1, 1981, but instead qualifies for the block grant at the beginning of a subsequent quarter, the amount of its allotment for fiscal year 1982 will be reduced. Any grants or contracts made in the State by the Department during the period of Federal administration will be taken from the State's allotment and will reduce the allotment accordingly. In addition, administrative expenses for operation of the community services block grant will be charged against the allotment. The Administration is seeking authority from Congress to deduct transition administrative expenses from allotments for the other block grants as well.

With respect to several of the block grants, the Act provides that allotments for which States do not qualify, or portions of allotments that are returned to the Department, are to be redistributed pro rata to the qualifying States. Except for the low-income home energy assistance program, funds subject to reallotment will be reallocated on September 1 of each year. Funds reallotted under the low-income home energy assistance program are included in the total funds available for allotment to States for the succeeding fiscal year.

Payments to States

Payments will be made through electronic funds transfer to those States capable of receiving funds in that manner. Letters of credit will be used in other cases. The procedures followed will be the same as with payments under other Departmental grants.

Under Federal law, the question of when a grantee may draw funds from the Treasury is a different matter from the issue of when the grant award is made. Thus, although the Department may award a State its entire annual allotment on the first day of a fiscal year, the State may not immediately withdraw the entire amount from the Treasury. Rather, payments are governed by the Intergovernmental Cooperation Act, 42 U.S.C. 4213, which provides in essence that a State must minimize the time elapsing between acquisition of Federal funds and disbursement of those funds by the State.

Use of Allotments

The permissible uses of the allotments to the States are clearly set forth in the Act. The Act establishes differing requirements with respect to the time period in which the funds may be used. The maternal and child health services block grant authorizes the States to obligate and to expend the funds under its allotment in a two-year period—the fiscal year in which the funds are awarded and in the following fiscal year. Three of the block grants allow the States two years to obligate funds but are silent as to expenditures. Two block grants permit two years to expend funds but do not expressly address the permissible period for obligation of funds. We interpret these provisions as allowing a two-year period for the obligation of funds. The low-income home energy assistance block grant allows funds to be held available for the following fiscal year, which we believe establishes a limit on the permissible period of obligation. In the case of the primary care and low-income home energy assistance block grants, the Act also establishes special conditions for use of funds after the first year.

Transferability of Funds

Funds for several of the block grants may be transferred by a State to be used for purposes under other block grants. We interpret the transferability provision in the social services block grant (section 2002(d) of the Social Security Act) as allowing a State to transfer funds to the preventive health and health services, alcohol and drug abuse and mental health services, primary care, maternal and child health services, and low-income home energy assistance block grants. In addition, social services block grant funds may be transferred to support health services, health promotion and disease prevention activities, and low-income home energy assistance under other Federal block grants, including block grants administered by other Federal Departments.

It should be noted that certain statutory provisions applicable to a State's basic allotment under a block grant may not apply to funds transferred for used under that block grant. For example, section 1915(c)(6) of the Public Health Service Act prescribes certain percentages for use of the State's basic allotment under the alcohol and drug abuse and mental health services block grant. These restrictions would not apply to transferred funds.

State and Federal Oversight

A basic purpose of the block grant legislation is to simplify State grant administration and minimize Federal involvement by placing far greater reliance on State government. Accordingly, the block grants will be exempt from the usual Departmental grant administration requirements found in 45 CFR Part 74. (Part 74 is based on OMB Circulars A-102, "Uniform Administrative Requirements for Grants to State and Local Governments" and A-87, "Cost Principles".) Because a Federal requirement for use of the Part 74 rules would be inappropriate for block grants, we are establishing a fiscal and administrative standard providing maximum discretion to the States and placing full reliance on State law and procedures. Under this standard, a State will not look to Part 74 for such matters as property or procurement standards, or what is an allowable or unallowable cost. Rather, the State's laws and procedures covering the expenditure of its own revenues will govern. Any expenditure in violation of the State's own laws and procedures would be unauthorized and subject to disallowance.

Audits

Under the Act, States are primarily responsible for conducting audits of the use of block grant funds. The Act also confers certain responsibilities on the Comptroller General with respect to evaluating the propriety of State expenditures and on the Secretary with respect to investigations into the use of funds. In fulfilling its responsibilities under the Act and other Federal statutes, the Department will rely on State audits if the audits have been conducted in accordance with the Comptroller General's standards for audits of governmental organizations, programs, activities, and functions. Any additional auditing by the Department would build upon the State's work.

The specific requirements pertaining to audits are set forth in the provisions

of the Act pertaining to the individual block grants. An exception is the audit requirement applicable to the community services block grant. Although section 675(c)(9) indicates that an annual audit is required, that provision is overridden by section 1745(b), which permits audits every two years. A State may modify the certification required by section 675(c)(9) so as to reflect the provisions of section 1745(b).

Recordkeeping

Section 96.30 of the regulations establishes a requirement that States keep records sufficient to permit the preparation of reports required by statute and to permit the tracing of funds to a level of expenditure adequate to insure that funds have not been spent unlawfully. In addition, as explained below, a report is required with respect to use of funds under the low-income home energy assistance program. Except for these provisions, the Secretary is not prescribing any data collection requirements and is not prescribing the format or content of any information that the Act requires the State to collect.

Enforcement

The Act requires States to comply with their assurances and the statutory provisions and provides for repayment of improperly expended funds and for withholding of funds in certain circumstances. The block grant programs are intended to confer great discretion on the States, which by statute are the primary auditors of their own expenditures. The fundamental check on the State's use of block grant funds is the State's accountability to its citizens, which is implemented by public disclosure within the State of information concerning use of the funds. Accordingly, when an issue arises as to whether a State has complied with its assurances and the statutory provisions, the Department will ordinarily defer to the State's interpretation of its assurances and the statutory provisions. Unless the interpretation is clearly erroneous, State action based on that interpretation will not be challenged by the Department. The Department's position is not intended to preclude contrary action by the independent State audit agency in fulfillment of its statutory responsibilities. The Department will provide copies of complaints to the the State's auditors for their consideration. Since the auditors might review the State's action without deference to the State's interpretation, they may subsequently reach a conclusion different from that of the Department.

If a State expends block grant funds contrary to its plan or a description of intended uses of the funds, such action would require the repayment of those funds if the expenditure violated the State's assurances or the statutory provisions. Other expenditures that do not conform to the State's plan or description are improper only because the State has failed to file a revised plan or description. In such cases, repayment is not provided for by the Act, but in appropriate circumstances a State's failure to file a revised plan could lead to the withholding of funds until the revision is made.

The Act provides with respect to all of the block grants that the State must repay any funds that are determined to have been spent improperly. Under several of the block grants, a hearing before the Department is required before repayment may be ordered. The Department will provide a hearing before ordering repayment even where it is not required by statute, and a hearing procedure is provided in the regulations. Decisions resulting from the hearing may be appealed to the Department's Grant Appeals Board. New regulations governing the Board's procedures were published in the Federal Register on August 31, 1981 (46 FR 43816).

If a State refuses to repay funds as ordered, the Department may recover them by offsetting the amount against future block grant payments. The Act provides a State with another opportunity for a hearing under several of the block grants before an offset can be made. For those block grants, the repayment hearing procedures will also be used for offset questions. Further appeal, however, which would likely be dilatory, will not be allowed.

We have provided for a comparatively informal hearing procedure rather than a formal hearing before an administrative law judge. There is no evidence that Congress intended the required hearings to be trial-type on-the-record hearings, and the Secretary has concluded that such a procedure would frequently be less efficient than the procedure adopted. The flexible procedure adopted is designed to resolve questions in a fair and expeditious manner.

In appropriate circumstances the Act requires the Secretary to withhold funds under the block grants until the Secretary has reasonable assurance that a State that has violated statutory provisions or the certifications in its application will not repeat such actions. The hearing procedure established for repayment and offset issues would also be used prior to withholding funds. Decisions resulting from withholding hearings may be appealed. Any appeals would be handled by the Secretary or, in his discretion, the Grant Appeals Board. The Board would typically be used to hear appeals when the question underlying the proposed withholding involved disallowed expenditures and the like. The Secretary will retain authority to make the final decision on any withholding.

Special Provisions

Nondiscrimination

The Act contains specific provisions prohibiting discrimination with respect to all of the block grants except the social services block grant. Congress has made clear that States and their grantees have the responsibility to prohibit discrimination on the basis of race, color, national origin, age, and handicap. In addition, several of the block grants require that religious and sex discrimination be prohibited as well. The Secretary interprets existing laws against discrimination in Federally assisted programs as applying to the social services block grant.

Current regulations in 45 CFR Parts 80, 81, 84, and 90, which relate to discrimination on the basis of race, color, national origin, handicap, or age, apply by their terms to all recipients of Federal financial assistance and therefore apply to all the block grants. In particular, 45 CFR 80.4 and 84.5 require certain assurances to accompany applications for assistance. In lieu of the assurances required by Parts 80 and 84, the Secretary will accept the assurances required by the Act to be part of the applications for the preventive health and health services, alcohol and drug abuse and mental health services, maternal and child health services, and low-income home energy assistance block grants. Those assurances incorporate the nondiscrimination provisions pertinent to the block grants either specifically or as part of a general assurance that the applicant will comply with block grant requirements. For the community services, primary care, and social services block grants, the States should furnish the assurances required by 45 CFR 80.4 and 84.5.

Direct Funding of Indian Tribes and Tribal Organizations

Five of the block grant programs permit the Secretary to grant funds directly to requesting Indian tribes and tribal organizations that request such funds. The block grants involved are community services, preventive health and health services, alcohol and drug abuse and mental health services, primary care, and low-income home

energy assistance. With respect to each of these block grants, the Act provides that direct funding is available if (1) the Indian tribe or tribal organization requests funds, and (2) the Secretary determines that the tribal members would be better served by direct Federal funding than by funding through the States.

The Act's provisions on direct funding were intended to continue the long-standing government-to-government relationship between the Federal government and the tribes. The provisions also implement a self-determination policy for Indian tribes and tribal organizations and seek to overcome jurisdictional problems between some States and their resident tribes regarding the provision of services.

The Secretary has determined that members of Indian tribes and tribal organizations would be better served by direct Federal funding than by funding through the States in every instance that the Indian tribe or tribal organization requests direct funding.

The tribes and tribal organizations are closer to their members than the State governments and are better able to ascertain their needs and to implement solutions. Our experience in the last five years has demonstrated that the performance of Indian tribal grantees is comparable to that of other grantees. A tribe or tribal organization may conclude that it is better served through the State government. The Secretary encourages Indian tribes and tribal organizations to work with the States and determine whether they might benefit from arrangements that could be developed. If a tribe or organization concludes that it would be better served by Federal funding, however, and therefore applies for a direct grant, the Secretary will concur with that assessment and will provide funds directly to the tribe or tribal organization. The fact that a tribe or organization is receiving direct Federal funds does not, however, disqualify its members from receiving services from the States.

Conditions of eligibility for block grant funds are defined in the Act and vary among the block grants. With respect to the Public Health Service block grants, the regulations make clear that certain current grantees that do not meet the definition of an Indian tribe or tribal organization will nevertheless be eligible for direct funding if they meet the definition by the time they apply.

No definition of an eligible Indian tribe or tribal organization is contained in the Act for the low-income home energy assistance program, and definitions similar to those established by statute for the other block grants have been adopted. With respect to the community services and low-income home energy assistance block grants, for which State-recognized tribes and organizations are eligible for funds, the regulations provide that the State must have expressly determined that the Indian group is a tribe or tribal organization in accordance with State procedures for making such determinations. This definition is intended to make clear, for example, that State actions incidentally referring to a group as a tribe do not constitute State recognition for the purposes of receiving block grant funds. Similarly, incorporation of a tribal organization under the laws of a State would not by itself constitute State recognition of the group as a tribal organization.

The regulations provide that Indian tribes and tribal organizations receiving direct funding have the same rights and obligations as States, unless otherwise provided or unless a State's rights and obligations have no relevance to an Indian tribe or tribal organization. Thus, for example, a tribe or tribal organization must submit an application containing the same information as that required from the States, except that the regulations permit the deletion of certain certifications that we have concluded are not appropriate for tribes and tribal organizations. Also, the statutory requirements for public participation and for an audit apply to tribes and tribal organizations, except that holding a hearing is not required to be part of the procedures. The regulations provide that the statutory audit must be conducted by an independent entity.

The Secretary does not have authority to reserve funds from a State's allotment for an Indian tribe or tribal organization unless the Secretary has received a request for such funds from the tribe or organization. Accordingly, an Indian tribe or tribal organization desiring funds for the fiscal year beginning October 1, 1981, must submit a request prior to the award of the total allotment to the State in which the tribe or organization is located. The request for funds does not have to be accompanied by the required application, but, with the exception of the low-income home energy assistance program, the complete application must be submitted within 75 days after the beginning of the quarter in which the State first receives funds under the pertinent block grant. An Indian tribe or tribal organization may submit a request for funds to preserve its choice and later choose not to submit an application. Applications for the low-income energy assistance block grant must be submitted by December 15, 1981.

If the members of a Indian tribe or tribal organization reside in more than one State, the source of the allotment to the Indians will depend on the nature of the allocation formula in the block grant. If the allotments to the States are based on population, the allotment to the tribe or tribal organization will be taken from the various States in which the eligible tribal members (or eligible households) reside in proportion to the number of eligible tribal members (or eligible households) to be served in each State. Allotments under the Public Health Service grants are, however, based on past grants. In those cases, therefore, the allotment to the tribe or tribal organization will come from the allotment of the State whose base year determination includes the relevant past grant to the tribe or tribal organization.

Social Services Block Grant

The regulations include two definitions specific to the social services block grant, which we have concluded should be issued to clarify congressional intent.

The Act contains a general prohibition on the use of funds to provide room and board or medical care but allows such use of the funds if the room and board or medical care is an "integral but subordinate" part of another State authorized service. The definition adopted makes clear that the statute prohibits the use of block grant funds to pay for room and board in foster care. Foster care is not a social service but is essentially a maintenance payment for room and board. (Moreover, we believe that Congress intended Federal funds for foster care to be made under the Title IV-E program.) Under our interpretation, the use of block grant funds for room and board is not precluded when part of temporary emergency shelter provided as a protective service, regardless of the type of facility the State uses for this purpose.

Also, "employees" as used in the social services block grant (section 2005(a)(5) of the Social Security Act) is defined to include staff, contractors, and other individuals who are under the direct supervision or professional direction of the institution. That provision of the statute prohibits the use of funds for social services provided in and by employees of certain institutions. The definition adopted in the block grant regulations, which is consistent with the current definitions under the present Title XX, makes clear that the

prohibition applies to all individuals who occupy an employee-type role. We believe that Congress did not intend to permit the prohibition to be thwarted by institutions designating certain individuals as independent contractors or through similar devices.

Low-Income Home Energy Assistance Program

The low-income home energy assistance program establishes a specific procedure for reallotment of unused funds at the end of each fiscal year. In order to implement that requirement, the regulations specify a report to be submitted by recipients of the funds.

The regulations also require the submission of a report necessary to provide certain information to Congress, as required by the Act. States must annually report the number and income levels of households assisted under the program. This information may be reported in the form collected by the State.

Under section 2604(e) of the Act, a State may request the Secretary to make direct payments to Supplemental Security Income (SSI) recipients out of the State's allotment. Any such request must be submitted by November 2, 1981. The request may be withdrawn at any time. In future years, a State for which the Secretary is not making direct payments may request such action for any fiscal year by submitting a request by September 1 of the preceding fiscal year.

Although certain territories are eligible for funds under the low-income home energy assistance program, the Act does not otherwise define the rights and responsibilities of territories. The regulations establish that eligible territories will be treated the same as States unless otherwise provided.

Waiver of Notice and Comment Procedures

The block grant programs were enacted on August 13, 1981, and become effective on October 1, 1981. In light of the short time available, it is impossible to publish these rules for comment and nevertheless put them into effect by October 1. In any event, the rules being adopted for the most part simply implement clear statutory provisions. Accordingly, the Secretary has determined that it would be impracticable, unnecessary, and contrary to the public interest to use notice and comment procedures in issuing these regulations. All comments received by November 30, 1981, will be considered, however, and the rules will be revised if appropriate.

Impact Analysis

Executive Order 12291

E.O. 12291 requires that a regulatory impact analysis be prepared for major rules—defined in the Order as any rule that has an annual effect on the national economy of $100 million or more, or certain other specified effects. The Department concludes that the regulations implementing the block grant programs are not major rules within the meaning of the Executive Order, because they do not have an effect on the economy of $100 million or more or otherwise meet the threshold criteria. To the contrary, these regulations provide great latitude to the States and impose no significant burdens on the States. No lower cost alternatives exist. Indeed, by providing maximum flexibility and discretion to the States, these regulations will save millions of dollars compared to what States have spent on meeting Federal requirements under predecessor programs. Although levels of funding for the programs have been reduced, the reductions result from congressional action, not the terms of these regulations.

Regulatory Flexibility Act of 1980

The Regulatory Flexibility Act (5 U.S.C. Ch. 6) requires the Federal Government to anticipate and reduce the impact of rules and paperwork requirements on small businesses. For each proposed rule with a "significant economic impact on a substantial number of small entities" an initial analysis must be prepared describing the proposed rule's impact on small entities. Small entities are defined by the Act to include small businesses, small non-profit organizations, and small governmental entities.

The primary impact of these regulations is on the States, which are not "small entities" within the meaning of the Act. Actual delivery of services will, however, be performed in large part by proprietary, public, and not-for-profit organizations including day care centers, medical practitioners, neighborhood service centers, United Way agencies, and units of local government, as well as by State agencies. Because these regulations provide States with great authority to prescribe management, organization, funding, and eligibility practices for service delivery, they do not directly impact small entities, either favorably or adversely. Instead, impacts will depend on future State decisions.

Because we have no way to predict such decisions, and in any event have no reason to expect that they will impact small entities, the Secretary hereby certifies that an initial regulatory flexibility analysis is not required.

For the reasons set forth in the preamble, Title 45 of the Code of Federal Regulations is amended as follows:

1. Part 96 is added to 45 CFR Subtitle A to read as follows:

PART 96—BLOCK GRANTS

Subpart A—Introduction

Sec.
96.1 Scope.
96.2 Definitions.

Subpart B—General Procedures

96.10 Prerequisites to obtain block grant funds.
96.11 Basis of award to the States.
96.12 Grant payment.
96.13 Reallotments.
96.14 Time period for obligation of grant funds.
96.15 Waivers.

Subpart C—Financial Management

96.30 Fiscal and administrative requirements.

Subpart D—Direct Funding of Indian Tribes and Tribal Organizations

96.40 Scope.
96.41 General determination.
96.42 General procedures and requirements.
96.43 Procedures during FY 1982.
96.44 Community services.
96.45 Preventive health and health services.
96.46 Alcohol and drug abuse and mental health services.
96.47 Primary care.
96.48 Low-income home energy assistance.

Subpart E—Enforcement

96.50 Complaints.
96.51 Hearings.
96.52 Appeals.

Subpart F—Hearing Procedure

96.60 Scope.
96.61 Initiation of hearing.
96.62 Presiding officer.
96.63 Communications to presiding officer.
96.64 Intervention.
96.65 Discovery.
96.66 Hearing procedure.
96.67 Right to counsel.
96.68 Administrative record of a hearing.

Subpart G—Social Services Block Grants

96.70 Scope.
96.71 Definitions.
96.72 Transferability of funds.

Subpart H—Low-Income Home Energy Assistance Program

96.80 Scope.
96.81 Reallotment report.
96.82 Required report.
96.83 Request for direct Federal payments to SSI recipients.
96.84 Territories.

Subpart I—Community Services Block Grants

96.90 Scope.
96.91 Audit requirement.

Subpart J—Transition Provisions

96.100 Scope.
96.101 Continuation of pre-existing regulations.
96.102 Community services block grant.

Authority: Pub. L. 97-35, secs. 671-682, 901, 2191-94, 2351-55, 2601-11.

Subpart A—Introduction

§ 96.1 Scope.

This part applies to the following block grant programs:

(a) Community services (Pub. L. 97-35, secs. 671-682).

(b) Preventive health and health services (Pub. L. 97-35, sec. 901).

(c) Alcohol and drug abuse and mental health services (Pub. L. 97-35, sec. 901).

(d) Primary care (Pub. L. 97-35, sec. 901).

(e) Maternal and child health services (Pub. L. 97-35, secs. 2191-94).

(f) Social services (Pub. L. 97-35, secs. 2351-55).

(g) Low-income home energy assistance (Pub. L. 97-35, secs. 2601-11).

§ 96.2 Definitions.

(a) "Secretary" means the Secretary of Health and Human Services or his designee.

(b) "Department" means the Department of Health and Human Services.

(c) "Reconciliation Act" means the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97-35).

Subpart B—General Procedures

§ 96.10 Prerequisites to obtain block grant funds.

No particular form is required for a State's application or the related submission required by statute. The provisions in section 1742(a) of the Reconciliation Act relating to the contents of a report on proposed uses of funds must be satisfied; the specified information should be included in the plan required for the community services block grant (section 675(d) of the Reconciliation Act) and in the description of intended uses of funds required for the preventive health and health services, and alcohol and drug abuse and mental health services block grants (sections 1905(d) and 1915(d) of the Public Health Service Act (as amended by the Reconciliation Act) respectively).

§ 96.11 Basis of award to the States.

The Secretary will award the block grant funds allotted to the State in accordance with the apportionment of funds from the Office of Management and Budget. Such awards will reflect amounts reserved for Indian Tribes and Tribal Organizations and, in FY 1982, any amounts awarded by the Department under transition authorities. The grant award constitutes the authority to carry out the program and to draw and expend funds.

§ 96.12 Grant payment.

The Secretary will make payments at such times and in such amounts to each State from its awards in advance in accordance with section 203 of the Intergovernmental Cooperation Act (42 U.S.C. 4213) and Treasury Circular No. 1075 (31 CFR Part 205). When matching funds are involved, the Secretary shall take into account the ratio that such payment bears to such State's total expenditures under its awards.

§ 96.13 Reallotments.

The Secretary will re-allot to eligible States those funds available as of September 1 of each fiscal year under the reallotment provisions pertaining to the alcohol and drug abuse and mental health services, maternal and child health services, and preventive health and health services block grants. The reallotment procedure for the low-income home energy assistance block grant is specified in section 2607 of the Reconciliation Act and § 96.81 of this part.

§ 96.14 Time period for obligation of grant funds.

Amounts unobligated by the State at the end of a fiscal year shall remain available for obligation during the succeeding fiscal year for all block grants except:

(a) *Primary care.* Amounts are available only if the Secretary determines that the State acted in accordance with section 1926(a)(1) of the Public Health Service Act and there is good cause for funds remaining unobligated.

(b) *Low-income home energy assistance.* Amounts are available only in accordance with section 2607(b)(2) of the Reconciliation Act, which limits the amount to 25 percent of the amount allotted to the State for the prior fiscal year.

§ 96.15 Waivers.

Applications for waivers that are permitted by statute for the block grants should be submitted to the Assistant Secretary of Health in the case of the preventive health and health services, alcohol and drug abuse and mental health services, primary care, and maternal and child health services block grants; to the Assistant Secretary for Human Development Services in the case of the community services and social services block grants; and to the Associate Commissioner for Family Assistance in the case of the low-income home energy assistance program.

Subpart C—Financial Management

§ 96.30 Fiscal and administrative requirements.

Except where otherwise required by Federal law or regulation, a State shall expend block grant funds in accordance with the laws and procedures applicable to the expenditure of its own revenues. Fiscal control and accounting procedures must be sufficient to (a) permit preparation of reports required by the statute authorizing the block grant and (b) permit the tracing of funds to a level of expenditure adequate to establish that such funds have not been used in violation of the restrictions and prohibitions of the statute authorizing the block grant.

Subpart D—Direct Funding of Indian Tribes and Tribal Organizations

§ 96.40 Scope.

This subpart applies to the community services, alcohol and drug abuse and mental health services, preventive health and health services, primary care, and low-income home energy assistance block grants.

§ 96.41 General determination.

The Secretary has determined that Indian tribes and tribal organizations would be better served by means of grants provided directly by the Secretary to such tribes and organizations out of the State's allotment of block grant funds than if the State were awarded its entire allotment. Accordingly, where provided for by statute, the Secretary will, upon request of an eligible Indian tribe or tribal organization, reserve a portion of a State's allotment and, upon receipt of the complete application and related submission that meets statutory requirements, grant it directly to the tribe or organization.

§ 96.42 General procedures and requirements.

(a) An Indian tribe or tribal organization applying for or receiving direct funding from the Secretary under a block grant program shall be subject to

all statutory and regulatory requirements applicable to a State applying for or receiving block grant funds to the extent that such requirements are relevant to an Indian tribe or tribal organization except where otherwise provided by statute or in this Part.

(b) A tribal organization representing more than one Indian tribe will be eligible to receive block grant funds on behalf of a particular tribe only if the tribe has by resolution authorized the organization's action.

(c) If an Indian tribe or tribal organization whose service population resides in more than one State applies for block grant funds that, by statute, are apportioned on the basis of population, the allotment awarded to the tribe or organization shall be taken from the allotments of the various States in which the service population resides in proportion to the number of eligible members or households to be served in each State. If block grant funds are required to be apportioned on the basis of grants during a base year, the allotment to the Indian tribe or tribal organization shall be taken from the allotment of the State whose base year grants included the relevant grants to the tribe or organization.

(d) The audit required under the block grant programs shall be conducted by an entity that is independent of the Indian tribe or tribal organization receiving grant funds from the Secretary.

(e) Beginning with fiscal year 1983, any request by an Indian tribe or tribal organization for direct funding by the Secretary must be submitted to the Secretary, together with the required application and related materials, by September 1 preceding the Federal fiscal year for which funds are sought. A separate application is required for each block grant.

§ 96.43 Procedures during FY 1982.

(a) This section applies to the fiscal year beginning October 1, 1981.

(b) Except under the low-income home energy assistance program, an Indian tribe or tribal organization may receive direct funding from the Secretary only with respect to those block grants for which the State in which the tribe or organization is located has qualified for funds.

(c) A request for direct funding must be received by the Secretary before the Secretary has awarded all of the allotment to the State involved. The application and related submission may be submitted later but must be submitted within 75 days after the beginning of the quarter in which the state qualified for block grant funds, except that the application and related submission for the low-income home energy assistance program must be submitted by December 15, 1981. A separate request and application are required for each block grant.

§ 96.44 Community Services.

(a) This section applies to direct funding of Indian tribes and tribal organizations under the community services block grant.

(b) For purposes of section 674(c)(5) of the Reconciliation Act, an organized group of Indians is eligible for direct funding based on State recognition only if the State has expressly determined that the group is an Indian tribe or tribal organization in accordance with State procedures for making such determinations.

(c) For purposes of section 674(c)(2) of the Reconciliation Act, an "eligible Indian" means a member of an Indian tribe whose income is at or below the poverty line defined in section 673(2) of the Reconciliation Act. An "eligible individual" under section 674(c)(2) means a resident of the State whose income is at or below the poverty line.

(d) An Indian tribe or tribal organization is not required to comply with section 675(b) or to provide the certifications required by the following other provisions of the Reconciliation Act:

(1) Section 675(c)(2)(A);
(2) Section 675(c)(3); and
(3) Section 675(c)(4).

§ 96.45 Preventive health and health services.

(a) This section applies to direct funding of Indian tribes and tribal organizations under the preventive health and health services block grant.

(b) For the purposes of determining eligible applicants under section 1902(d) of the Public Health Service Act, a grantee that received a grant directly from the Secretary in FY 1981 under any of the programs replaced by the preventive health and health services block grant that was specifically targeted toward serving a particular Indian tribe or tribal organization will be considered eligible if the grantee is an Indian tribe or tribal organization at the time it requests funds under this part. Grantees that received funds under formula or Statewide grants, and subgrantees that received funds from any program replaced by the preventive health and health services block grant, are not eligible.

§ 96.46 Alcohol and drug abuse and mental health services.

(a) This section applies to direct funding of Indian tribes and tribal organizations under the alcohol and drug abuse and mental health services block grant.

(b) For the purpose of determining eligible applicants under section 1912(c) of the Public Health Service Act, an entity that received a treatment grant or contract directly from the Secretary in FY 1980 specifically targeted toward serving a particular Indian tribe or tribal organization will be considered eligible if the entity is an Indian tribe or tribal organization at the time it requests funds under this part. Entities that received funds under formula or statewide grants, and those grantees who had the responsibility for their treatment grant support transferred to the Indian Health Service, are not eligible.

(c) An Indian tribe or tribal organization is not required to comply with section 1915(b) or to provide the certifications required by section 1915 (c)(2) through (c)(8) of the Public Health Service Act. Also, the services identified in section 1914(a)(1) of the Public Health Service Act need not be provided by means of grants to community mental health centers.

§ 96.47 Primary care.

Applications for direct funding of Indian tribes and tribal organizations under the primary care block grant must comply with 42 CFR Part 51c (Grants for Community Health Services).

§ 96.48 Low-income home energy assistance.

(a) This section applies to direct funding of Indian tribes under the low-income home energy assistance program.

(b) The terms "Indian tribe" and "tribal organization" as used in the Reconciliation Act have the same meaning given such terms in section 4(b) and 4(c) of the Indian Self-Determination and Education Act (25 U.S.C. 4506), except that the terms shall also include organized groups of Indians that the State in which they reside has expressly determined are Indian tribes or tribal organizations in accordance with State procedures for making such determinations.

(c) The plan required by section 2604(c)(4) of the Reconciliation Act shall contain the certification and information required for States under section 2605 (b) and (c) of that Act. An Indian tribe or tribal organization is not required to

comply with section 2605(a)(2) of the Act.

Subpart E—Enforcement

§ 96.50 Complaints.

(a) This section applies to any complaint that a State has failed to use its allotment under a block grant in accordance with the terms of the act establishing the block grant or the certifications and assurances made by the State pursuant to that act. The Secretary is not required to consider a complaint unless it is submitted as required by this section.

(b) Complaints with respect to the preventive health and health services, alcohol and drug abuse and mental health services, primary care, and maternal and child health services block grants shall be submitted in writing to the Assistant Secretary of Health. Complaints with respect to the community services and social services block grants shall be submitted in writing to the Assistant Secretary for Human Development Services. Complaints with respect to the low-income home energy assistance program shall be submitted to the Commissioner of Social Security. (The address in each case is 200 Independence Ave. SW., Washington, D.C. 20201.) The complaint must identify the provision of the act, assurance, or certification that was allegedly violated; must specify the basis for the violations it charges; and must include all relevant information known to the person submitting it.

(c) The Department shall promptly furnish a copy of any complaint to the affected State. Any comments received from the State within 60 days (or such longer period as may be agreed upon between the State and the Department) shall be considered by the Department in responding to the complaint. The Department will conduct an investigation of complaints where appropriate.

(d) The Department will provide a written response to complaints within 180 days after receipt. If a final resolution cannot be provided at that time, the response will state the reasons why additional time is necessary.

(e) In resolving any issue raised by a complaint or a Federal audit, the Department will defer to a State's interpretation of its assurances and of the provisions of the block grant statutes unless the interpretation is clearly erroneous. In any event, the Department will provide copies of complaints to the independent entity responsible for auditing the State's activities under the block grant program involved. Any determination by the Department that a State's interpretation is not clearly erroneous shall not preclude or otherwise prejudice the State auditors' consideration of the question.

§ 96.51 Hearings.

(a) The Department will order a State to repay amounts found not to have been expended in accordance with law or the certifications provided by the State only after the Department has provided the State an opportunity for a hearing. The hearing will be governed by Subpart F of this part and will be held in the State if required by statute.

(b) If a State refuses to repay amounts after a final decision that is not subject to further review in the Department, the amounts may be offset against payments to the State. If a statute requires an opportunity for a hearing before such an offset may be made, the hearing will be governed by Subpart F of this part and will be held in the State if required by statute.

(c) The Department will withhold funds from a State only if the Department has provided the State an opportunity for a hearing. The hearing will be governed by Subpart F of this part and will be held in the State if required by statute.

§ 96.52 Appeals.

(a) Decisions resulting from repayment hearings held pursuant to § 96.51(a) of this part may be appealed by either the State or the Department to the Grant Appeals Board.

(b) Decisions resulting from offset hearings held pursuant to § 96.51(b) of this part may not be appealed.

(c) Decisions resulting from withholding hearings held pursuant to § 96.51(c) of this part may be appealed to the Secretary by the State or the Department as follows:

(1) An application for appeal must be received by the Secretary no later than 60 days after the appealing party receives a copy of the presiding officer's decision. The application shall clearly identify the questions for which review is sought and shall explain fully the party's position with respect to those questions. A copy shall be furnished to the other party.

(2) The Secretary may permit the filing of opposing briefs, hold informal conferences, or take whatever other steps the Secretary finds appropriate to decide the appeal.

(3) The Secretary may refer an application for appeal to the Grant Appeals Board. Notwithstanding Part 16 of this title, in the event of such a referral, the Board shall issue a recommended decision that will not become final until affirmed, reversed, or modified by the Secretary.

(d) Any appeal to the Grant Appeals Board under this section shall be governed by Part 16 of this title except that the Board shall not hold a hearing. The Board shall accept any findings with respect to credibility of witnesses made by the presiding officer. The Board may otherwise review and supplement the record as provided for in Part 16 of this title and decide the issues raised.

Subpart F—Hearing Procedure

§ 96.60 Scope.

The procedures in this subpart apply when opportunity for a hearing is provided for by § 96.51 of this part.

§ 96.61 Initiation of hearing.

(a) A hearing is initiated by a notice of opportunity for hearing from the Department. The notice will:

(1) Be sent by mail, telegram, telex, personal delivery, or any other mode of written communication;

(2) Specify the facts and the action that are the subject of the opportunity for a hearing;

(3) State that the notice of opportunity for hearing and the hearing are governed by these rules; and

(4) State the time within which a hearing may be requested, and state the name, address, and telephone number of the Department employee to whom any request for hearing is to be addressed.

(b) A State offered an opportunity for a hearing has the amount of time specified in the notice, which may not be less than 10 days after receipt of the notice, within which to request a hearing. The request may be filed by mail, telegram, telex, personal delivery, or any other mode of written communication, addressed to the designated Department employee. If no response is filed within that time, the offer is deemed to have been refused and no hearing will be held.

(c) If a hearing is requested, the Department will designate a presiding officer, and (subject to § 96.51 of this part) the hearing will take place at a time and location agreed upon by the State requesting the hearing, the Department, and the presiding officer or, if agreement cannot be reached, at a reasonable time and location designated by the presiding officer.

§ 96.62 Presiding officer.

(a) A Department employee to whom the Secretary delegates such authority, or any other agency employee designated by an employee to whom such authority is delegated, may serve as the presiding officer and conduct a hearing under this subpart.

(b) The presiding officer is to be free from bias or prejudice and may not have participated in the investigation or action that is the subject of the hearing or be subordinate to a person, other than the Secretary, who has participated in such investigation or action.

(c) The Secretary is not precluded by this section from prior participation in the investigation or action that is the subject of the hearing.

(d) A different presiding officer may be substituted for the one originally designated under § 96.61 of this part without notice to the parties.

§ 96.63 Communications to presiding officer.

(a) Those persons who are directly involved in the investigation or presentation of the position of the Department or any party at a hearing that is subject to this subpart should avoid any off-the-record communication on the matter to the presiding officer or his advisers if the communication is inconsistent with the requirement of § 96.68 of this part that the administrative record be the exclusive record for decision. If any communication of this type occurs, it is to be reduced to writing and made part of the record, and the other party provided an opportunity to respond.

(b) A copy of any communications between a participant in the hearing and the presiding officer, e.g., a response by the presiding officer to a request for a change in the time of the hearing, is to be sent to all parties by the person initiating the communication.

§ 96.64 Intervention.

Participation as parties in the hearing by persons other than the State and the Department is not permitted.

§ 96.65 Discovery.

The use of interrogatories, depositions, and other forms of discovery shall not be allowed.

§ 96.66 Hearing procedure.

(a) A hearing is public, except when the Secretary or the presiding officer determines that all or part of a hearing should be closed to prevent a clearly unwarranted invasion of personal privacy, to prevent the disclosure of a trade secret or confidential commercial or financial information, or to protect investigatory records compiled for law enforcement purposes that are not available for public disclosure.

(b) A hearing wil be conducted by the presiding officer. Employees of the Department will first give a full and complete statement of the action which is the subject of the hearing, together with the information and reasons supporting it, and may present any oral or written information relevant to the hearing. The State may then present any oral or written information relevant to the hearing. Both parties may confront and conduct reasonable cross-examination of any person (except for the presiding officer and counsel for the parties) who makes any statement on the matter at the hearing.

(c) The hearing is informal in nature, and the rules of evidence do not apply. No motions or objections relating to the admissibility of information and views will be made or considered, but either party may comment upon or rebut all such data, information, and views.

(d) The presiding officer may order the hearing to be transcribed. The State may have the hearing transcribed, at the State's expense, in which case a copy of the transcript is to be furnished to the Department at the Department's expense.

(e) The presiding officer may, if appropriate, allow for the submission of post-hearing briefs. The presiding officer shall prepare a written decision, which shall be based on a preponderance of the evidence, shall include a statement of reasons for the decision, and shall be final unless appealed pursuant to § 96.52 of this part. If post-hearing briefs were not permitted, the parties to the hearing will be given the opportunity to review and comment on the presiding officer's decision prior to its being issued.

(f) The presiding officer shall include as part of the decision a finding on the credibility of witnesses (other than expert witnesses) whenever credibility is a material issue.

(g) The presiding officer shall furnish a copy of the decision to the parties.

(h) The presiding officer has the power to take such actions and make such rulings as are necessary or appropriate to maintain order and to conduct a fair, expeditious, and impartial hearing, and to enforce the requirements of this subpart concerning the conduct of hearings. The presiding officer may direct that the hearing be conducted in any suitable manner permitted by law and these regulations.

(i) The Secretary or the presiding officer has the power to suspend, modify, or waive any provision of this subpart.

§ 96.67 Right to counsel.

Any party to a hearing under this part has the right at all times to be advised and accompanied by counsel.

§ 96.68 Administrative record of a hearing.

(a) The exclusive administrative record of the hearing consists of the following:

(1) The notice of opportunity for hearing and the response.

(2) All written information and views submitted to the presiding officer at the hearing or after if specifically permitted by the presiding officer.

(3) Any transcript of the hearing.

(4) The presiding officer's decision and any briefs or comments on the decision under § 96.66(e) of this part.

(5) All letters or communications between participants and the presiding officer or the Secretary referred to in § 96.63 of this part.

(b) The record of the hearing is closed to the submission of information and views at the close of the hearing, unless the presiding officer specifically permits additional time for a further submission.

Subpart G—Social Services Block Grants

§ 96.70 Scope.

This subpart applies to the social services block grant.

§ 96.71 Definitions.

(a) Section 2005 (a)(2) and (a)(5) of the Social Security Act establishes prohibitions against the provision of room and board and medical care unless they are an "integral but subordinate" part of a State-authorized social service. "Integral but subordinate" means that the room and board or medical care is a minor but essential adjunct to the service of which it is a part and is necessary to achieve the objective of that service. Room and board shall not be considered an integral but subordinate part of a service when it is provided to an individual in a foster family home or other facility the primary purpose of which is to provide food, shelter, and care or supervision, except for temporary emergency shelter provided as a protective service.

(b) As used in section 2005(a)(5) of the Social Security Act with respect to the limitations governing the provision of services by employees of certain institutions, "employees" includes staff, contractors, or other individuals whose activities are under the professional direction or direct supervision of the institution.

§ 96.72 Transferability of funds.

Under section 2002(d) of the Social Security Act, funds may be transferred in accordance with the provisions of that section to the preventive health and health services, alcohol and drug abuse and mental health services, primary care, maternal and child health services, and low-income home energy assistance block grants. In addition, funds may be transferred to other Federal block grants

for support of health services, health promotion and disease prevention activities, or low-income home energy assistance (or any combination of those activities).

Subpart H—Low-Income Home Energy Assistance Program

§ 96.80 Scope.

This subpart applies to the low-income home energy assistance program.

§ 96.81 Reallotment report.

As part of the reallotment procedure established by section 2607 of the Reconciliation Act, each recipient of funds must submit a report to the Secretary by August 1 of each year containing the following information:

(a) The amount of the State's original allotment that the State desires to remain available for expenditure in the succeeding fiscal year, not to exceed 25 percent of the original allotment; and

(b) The amount of funds, if any, to be subject to reallotment.

§ 96.82 Required report.

In accordance with the authority in section 2610(a) of the Reconciliation Act, each State receiving funds shall submit to the Department by October 31 of each year a report of the number and income levels of the households assisted by the funds.

§ 96.83 Request for direct Federal payments to SSI recipients.

A State that wants the Secretary to make direct payments from the State's allotment to recipients of Supplemental Security Income in accordance with section 2604(e) of the Reconciliation Act must submit such a request by November 2, 1981. Such a request may be withdrawn at any time. If such a request is not in effect, a State may request the Secretary to make direct payments in any fiscal year by submitting a request by September 1 of the preceding fiscal year.

§ 96.84 Territories.

Except as otherwise provided, a territory eligible for funds shall have the same rights and responsibilities as a State.

Subpart I—Community Services Block Grants

§ 96.90 Scope.

This subpart applies to the community services block grant.

§ 96.91 Audit requirement.

Pursuant to section 1745(b) of the Reconciliation Act, an audit is required with respect to the 2-year period beginning on October 1, 1981, and with respect to each 2-year period thereafter. In its application for funds, a State may modify the assurance required by section 675(c)(9) of the Reconciliation Act to conform to the requirements of section 1745(b).

Subpart J—Transition Provisions

§ 96.100 Scope.

Except as otherwise stated, this subpart applies to the community services, preventive health and health services, alcohol and drug abuse and mental health services, and maternal and child health services block grants for the fiscal year beginning October 1, 1981.

§ 96.101 Continuation of pre-existing regulations.

The regulations previously issued by the Department and the Community Services Administration to govern administration of the programs replaced by the block grants specified in § 96.1 of this part shall continue in effect, until revised, to govern administration of those programs by the Department in those circumstances in which States have not qualified for block grants.

§ 96.102 Community services block grant.

(a) For the fiscal year beginning October 1, 1981, only, a State may choose to operate programs under the community services block grant or, instead, have the Secretary operate the programs replaced by the block grant. If a State does not notify the Secretary in accordance with the statutory deadlines each quarter, it will be deemed to have requested the Secretary to operate the programs for the following quarter.

(b) For any quarter in which the Secretary administers the programs, the Department's administration costs will be deducted from the State's allotment. The Department's total administration costs for making grants during fiscal year 1982 and for any monitoring of these grants in fiscal year 1983 will be deducted from each State's allotment in proportion to the total amount of grants awarded from the allotment during the period of administration by the Department (but not to exceed 5 percent of the State's FY 1982 allotment).

PART 16—PROCEDURES OF THE DEPARTMENTAL GRANT APPEALS BOARD

2. Appendix A to Part 16 is amended by revising paragraph B. (a), introductory text, and adding paragraph B (a)(5) to read as follows:

Appendix A—What Disputes the Board Reviews

* * * * *

B. *Mandatory grant programs.*

(a) The Board reviews the following types of final written decisions in disputes arising in HHS programs authorizing the award of mandatory grants:

* * * * *

(5) Decisions relating to repayment and withholding under block grant programs as provided in 45 CFR 96.52.

* * * * *

PART 74—ADMINISTRATION OF GRANTS

3. Section 74.4(a) is amended by revising the first sentence to read as follows:

§ 74.4 Applicability of this part.

(a) *General.* Except where inconsistent with Federal statutes, regulations, or other terms of a grant, this part applies to all HHS grants, other than the block grant programs identified in 45 CFR 96.1. * * *

Dated: September 21, 1981.

Richard S. Schweiker,

Secretary of Health and Human Services.

[FR Doc 81-28341 Filed 9-30-81; 8:45 am]

BILLING CODE 4110-12-M

---

42 CFR Parts 50, 51, 51a, 51b, 51g, 54, 54a, 54b, 56a, 59, and 91

Block Grant Implementation; Revocation of Categorical Health Grant Regulations

AGENCY: Department of Health and Human Services.

ACTION: Final Rule.

SUMMARY: Following the one year period of transition to the block grants established by the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97-35), this rule revokes, effective October 1, 1982, regulations governing categorical health grants which are replaced by the preventive health and health services, alcohol and drug abuse and mental health services, and maternal and child health services block grants.

EFFECTIVE DATE: October 1, 1982.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Spencer, Public Health Service Regulations Officer, 301/443-6330.

SUPPLEMENTARY INFORMATION: Published elsewhere in this issue of the Federal Register are regulations

implementing the block grant programs administered by the Department. During the October 1, 1981–October 1, 1982, period of transition to full implementation of the block grants for preventive health and health services, alcohol and drug abuse and mental health services, and maternal and child health services the Department is responsible for administering categorical grants in those States that do not begin administering the block grant funds for those programs. Elsewhere in this issue of the Federal Register, the Department is also publishing interim rules setting forth the requirements that will apply to the Department's administration of the categorical health grants during the transition period.

This final rule revokes those categorical health grant regulations effective October 1, 1982, the date on which the block grant programs become fully effective and the transitional authority to administer the categorical grants expires.

Because this rule makes technical amendments removing superseded or obsolete regulations, the Secretary has determined that public participation in rulemaking is unnecessary and that an impact analysis is not required under the Regulatory Flexibility Act, Pub. L. 96–354 or Executive Order 12291.

Dated: September 21, 1981.

James F. Dickson,

Acting Assistant Secretary for Health.

Dated: September 24, 1981.

Richard S. Schweiker,

Secretary.

Effective October 1, 1982, Subchapter D, Chapter I of the Title 42 Code of Federal Regulations is amended as follows:

PART 50—POLICIES OF GENERAL APPLICABILITY

§§ 50.601–50.606 (Subpart F) [Removed]

42 CFR Part 50 is amended by removing Subpart F (§§ 50.601–50.606).

PART 51—GRANTS TO STATES FOR COMPREHENSIVE PUBLIC HEALTH SERVICES [REMOVED]

PART 51a—GRANTS FOR MATERNAL AND CHILD HEALTH AND CRIPPLED CHILDREN'S SERVICES [REMOVED]

42 CFR Parts 51 and 51a are removed.

PART 51b—PROJECT GRANTS FOR PREVENTIVE HEALTH SERVICES

§§ 51b.301–51b.306 (Subpart C) and §§ 51b.701–51b.706 (Subpart G) [Removed]

42 CFR Part 51b is amended by removing Subpart C (§§ 51b.301–51b.306), and Subpart G (§§ 51b.701–51b.706).

PART 51g—GRANTS FOR HEALTH EDUCATION-RISK REDUCTION

42 CFR Part 51g is amended as follows:

1. The authority citation is revised to read as follows:

Authority: Sec. 215, 58 Stat. 690 (42 U.S.C. 216); sec. 1703(a), 90 Stat. 697 (42 U.S.C. 300u–2(a)).

§ 51g.1 [Amended]

2. Section 51g.1 is amended by removing the words "and grants to deter smoking and alcoholic beverage use among children and adolescents authorized under section 402(a)(2) of the Health Service and Centers Amendments of 1978, Pub. L. 95–626 (42 U.S.C. 247b–2)" and inserting in their place, a period.

§ 51g.4 [Amended]

3. Section 51g.4 is amended by removing paragraph (c)(2).

§ 51g.5 [Amended]

4. Section 51g.5 is amended as follows:

(i) In the first sentence of the undesignated paragraph, the words "and section 402(a)(2) of Pub. L. 95–626." are removed and a period is inserted in their place.

(ii) Paragraph (c) is removed.

PART 54—GRANTS FOR COMMUNITY MENTAL HEALTH CENTERS

42 CFR Part 54 is removed.

PART 54a—GRANTS FOR ALCOHOL ABUSE AND ALCOHOLISM PREVENTION, TREATMENT, AND REHABILITATION SERVICES AND NATIONAL ALCOHOL RESEARCH CENTERS

42 CFR Part 54a is amended as follows:

Authority Citation [Amended]

1. The authority citation is amended by removing "Sec. 1743 of Pub. L. 97–35, 95 Stat. 763 (31 U.S.C. 1243 note)."

§§ 54a.101–54a.107 (Subpart A); §§ 54a.201–54a.206 (Subpart B); §§ 54a.301–54a.306 (Subpart C); and §§ 54a.401–54a.409 (Subpart D) [Removed]

2. Subpart A (§§ 54a.101–54a.107), Subpart B (§§ 54a.201–54a.206), Subpart C (§§ 54a.301–54a.306) and Subpart D (§§ 54a.401–54a.409) are removed.

PART 54b—GRANTS TO STATES FOR DRUG ABUSE PREVENTION FUNCTIONS [REMOVED]

42 CFR Part 54b is removed.

PART 56a—GRANTS FOR EMERGENCY MEDICAL SERVICES SYSTEMS [REMOVED]

42 CFR Part 56a is removed.

PART 59—GRANTS FOR FAMILY PLANNING SERVICES [REMOVED]

42 CFR Part 59 is amended by removing Subpart D.

PART 91—GRANTS FOR THE DETECTION, TREATMENT AND PREVENTION OF LEAD-BASED PAINT POISONING [REMOVED]

42 CFR Part 91 is removed.

[FR Doc. 81-28342 Filed 9-30-81; 8:45 am]
BILLING CODE 4110-85-M

---

42 CFR Parts 50, 51, 51a, 51b, 51e, 54, 54a, 54b, 56a, 59, and 91

45 CFR Parts 260, 1391, 1393, 1395, and 1396

Changes in Requirements for Programs Replaced by Block Grants

AGENCY: Department of Health and Human Services.

ACTION: Interim Final Rule with Request for Comments.

SUMMARY: The Omnibus Budget Reconciliation Act of 1981 established seven block grants administered by the Department of Health and Human Services to replace a large number of existing programs. Accordingly, we are deleting existing regulations for programs replaced by those block grants that are fully effective on October 1, 1981. We are also revising the existing regulations for those programs replaced by those block grants that are subject to the one-year transition period under the Reconciliation Act. These revisions establish the rules under which the Department will administer the categorical programs replaced by the preventive health and health services, alcohol and drug abuse and mental health services, and maternal and child health services block grants. The amendments are intended to remove burdensome and unnecessary requirements to the extent consistent with applicable laws and sound program management.

DATES: These rules are effective October 1, 1981. Comments must be received on

or before November 30, 1981. Any amendments suggested in those comments will be considered and any appropriate revisions will be made promptly.

ADDRESSES: Comments on these rules should be submitted to: Executive Secretariat, Attn: Charlotte Lewis, Department of Health and Human Services, Room 632-H, Humphrey Building, 200 Independence Avenue, SW, Washington, D.C. 20201.

FOR FURTHER INFORMATION CONTACT:

With respect to the Public Health Service Programs: Robert L. Spencer, Regulations Officer, Public Health Service, Parklawn Building, Room 17B-08, 5600 Fishers Lane, Rockville, MD 20857, (301) 443-6330.

With respect to the social services program: Michio Suzuki, Deputy Director, Office of Program Coordination and Review, 200 Independence Avenue, SW, Room 306E, Washington, D.C. 20201, (202) 245-7027.

With respect to the low-income home energy assistant program: Deborah Chassman, Acting Director, Energy Group, Office of Family Assistance, 2100 2nd Street, SW, Room B815, Washington, D.C. 20201, (202) 245-2137

SUPPLEMENTARY INFORMATION: Published elsewhere in this issue of the Federal Register are regulations implementing the block grant programs administered by the Department. Under three of the block grants, the Department will continue during fiscal year 1982 to administer the replaced categorical programs until the States qualify for block grant funds. In this document we are revising the existing regulations governing the affected categorical programs for the transition year and are removing those regulations that are no longer necessary.

Public Health Service Programs

The statutes governing the categorical programs replaced by the preventive health and health services and the alcohol and drug abuse and mental health services block grants were repealed by the Reconciliation Act effective October 1, 1981. Accordingly, the Department will continue to administer the replaced categorical programs during the transition period under the authority of section 1743 of the Reconciliation Act. Departmental administration of the programs replaced by the alcohol and drug abuse and mental health services block grant is, in addition, governed by the new section 1920 of the Public Health Service Act, which provides that grants made during the transition period must be made in accordance with paragraphs (6), (7), and (8) of section 1915(c) of that Act.

The transition provisions of the maternal and child health services block grant differ in that existing categorical program statutes remain in effect throughout fiscal year 1982 except in those States that qualify for the block grant. The Department will continue to operate the affected categorical programs under section 1743 of the Reconciliation Act and existing law.

The changes in existing Public Health Service regulations made in this document are intended to lessen the regulatory burdens on grantees and the Department that apply during the transition year. The Department has retained fundamental provisions of the programs and those regulatory requirements directed toward sound fiscal and administrative managment of projects in order to ensure that viable projects will be transferred to the States at the end of the transition period.

Social Services

The social services block grant applies to the 50 States, the District of Columbia, and the territories. Previously, the territories provided social services under titles I, IV-A, X, XIV, and XVI(AABD) of the Social Security Act, rather than under title XX. The various regulations applying to the territories under the prior programs are therefore being revised to reflect this change. 45 CFR Part 1391 (General Administration and State Plan Requirements) and Part 1393 (Service Programs under titles I, X, XIV, and XVI of the Act) are being deleted in their entirety. Part 1392 (Service Programs for Families and Children under title IV-A and B of the Act) is being retained until the Secretary issues revised regulations for the Child Welfare Program under title IV-B, as amended by Pub. L. 96-272, The Adoption Assistance and Child Welfare Act of 1980. References to titles I, X, XIV, and XVI are being deleted from the title of Subchapter J, so that it now refers to title IV only.

Regulations in 45 CFR Part 1395 (General Administration and State Plan Requirements), and Part 1396 (Social Services Programs for Individuals and Families under title XX) govern the old title XX program. These Parts are being deleted in their entirety.

Low-Income Home Energy Assistance

Since the Reconciliation Act repealed the Home Energy Assistance Act of 1980, the regulations issued in 45 CFR Part 260 to implement that act are being deleted.

Waiver of Notice and Comment Procedures and Delayed Effective Date

As noted above, the transition provisions of the Reconciliation Act are effective for the three Public Health Service Act block grants only for fiscal year 1982. The Secretary has determined that it is in the public interest to reduce regulatory burdens on grantees and the Department to the extent possible during this transition year. This determination is consistent with the intent of the conference committee report on the Reconciliation Act, which states that "In administering such transitional assistance, it is the intention of the conferees that a Federal agency shall minimize its own administrative expenses." (H.R. Rep. No. 97-208, 97th Cong., 1st Sess. 923.) It would be impractical and contrary to the public interest to utilize notice and comment procedures to develop these regulatory simplifications and reductions of regulatory burdens, since the time necessary to undertake those procedures would utilize much of the transition year. For the same reasons, the Secretary has determined that good cause exists for not postponing the effective date of these changes beyond October 1, 1981. Insofar as this document removes those regulations that are no longer needed because the underlying statutory authority has been repealed, public participation in the implementation is obviously unnecessary.

Impact Analysis

Economic Impact on Small Entities

The Secretary certifies that these rules will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, Pub. L. 96-354, because (1) the rules apply to a limited number of recipients of Federal financial assistance, many of which are not within the statutory definition of "small entity," and (2) the rules remove requirements that are considered burdensome. Thus, a regulatory flexibility analysis is not required.

Classification of Rule Under E.O. 12291

The Secretary has determined that this rule is not a "major rule" under Executive Order 12291 and thus a regulatory impact analysis is not required. The Secretary's determination is based on the finding that the rule will not:

(1) Have an annual effect on the economy of $100 million or more;

(2) Impose a major increase in costs or prices for consumers, individual

industries, Federal, State or local government agencies, or geographic regions; or

(3) Result in significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Dated: September 24, 1981.

Richard D. Schweiker,

Secretary, Department of Health and Human Services.

Effective October 1, 1981, Subchapter D, Chapter I, Title 42 Code of Federal Regulations is amended as set forth below.

Title 42—Public Health

PART 50—POLICIES OF GENERAL APPLICABILITY

42 CFR Part 50 is amended as follows:

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

Authority: Secs. 215, 1001, 1006 Public Health Service Act, as amended, 42 U.S.C. 216, 300, 300a–4; sec. 501 of Pub. L. 95–134, 91 Stat. 1164 (48 U.S.C. 1469a); sec. 1743 of Pub. L. 97–35, 95 Stat. 763 (31 U.S.C. 1243 note).

§§ 50.101–50.107 (Subpart A) [Removed and Reserved]

2. The title and sections (§§ 50.101–50.107) of Subpart A are removed and Subpart A is reserved.

PART 51—GRANTS TO STATES FOR COMPREHENSIVE PUBLIC HEALTH SERVICES

42 CFR Part 51 is amended as follows:

1. The authority citation for Part 51 is revised to read as follows:

Authority: Sec. 215 Public Health Service Act, 58 Stat. 690, as amended (42 U.S.C. 216); sec. 1743 of Pub. L. 97–35, 95 Stat. 763 (31 U.S.C. 1243 note).

§ 51.101 [Amended]

2. Section 51.101 is amended by removing the words "as authorized by section 314(d) of the Public Health Service Act, as amended," and inserting, in their place, the words "as authorized to be continued by section 1743 of the Omnibus Budget Reconciliation Act of 1981 during the October 1, 1981–October 1, 1982 period of transition to the preventive health and health services block grant authorized by sections 1901–1909 of the Public Health Service Act."

§ 51.102 [Amended]

3. Section 51.102 is amended by removing and reserving paragraph (a).

4. Section 51.103 is revised to read as follows:

§ 51.103 Grants.

(a) From the sum allotted to a State under section 1902 of the Public Health Service Act, the Secretary will, if the State does not certify its readiness to administer the block grant funds as provided in section 1743 of the Omnibus Budget Reconciliation Act of 1981, and is eligible to receive a grant under section 314(d) of the Public Health Service Act as in effect on the date of enactment of the Omnibus Act, award a grant to carry out the purposes of section 314(d).

(b) The grant will—

(1) Be in an amount determined by the Secretary to be proportionate to the portion of the State's allotment attributable to the section 314(d) funds provided to the State and entities in the State for fiscal year 1981; and

(2) Be subject to the same terms and conditions as would have been applied to such a grant in fiscal year 1981, except to extent the Secretary determines this impractical.

§ 51.104 [Removed]

5. Section 51.104 is removed.

§ 51.105 [Redesignated]

6. Section 51.105 is redesignated § 51.104.

PART 51a—GRANTS FOR MATERNAL AND CHILD HEALTH AND CRIPPLED CHILDREN'S SERVICES

42 CFR Part 51a is amended as follows:

§ 51a.309 [Amended]

1. The last sentence in the introductory paragraph of § 51a.309, and paragraphs (a) through (g) of that section, are removed.

PART 51b—PROJECT GRANTS FOR PREVENTIVE HEALTH SERVICES

42 CFR Part 51b is amended as follows:

1. The authority citation for Part 51b is revised to read as follows:

Authority: Secs. 317 and 318, Public Health Service Act (42 U.S.C. 247b and 247c); sec. 1743 of Pub. L. 97–35, 95 Stat. 763 (31 U.S.C. 1243 note).

§ 51b.304 [Amended]

2. Section 51b.304 is amended by removing and reserving paragraphs (b)(1), (b)(6), (c)(1), (c)(2), (c)(3) and (c)(5), and removing paragraph (d).

PART 51e—GRANTS FOR HOME HEALTH SERVICES AND TRAINING [REMOVED]

42 CFR Part 51e is removed.

PART 54—GRANTS FOR COMMUNITY MENTAL HEALTH CENTERS

42 CFR Part 54 is amended as follows:

1. The authority citation for Part 54 is revised to read as follows:

Authority: Sec. 1743 of Pub. L. 97–35, 95 Stat. 763 (31 U.S.C. 1243 note).

2. Section 54.101 is revised to read as follows:

§ 54.101 To whom do these regulations apply?

This subpart applies to the award and administration of grants to community mental health centers as authorized by section 1743 of the Omnibus Budget Reconciliation Act of 1981 during the October 1, 1981–October 1, 1982 period of transition to the alcohol and drug abuse and mental health services block grant authorized by section 1911–1920 of the Public Health Service Act.

3. Section 54.102 is amended by revising the definition for "Act" first paragraph to read as follows:

§ 54.102 Definitions.

* * * * *

"Act" means the Community Mental Health Centers Act (42 U.S.C. 2689 *et seq.*) other than Part D thereof as in effect before the date of enactment of the Omnibus Budget Reconciliation Act of 1981, Pub. L. 97–35.

* * * * *

§ 54.103 [Amended]

4. Section 54.103 is amended by removing paragraph (d)(2).

5. Section 54.104 is revised to read as follows:

§ 54.104 What State plan requirements apply?

A State plan approved under section 237 of the Act for fiscal year 1981 will remain in effect for fiscal year 1982, except to the extent the Secretary directs a modification or update of the plan or the State submits a modification which is approved by the Secretary.

§ 54.105 [Removed]

6. Section 54.105 is removed.

§ 54.106 [Amended]

7. Section 54.106 is amended by removing and reserving paragraph (f)(1) and removing paragraphs (c)(3), (g)(3) and the last sentence of the paragraph (g)(2) which reads "These requirements include those of Title XV of the Public Health Service Act and the implementing regulations 42 CFR Part 122, and Part I of Circular A–95 of the Office of Management and Budget."

8. Section 54.107 is amended by:

Revising the introductory text to paragraph (a) to read as follows:

§ 54.107 What are some general requirements that apply to community mental health centers grants?

(a) *Service requirements.* The services to be provided include those required under section 201(b)(1) of the Act only as follows:"

* * * * *

9. Section 54.107 is amended by removing and reserving paragraph (a)(10), (a)(11), (a)(12), (c) and removing (d)(3) and removing the words "governing body, director," from paragraphs (d)(1)(i) and (d)(1)(iv) and substituting "director".

§ 54.110 [Amended]

10. Section 54.110 is amended by removing paragraph (c)(2) and the words at the beginning of paragraph (c)(1), "Except as provided in paragraph (c)(2) of this section with respect to planning grants under section 202 of the Act, no, "and, by inserting, in the place of those words "No."

§§ 54.201-54.203 (Subpart B) [Removed]

11. Subpart B of Part 54 (§§ 54.201-54.203) is removed.

§ 54.301 [Amended]

12. Section 54.301 is amended by removing the words "under section 203 of the Act" and inserting, in their place, the words "as authorized by section 1743 of the Omnibus Budget Reconciliation Act of 1981 during the October 1, 1981-October 1, 1982 period of transition to the alcohol and drug abuse and mental health services block grant authorized by section 1911-1920 of the Public Health Service Act."

§ 54.302 [Amended]

13. Section 54.302 is amended by removing paragraphs (b)(2)(iv), (b)(2)(v), and (b)(3).

§ 54.401 [Amended]

14. Section 54.401 is amended by removing the words "under section 204 of the Act" and inserting in their place the words "as authorized by section 1743 of the Omnibus Budget Reconciliation Act of 1981 during the October 1, 1981-October 1, 1982 period of transition to the alcohol and drug abuse and mental health services block grant authorized by section 1911-1920 of the Public Health Service Act."

§§ 54.501-54.503 (Subpart E) [Removed]

15. Subpart E of Part 54 (§§ 54.501-54.503) is removed.

§ 54.601 [Amended]

16. Section 54.601 is amended by removing the words "under section 211 of the Act" and inserting in their place the words "as authorized by section 1743 of the Omnibus Budget Reconciliation Act of 1981 during the October 1, 1981-October 1, 1982 period of transition to the alcohol and drug abuse and mental health services block grant authorized by sections 1911-1920 of the Public Health Service Act."

PART 54a—GRANTS FOR ALCOHOL ABUSE AND ALCOHOLISM PREVENTION, TREATMENT, AND REHABILITATION SERVICES AND NATIONAL ALCOHOL RESEARCH CENTERS

42 CFR Part 54a is amended as follows:

1. The authority citation for Part 54a is revised to read as follows:

Authority: Sec. 504, 90 Stat. 1035 (42 U.S.C. 4588); sec. 1743 of Pub. L. 97-35 Stat. 763 (31 U.S.C. 1243 note)

2. Section 54a.101 is revised to read as follows:

§ 54a.101 Applicability.

This subpart applies to: (a) Formula and special grants to assist States, respectively, in the development of more effective alcohol abuse and alcoholism prevention, treatment, and rehabilitation programs, and in implementing the Uniform Alcoholism and Intoxication Treatment Act as those grants are authorized to be continued during fiscal year 1982 by section 1743 of the Omnibus Reconciliation Act of 1981; (b) Grants for alcohol abuse and alcoholism prevention and treatment projects as authorized to be continued during fiscal year 1982 by section 1743 of the Omnibus Budget Reconciliation Act of 1981; and (c) grant for National Alcohol Research Centers authorized by section 504 of the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act (42 U.S.C. 4588).

§ 54a.105 [Removed]

3. Section 54a.105 is removed.

4. Section 54a.201 is revised to read as follows:

§ 54a.201 Applicability.

This subpart applies to grants to assist States in planning, establishing, maintaining, coordinating, and evaluating projects and programs to deal with alcohol abuse and alcoholism as authorized to be continued by section 1743 of the Omnibus Budget Reconciliation Act of 1981 during the October 1, 1981-October 1, 1982 period of transition to the alcohol and drug abuse and mental health services block grant authorized by sections 1911-1920 of the Public Health Service Act.

5. Section 54a.203 is revised to read as follows:

§ 54a.203 Grants.

(a) From the sum allotted to a State under section 1912 of the Public Health Service Act, the Secretary will, if the State does not certify its readiness to administer the block grant funds as provided in section 1743 of the Omnibus Budget Reconciliation Act of 1981, and is eligible to receive a grant under these regulations and sections 301-303 of the Act as in effect on the date of enactment of the Omnibus Budget Reconciliation Act of 1981, award a grant to the State to carry out the purposes of sections 301-303.

(b) The grant will—

(1) Be in an amount determined by the Secretary to be proportionate to the portion of the State's allotment attributable to the section 301 funds provided to the State and entities in the State for fiscal year 1980; and

(2) Be subject to the requirements of these regulations.

§ 54.204 [Removed]

6. Section 54.204 is removed.

§ 54a.205 [Amended]

7 Section 54a.205 is amended by removing and reserving paragraph (b).

8. Section 54a.207 is revised to read as follows:

§ 54a.207 State plan; submission and review.

To receive a grant under these regulations a State must have an approved State plan for fiscal year 1981 which has been updated and modified as may be directed by the Secretary or which has been modified by the State with the approval of the Secretary.

§§ 54a.208-54a.215 [Removed]

9. Sections 54a.208, 54a.209, 54a.210, 54a.211, 54a.212, 54a.213, 54a.214 and 54a.215 are removed.

10. Subpart C of 42 CFR Part 54a is amended as follows:

(i) The authority citation for Subpart C is revised to read as follows:

Authority: Sec. 1743 of Pub. L. 97-35, 95 Stat. 763 (31 U.S.C. 1243 note)

§ 54a.301 [Amended]

(ii) Section 54a.301 is amended by:

(a) Removing the words "under section 310 of Act (42 U.S.C. 4576)."

(b) Removing the period after "standpoint" and inserting in its place "as authorized to be continued by

section 1743 of the Omnibus Budget Reconciliation Act of 1981 during the October 1, 1981–October 1, 1982 period of transition to the alcohol and drug abuse and mental health services blocks grant authorized by sections, 1911–1920 of the Public Health Service Act."

§ 54a.303 [Amended]

(iii) Section 54a.303 is amended by removing from paragraph (a) the words "agency designated under section 303 of the Act."

(iv) Section 54a.305 is amended by revising paragraph (a) to read as follows:

§ 54a.305 How is the Uniform Act grant awarded?

(a) *Grant award* From the sum allotted to a State under section 1912 of the Public Health Service Act, the Secretary may award a grant to the State, if it does not certify its readiness to administer the block grant funds as provided in section 1743 of the Omnibus Budget Reconciliation Act of 1981, and meets the requirements of these regulations. The grant will be in an amount determined by the Secretary to be proportionate to the portion of the State's allotment attributable to the Uniform Act grant funds provided to the State for fiscal year 1980

* * * * *

11. Section 54a.401 is revised to read as follows:

§ 54a.401 Applicability.

This subpart applies to grants for the prevention and treatment of alcohol abuse and alcoholism and for the rehabilitation of alcohol abusers and alcoholics as authorized to be continued during the period October 1, 1981–October 1, 1982 by section 1743 of the Omnibus Budget Reconciliation Act of 1981.

§ 54a.403 [Amended]

12. Section 54a.403 is amended by removing and revising paragraph (c)(2).

§ 54a.404 [Amended]

13. Section 54a.404 is amended by removing paragraphs (k)(1), (m), (n), (o), (q)(1), (q)(2), (r), (s), (t), and (u).

§ 54a.405 [Amended]

14. Section 54a.405 is amended by removing paragraphs (a)(4), (a)(5), (b), (c), and (d).

PART 54b—DRUG ABUSE GRANTS

42 CFR Part 54b is amended as follows:

1. The title of the Part is revised to read, "Drug Abuse Grants" as set forth above.

2. An authority citation is added to read as follows:

Authority: Sec. 1743 of Pub. L. 97–35, 95 Stat. 763 (31 U.S.C. 1243 note)

3. Section 54b.101 is revised to read as follows:

§ 54b.101 Applicability.

This part applies to drug abuse formula grants and drug abuse project grants as authorized to be continued by section 1743 of the Omnibus Budget Reconciliation Act of 1981 during the October 1, 1981–October 1, 1982 period of transition to the alcohol and drug abuse and mental health services block grant authorized by sections 1911–1920 of the Public Health Service Act.

4. Section 54b.102 is revised to read as follows:

§ 54b.102 Grants.

(a) From the sum allotted to a State under section 1912 of the Public Health Service Act, the Secretary will, if the State does not certify its readiness to administer the block grant funds as provided in section 1743 of the Omnibus Budget Reconciliation Act of 1981 and is eligible to receive a grant under section 409 or 410 of the Drug Abuse Prevention, Treatment, and Rehabilitation Act, or both, as in effect on the date of enactment of the Omnibus Act, award such a grant or grants. (The grants may be combined.)

(b) The grant or grants will—

(1) Be in amount or amounts determined by the Secretary to be proportionate to the portion of the State's allotment attributable to the section 409, section 410, or both, as the case may be, funds provided to the State and entities in the State for fiscal year 1980;

(2) Be subject to the same terms and conditions as would have been applied to such a grant or grants in fiscal year 1981, except to the extent the Secretary determines this is impractical.

PART 56a—GRANTS FOR EMERGENCY MEDICAL SERVICES SYSTEMS

42 CFR Part 56a is amended as follows:

1. The authority citation for Part 56a is revised to read as follows:

Authority: Sec. 1743 of Pub. L. 97–35, 95 Stat. 763 (31 U.S.C. 1243 note).

§§ 56a.201—56a.206 (Subpart B) [Removed and reserved]

2. Subpart B of Part 56a is removed and reserved.

§ 56a.302 [Amended]

3. Section 56a.302 is amended by removing paragraphs (a)(2), (b), and (c).

§ 56a.106 [Amended]

4. Section 56a.106 is amended by removing and reserving paragraphs (d) through (j).

§ 56a.303 [Amended]

5. Section 56a.303 is amended by removing and reserving paragraphs (c), (d), (e), (k)(1), (k)(2)(i) and (ii) and removing paragraphs (m) and (n).

§ 56a.304 [Amended]

6. Section 56a.304 is amended by removing and reserving paragraphs (b) and removing (d).

§ 56a.305 [Amended]

7. Section 56a.305 is amended by removing paragraphs (b)(4) through (b)(7).

§ 56a.306 [Amended]

8. Section 56a.306 is amended by removing and reserving paragraph (a).

§ 56a.403 [Amended]

9. Section 56a.403 is amended by removing paragraphs (a)(2), (b), and (c).

§ 56a.404 [Amended]

10. Section 56a.404 is amended by removing and reserving paragraphs (c), (d), (e), (h), (j), (1)(2)(i) and (ii), (m), and (n).

§ 56a.405 [Amended]

11. Section 56a.405 is amended by removing and reserving paragraphs (b) and removing paragraph (d).

§ 56a.406 [Amended]

12. Section 56a.406 is amended by removing paragraphs (b)(3) through (b)(6).

§ 56a.408 [Amended]

13. Section 56a.408 is amended by removing and reserving paragraph (a).

PART 59—GRANTS FOR FAMILY PLANNING SERVICES

42 CFR Part 59, Subpart D, is amended as follows:

§ 59.304 [Amended]

§ 59.304 is amended by removing and reserving paragraphs (a)(16) and (a)(17).

PART 91—GRANTS FOR THE DETECTION, TREATMENT AND PREVENTION OF LEAD-BASED PAINT POISONING

42 CFR Part 91 is amended as follows:

91.5 [Amended]

1. Section 91.5 (c), introductory text is amended by removing the phrase "to accomplish the objectives and a schedule for their accomplishment" from the first sentence of that paragraph.

2. Section 91.5 (c)(3) is revised to read as follows:

§ 91.5 What are the specific application requirements for grants for detection and reduction of lead-based paint poisoning?

* * * * *

(c) * * *

(3) An intensive community screening program to detect evidence of undue lead absorption and lead poisoning in children. Emphasis shall be placed on door-to-door efforts designed to reach the greatest number of children at risk. The use of clinics shall be encouraged for "walk-in" testing.

* * * * *

§ 91.5 [Amended]

3. Section 91.5 (c)(4)(i) is amended by removing the phrase "by washing, sanding, scraping, using a wire brush or other cleaning."

§ 91.5 [Amended]

4. Section 91.5 is amended by removing and reserving paragraph (c)(7) and removing paragraph (c)(10).

Title 45—Public Welfare

PART 260—LOW INCOME ENERGY ASSISTANCE PROGRAM [REMOVED]

45 CFR, Chapter II is amended by removing Part 260.

45 CFR, Chapter XIII is amended as follows:

1. The title of Subchapter J is revised to read as follows:

SUBCHAPTER J—SOCIAL SERVICES FOR INDIVIDUALS AND FAMILIES UNDER TITLE IV-A AND B OF THE SOCIAL SECURITY ACT.

PART 1391—GENERAL ADMINISTRATION AND STATE PLAN REQUIREMENTS. [REMOVED]

PART 1393—SERVICE PROGRAMS FOR AGED, BLIND, OR DISABLED PERSONS: TITLES I, X, XIV, AND XVI (AABD) OF THE SOCIAL SECURITY ACT. [REMOVED]

PART 1395—GENERAL ADMINISTRATION AND STATE PLAN REQUIREMENTS. [REMOVED]

PART 1396—SOCIAL SERVICES PROGRAMS FOR INDIVIDUALS AND FAMILIES: TITLE XX OF THE SOCIAL SECURITY ACT. [REMOVED]

2. Parts 1391, 1393, 1395, and 1396 are removed.

[FR Doc. 81-28343 Filed 9-30-81; 8:45 am]
BILLING CODE 4110-12-M

federal register

Thursday
October 1, 1981

Part XII

Department of Transportation

Federal Aviation Administration

Size of Registration Marks

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 45

[Docket No. 20424; Amdt. No. 45-13]

Size of Registration Marks

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The amendments require the display of registration marks, N-numbers, at least 12 inches high on certain fixed-wing aircraft in place of the smaller marks previously allowed by Federal Aviation Regulations. The amendments are needed to provide better visual identification of those aircraft. The rule is intended to improve air traffic flow at airports, discourage violations, and improve enforcement of Federal Aviation Regulations regarding low-flying aircraft.

To avoid undue cost of compliance to aircraft owners and manufacturers, an aircraft displaying small marks before the effective date of the amendments and an aircraft manufactured after November 2, 1981, but before January 1, 1983, will be allowed to continue to display those marks until the aircraft is repainted or the marks are restored, repainted, or changed. These amendments do not change existing rules on the use of special marking procedures for: (1) Small aircraft used for exhibition purposes; (2) small aircraft built at least 30 years ago; (3) unusually configured aircraft; and (4) aircraft issued an experimental certificate for operating as either exhibition or amateur-built aircraft.

EFFECTIVE DATE: November 2, 1981.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph A. Sirkis, Regulatory Projects Branch, AVS-24, Safety Regulations Staff, Associate Administrator for Aviation Standards, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; Telephone (202) 755-8716.

SUPPLEMENTARY INFORMATION:

Background

On December 31, 1960, the FAA began to require 12-inch-high registration marks, N-numbers, to be displayed on the sides of airplane fuselages. The use of these marks had been advocated by the U.S. Air Force and air traffic controllers. The Air Force advocated the side markings as a means of decreasing the collision hazard associated with air-to-air identification of aircraft. Air traffic controllers also advised that these marks facilitate visual identification of aircraft, which aids in safer aircraft traffic control at airports. At the same time, underwing marks were considered and rejected as being costly and ineffective.

In 1977, the size of N-numbers was reduced to 3 inches for small fixed-wing aircraft with speeds not greater than 180 knots. This was in response to a petition for rulemaking submitted by the Experimental Aircraft Association (EAA) to improve the aesthetic appearance of small general aviation aircraft. Based on the facts at hand and since there were no substantive objections from the Department of Defense, law enforcement agencies, or the public sector, the amendment was adopted.

After fixed-wing aircraft began to display 3-inch marks, the FAA began to receive complaints from private citizens, law enforcement agencies, the U.S. Customs Service, and the Department of Defense. Air Traffic Service reports and field inspectors' reports also began to show instances in which aircraft displaying these small marks could not be identified. These complaints established that operational efficiency has been affected by aircraft displaying small numbers and that positive and timely visual identification at busy general aviation airports has been compromised.

Because of these concerns, on July 24, 1980, Notice of Proposed Rulemaking No. 80-11 was issued (45 FR 50810; July 31, 1980), proposing reinstatement of the 12-inch marks on certain aircraft. The comment period was extended 60 days, to November 28, 1980, to allow participants ample time to submit comments.

Notice 80-11 also responded to the petition of Raven Industries, Inc., of Sioux Falls, South Dakota, which requested that the FAA reduce the 20-inch height requirement for nationality and registration marks on airships, spherical balloons, and nonspherical balloons.

Interested persons were given an opportunity to participate in the making of this rule, and due consideration was given to all information submitted. Except as discussed in this preamble, the revisions adopted by this amendment and the reasons for them are the same as those in Notice 80-11.

Need for Amendments

Civic organizations in California, Florida, New York, New Jersey, and Hawaii have submitted resolutions asking, and private citizens have requested, that the FAA impose regulations that require larger N-numbers to be displayed on all civil aircraft for better visual identification. The organizations have expressed concern about low-flying aircraft over citizen's homes that cause hazardous conditions and considerable noise. Further, citizens complain that aircraft cannot be identified positively because the identification marks are too small to see. Without accurate identification, appropriate action cannot be taken against violators of regulations.

The FAA has received reports and complaints that law enforcement activities have been hampered by 3-inch marks. Agencies on the Federal, State, and local levels have complained of an increase in cases involving aircraft in various illegal acts and operations. Some law enforcement agencies have asserted that it is virtually impossible to identify aircraft displaying small marks and that identification through registration marks is the important element in investigation and in prosecutions.

The Department of Defense (DOD) has recommended that 12-inch registation marks again be required on all civil aircraft. The recommendation was based on statistical data acquired from hazardous traffic reports. DOD indicated that large N-numbers would eliminate the need for military aircraft to closely approach civil aircraft displaying small marks to identify them. Accordingly, DOD has reconsidered and revised its 1976 decision regarding 3-inch marks.

Air traffic controller reports have indicated that even with mandatory radio communication between pilots and controllers and the aid of optics (binoculars, etc.), a high rate of aircraft traffic flow cannot be maintained safely without positive visual identification of aircraft, especially at airports with high general aviation activity. This air traffic problem is increased at complex airports with multiple runways and intersections, where it is difficult for transient pilots to know, or properly describe, their location on the airport. The frequent use of radio transmissions to ascertain an aircraft's exact location is time-consuming and detrimental to airport operation because control frequency congestion is also increased. This congestion of the control frequency leads to blocked or partially blocked radio transmissions that often result in misinterpreted clearances and unauthorized aircraft movements. Complicating the problem of safe and efficient aircraft control is the low level of experience of some pilots, which frequently makes it essential to identify

quickly, and communicate with, an aircraft making an unauthorized movement.

For these reasons it is in the public interest to change the minimum height of aircraft registration marks from 2 inches and 3 inches to 12 inches on aircraft that have been involved in these problems.

Discussion of Comments

Comments from individuals on Notice 80-11 largely oppose the proposal. However, many commenters give no reasons for their opposition or specific suggestions that would resolve the problems posed by the old regulation. Many commenters indicate a misunderstanding of the notice or conclude that no one problem is important enough to require a rule change. For example, early comments indicate owners of excepted aircraft are not aware of the exceptions. Others are not aware of the minimal cost involved or of the provision for delayed compliance. Many are of the opinion that large numbers should not be required since the same size numbers are not used on other transportation vehicles; and cannot be seen at night, in bad weather, or when aircraft are out of visible range. Some objections minimize or dismiss out of hand the need for improving aircraft identification in favor of aesthetics. These issues are discussed in subsequent paragraphs with specific comments on the proposed rule.

Comments from those favoring the rule indicate general agreement with the notice as published. The requests and comments concerned with improving aircraft identification span a wide range of specific problems. For example, citizens and civic organizations from all across the United States cite as unacceptable hazardous low flying, the disregard of normal air traffic patterns, and the disregard of noise abatement procedures by unidentifiable aircraft. The problems also involve violations by aircraft that engage in sightseeing while flying low over congested areas, such as beaches, parks, or stadium events; agricultural aircraft improperly spraying toxic materials; as well as prohibited hunting, smuggling, and other illegal activities.

Because of smugglers using small aircraft, government agencies have requested the FAA to revert back to 12-inch-high marks. For example, the Western Caribbean/Central American Flight Safety Group, with U.S. participation that includes the Drug Enforcement Administration, the FAA, the Customs Service, and the National Transportation Safety Board, requested that the size of N-numbers on small aircraft be increased.

Further, FAA General Aviation District Offices have reported that investigations and enforcement actions have been hampered by the lack of positive aircraft identification. Since 3-inch marks were allowed, the number of reported low-flying violations has increased nearly 20 percent, yet the number of investigations completed dropped nearly 30 percent. Identification of aircraft by description instead of N-number is insufficient to locate alleged violators.

The analysis of over 2,000 comments submitted in response to the notice indicated that approximately 10 percent are in favor of the amendment, while 90 percent are opposed. The majority of the comments, those that oppose large numbers, include the views of organizations representing aircraft interests.

Nearly 60 percent state that N-numbers are not needed to identify aircraft or that 3-inch marks are adequate for visual identification. Over 40 percent contend that large numbers are costly, and nearly 40 percent state that large "ugly" numbers disfigure aircraft. Nearly 25 percent comment that the proposed amendments would discriminate against some small aircraft owners. Close to 25 percent indicate that the 1977 FAA decision to allow certain fixed-wing aircraft to display 3-inch marks was justified and that the decision should be maintained.

Need for Identification by N-Number

Over 1,100 comments contend that N-numbers are not needed to identify aircraft or that 3-inch numbers are adequate for visual identification. To support these views, the following comments were offered:

(1) When aircraft identification is needed, it is mostly done by color, type, and location only.

This comment is contradicted by the experience of FAA air traffic control and enforcement personnel. Abstract descriptions of aircraft using color, type, or location have been ineffective in enforcing regulations. Further, they do not meet the needs for safe and effective control of aircraft movements.

(2) Registration numbers are rarely used in controlling air carrier aircraft at large air carrier airports or military aircraft at military airports.

With regard to airline aircraft, while it is true that at large air carrier airports controllers handle airline aircraft without relying on N-numbers, the conditions at busy general aviation airports are different from those encountered at air carrier airports. Fewer air carrier aircraft are handled at any one time, and these are easily distinguished by unique airline color scheme and type of aircraft. In the case of general aviation aircraft, however, it is not uncommon to have many similar-looking aircraft with no distinguishing characteristics lined up on a taxiway.

Another important consideration is that of air terminals. Air carrier aircraft arrive at and depart quickly from gates near the tower where they are more easily seen. In contrast, the busiest general aviation parking and servicing areas are not usually near the tower, making visual confirmation of aircraft movements difficult. Small registration markings intensify the identification problem.

With regard to military base operations, the larger military aircraft are handled in the same manner as air carrier aircraft. Many smaller aircraft flights are formation flights, and control communications only involve the lead aircraft. At basic training bases, many flights are performed under a form of control where aircraft follow each other in a preset pattern, and no attempt is made to clear each aircraft to land or take off, as required for civil aircraft.

(3) To identify aircraft, conditions have to be favorable with respect to daylight, weather, obstructions, and aircraft position and range.

It is true that some conditions preclude aircraft identification by registration marks either for enforcement or air traffic control purposes. This is of course the case during IFR weather and at night; however, general aviation night or IFR operations are not an air traffic problem since activity is lower during the night and in IFR weather. In contrast, during VFR daylight hours, traffic counts of 275 to 300 operations per hour are not uncommon at the busiest airports.

It is true that aircraft are not always visible from the tower because hangars or other aircraft obstruct the view; however, once aircraft approach a controlled taxiway or runway, positive identification by the tower is mandatory. The method of identification will vary from one airport to another. When traffic is heavy, this is usually done by quick visual confirmation of the N-numbers and by radio contact as the aircraft enters a controlled portion of the airport. Aircraft that display small marks preclude fast traffic flow since quick visual confirmation is not possible.

(4) Identification numbers are rarely used in controlling private aircraft at large aviation events, such as the EAA Convention at Oshkosh, Wisconsin. Approximately 450 commenters cite the aircraft traffic control methods used at

various aviation conventions as proof that N-numbers are not needed on aircraft.

The handling of air traffic at large aviation events is accomplished in accordance with restrictive and highly specialized procedures. The specialized procedures are published in advance, and restrictions include closing designated runways and curtailing instrument approaches for the duration of the event. Regular airport operations do not lend themselves to these kinds of restrictions.

Cost of Application

Approximately 800 comments, including those the Aircraft Owners and Pilots Association, the Experimental Aircraft Association, the National Business Aircraft Association, and the General Aviation Manufacturers Association, contend that the cost of increasing the size of N-numbers would impose an undue burden on owners who would have to re-mark recently painted aircraft displaying 3-inch numbers.

It was apparent that many failed to note that the rule allows affected aircraft displaying small N-numbers before the effective date of this amendment to continue to display the numbers until the aircraft is repainted, or the numbers are repainted, restored, or changed.

The General Aviation Manufacturers Association (GAMA) comments that a member study of the cost associated with adopting the 12-inch numbers indicates that to process and apply these larger N-numbers on aircraft would cost approximately $50 more than the smaller numbers; that this significant cost would be passed on to owners; and that the burden of compliance and the associated financial strain would be extreme.

FAA information based on estimates obtained from aircraft painting companies indicates that there is no significant price difference for initial painting or repainting of an aircraft that required 3-inch or 12-inch N-numbers, since the cost of applying numbers is negligible when compared to the total cost of painting.

GAMA based its cost estimates on the difference between the cost of applying 3-inch decal numbers as opposed to painting 12-inch numbers on most aircraft. The FAA recognizes that decals have been applied on many new smooth-fuselage aircraft surfaces and by aircraft owners who apply their own numbers. These costs would reflect a lower cost compared with painting N-numbers. Professional aircraft painters on the other hand indicated that painting N-numbers was preferred to applying decals which have to be ordered or stocked for each application and are not cost-effective.

In either case the cost would be minimal. Even the maximum increase in cost of applying N-numbers, estimated at approximately $50 by GAMA, when compared with the estimated sales price of $25,000 to $100,000 for affected new aircraft, is not a significant enough burden to outweigh the need for larger numbers. When an aircraft is only re-marked, this incremental cost would not be significant compared to the operating costs of the aircraft during the period preceding re-marking.

Moreover, to avoid any undue cost burden on aircraft owners and manufacturers, the rule, as adopted, will allow an aircraft which displayed marks smaller than 12 inches high before the effective date of these amendments and a new aircraft manufactured after the effective date of the amendments, but before January 1, 1983, to display those marks until the aircraft is repainted or the marks are restored, repainted, or changed.

Aircraft Aesthetics

Approximately 700 commenters assert that the 12-inch N-numbers affect the aesthetics of aircraft and ruin their appearance. The FAA recognizes that this may be true; however, the safety benefits of providing for positive aircraft identification have been determined to outweigh aircraft aesthetics.

Discrimination

Approximately 400 commenters contend that the rule is discriminatory. Most comments regarding discrimination note that vehicles in other transportation systems such as automobiles, trucks, boats, and ships display small marks or marks that are proportionately smaller than the 12-inch marks required for aircraft.

The FAA recognizes the differences in the size of registration marks for vehicles in the different modes of transportation. However, there are vast differences in visual identification requirements imposed by the different operational environments. Since aircraft speeds are much greater than those of automobiles, trucks, boats, and ships and aircraft operations are not simply confined to roadways or waterways at ground and sea level, a comparison of requirements for visual identification is not appropriate.

Other commenters believe that it is unjust discrimination to allow aircraft certificated in the experimental category to display 3-inch marks while requiring those in the standard category to display 12-inch marks; however, the discrimination between categories which concerns these commenters has a reasonable basis. The exceptions to the 12-inch requirement for experimental exhibition, experimental amateur-built, and antique aircraft are supported by consideration of the operational limitations imposed on these aircraft and their limited number.

FAA recognized that the large marks would preclude antique aircraft owners from preserving authenticity and diminish the historical value of these aircraft.

Regarding the operation of experimental-exhibition and experimental amateur-built aircraft (certificated under § 21.191(d) and (g)), FAA has found that these aircraft have not created identification problems. They are required by § 91.42 to operate in limited, tightly controlled and monitored environments, which separate them from busy air traffic control operations. The limitations prescribe that unless authorized by the Administrator experimental aircraft cannot be operated over densely populated areas or congested airways and must operate in daylight hours. The operators also must notify the control tower of the experimental nature of the aircraft when operating into or out of airports with operating control towers. Finally, they must adhere to any other limitations prescribed by the Administrator.

Antique Aircraft

In Notice 80-11, the FAA pointed out that the original designs of many aircraft currently in service are approaching or exceed 30 years of age. This is causing a rapid increase in the number of aircraft eligible to display 2-inch-high marks. In addition, many newer aircraft that have the same external configuration as an aircraft built at least 30 years ago would also be able to display the 2-inch marks. The intent of § 45.22 was to permit the small number of owners exhibiting antique and amateur-built copies of antique aircraft to display 2-inch marks rather than the 12-inch identifications marks then required by § 45.29. The FAA recognized that the more visible large marks would detract from the authenticity and diminish the historical value of these small aircraft. The FAA did not anticipate that the rule would eventually permit large commercial aircraft, as well as an increasing number of commercially manufactured copies of older aircraft not in the experimental exhibition or experimental amateur-built category, to display the less-visible 2-inch marks. While the number of antique small aircraft is limited, there is

an increasing number of commercially manufactured aircraft that look like them, and this is contributing to the identification and air traffic problems already discussed.

To remedy this problem, this rule will require aircraft not certificated as experimental exhibition or experimental amateur-built to display 12-inch marks, unless they are small aircraft built 30 years ago. These aircraft will no longer be able to display marks as small as 2 inches high, and a proliferation of new aircraft displaying these small marks is expected to cease.

Gliders, Airships, and Balloons

In response to the petition of Raven Industries, Inc., Notice 80-11 also proposed to allow airships, spherical balloons, and nonspherical balloons to display marks at least 3 inches high. Raven Industries asked that the height requirement for nationality and registration marks be reduced from the current requirement of 20 inches to 3 inches for airships, spherical balloons, and nonspherical balloons.

No adverse comments were submitted concerning the decrease in size of marks on gliders, airships, and balloons.

When compared to powered aircraft, there are a relatively small number of gliders (less than 4,000) in operation. Many gliders are not equipped with two-way radios and, thus, operate at uncontrolled airports and at airports with low levels of general aviation activity. These factors minimize radio communication and air traffic control problems associated with gliders displaying 3-inch marks. The lack of easily identifiable numbers has not created enforcement problems with these aircraft. For these reasons, the rule has maintained the 3-inch numbers for registration marks on gliders.

Because of the smaller number and individual characteristics of airships and balloons, they are more easily identified than other aircraft. In addition, balloons are not likely to be used in the conduct of illegal activities, as they would be readily identifiable by their individual characteristics. Their size and maneuvering capabilities facilitiate identification and apprehension. Accordingly, marks on airships, spherical balloons, and nonspherical balloons are being reduced from 20 inches to 3 inches.

Alternatives

Two alternatives were available to resolve the aircraft identification problems.

One solution would be to maintain the status quo but restrict the use of busy general aviation airports to aircraft displaying marks at least 12 inches high. This option would solve the identification problems at these airports but would be difficult to implement and enforce. Further, the current law enforcement problems would continue unresolved and would be compounded by new aircraft displaying small marks. The identification problems noted by DOD, drug enforcement agencies, and civic organizations would in effect be ignored by this option. Accordingly, this option was not considered realistic.

The second and only viable solution is to raise the marks on aircraft involved in the identification problems to a size that in the past has facilitated safe and efficient air traffic control as well as enforcement.

Marks 12 inches high can be identified from four times as far as 3-inch-high marks. The effectiveness of 12-inch marks has been confirmed by air traffic controllers and field inspectors under actual operating conditions. Moreover, with these 12-inch marks, the hazardous close manuevering now required by DOD amd the Drug Enforcement Administration to identify aircraft displaying 3-inch marks will be eliminated.

Regulatory Evaluation

The FAA conducted an economic study to determine the benefits and costs of the new registration marks requirements. This study is included in the rules docket for the final rule.

The costs are the incremental costs (costs that would not result unless the regulation is in effect) incurred in the application of 12-inch registration marks instead of 3-inch registration marks to all airplanes affected by the new amendments. By the FAA's not establishing a mandatory compliance date for owners of airplanes presently displaying 3-inch marks, owners will not have to display 12-inch marks until their aircraft are re-marked or repainted, which is done on approximately a 7-year cycle. The individual cost burden will be largely eliminated because the incremental cost attributable to painting 12-inch as opposed to 3-inch marks is a small percentage of the total cost of repainting an airplane.

The FAA found the estimated incremental cost to be highly judgmental. The FAA contacted several aircraft painting enterprises, and the price quoted to repaint an airplane was the same regardless of the size of the registration marks to be displayed. The incremental cost of applying N-numbers is only a small portion of the price to repaint an old airplane or the price of a new aircraft. For example, a price of $2,000 was quoted to repaint a medium-size general aviation airplane. The $46.50 incremental cost estimated by GAMA is 2.3 percent of the total repainting price. Further, assuming the price of a similar new general aviation airplane is approximately $50,000, the incremental cost of applying 12-inch instead of 3-inch marks would be only 0.1 percent of the total price of the airplane.

With respect to re-marking without repainting, the cost remains minimal. While the continued use of 3-inch marks may present a minimal saving as opposed to re-marking with 12-inch marks, the minor cost involved does not outweigh the considerations involved in the current identification problems. The FAA estimated the maximum costs for remarking N-numbers by assuming a 7-year cycle for repainting and even the maximum incremental cost of re-marking would not be significant compared to the cost of operating the airplane during that 7-year period.

The total cost of this final rule depends on the volume of future aircraft production. The FAA made 10-year cost estimates with the $46.50 incremental cost supplied by GAMA for low-demand, constant-demand, and high-demand scenarios for the approximately 240,000 present active airplane and those to be produced in the next 10 years. The scenario cost estimates are $13.8 million, $15.0 million, and $15.8 million, respectively. It must be emphasized that these are estimates of the maximum cost under each scenario condition. The FAA expects that the actual incremental outlay for compliance for each airplane involved will not be as much as $46.50 and, therefore, that the true total cost of compliance with the final rule under each scenario will be considerably less.

Adoption of the amendment

Accordingly, Part 45 of the Federal Aviation Regulations (14 CFR Part 45) is amended as follows, effective November 2, 1981:

PART 45—IDENTIFICATION AND REGISTRATION MARKING

1. By revising the introductory text of § 45.22(b) to read as follows:

§ 45.22 Exhibition, antique, and other aircraft: Special rules.

* * * * *

(b) A small U.S.-registered aircraft built at least 30 years ago or a U.S.-registered aircraft for which an experimental certificate has been issued under § 21.191(d) or 21.191(g) for operation as an exhibition aircraft or as an amateur-built aircraft and which has

the same external configuration as an aircraft built at least 30 years ago may be operated without displaying marks in accordance with §§ 45.21 and 45.23 through 45.33 if:

* * * * *

2. By revising § 45.29(b) (1) and (2) to read as follows:

§ 45.29 Size of marks.

* * * * *

(b) *Height.* The character marks must be of equal height and on—

(1) Fixed-wing aircraft, must be at least 12 inches high, except that:

(i) An aircraft displaying marks at least 2 inches high before November 1, 1981 and an aircraft manufactured after November 2, 1981, but before January 1, 1983, may display those marks until the aircraft is repainted or the marks are repainted, restored, or changed;

(ii) Marks at least 3 inches high may be displayed on a glider;

(iii) Marks at least 3 inches high may be displayed on an aircraft for which an experimental certificate has been issued under § 21.191(d) or 21.191(g) for operating as an exhibition aircraft or as an amateur-built aircraft when the maximum cruising speed of the aircraft does not exceed 180 knots CAS; and

(iv) Marks may be displayed on an exhibition, antique, or other aircraft in accordance with § 45.22.

(2) Airships, spherical balloons, and nonspherical balloons, must be at least 3 inches high; and

* * * * *

(Secs. 307(c), 313(a), 501, and 601(a), Federal Aviation Act of 1958, as amended (49 U.S.C. 1348(c), 1354(a), 1401, and 1421(a); and sec. 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).)

Note.—Since this amendment will impose only a minimal increase in the costs associated with marking aircraft in the future and would not impose any other cost or other economic burden on aircraft owners and manufacturers, it has been determined that this is not a major regulation under Executive Order 12291 and that, under the criteria of the Regulatory Flexibility Act, it will not have a significant impact on a substantial number of small entities. In addition, the FAA has determined that this regulation is not considered to be significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). A copy of the evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the person identified under the caption "FOR FURTHER INFORMATION CONTACT."

Issued in Washington, D.C., on September 3, 1981.

J. Lynn Helms,

Administrator.

[FR Doc. 81-28606 Filed 9-30-81; 8:45 am]

BILLING CODE 4910-13-M

federal register

Thursday
October 1, 1981

Part XIII

Department of Labor

Employment and Training Administration

Department of Health and Human Services

Office of Human Development Services

Work Incentive Program for AFDC Recipients Under Title IV of the Social Security Act

DEPARTMENT OF LABOR

Employment and Training Administration

29 CFR Part 56

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Human Development Services

45 CFR Part 224

Work Incentive Program for AFDC Recipients Under Title IV of the Social Security Act

AGENCIES: Employment and Training Administration, Labor; and Office of Human Development Services, Health and Human Services.

ACTION: Interim Final rules with a 60-day comment period.

SUMMARY: The Secretary of Labor, and the Secretary of Health and Human Services, are jointly revising on an interim basis the regulations for the Work Incentive Program. These rules are made necessary by the Social Security Disability Amendments of 1980. Other necessary technical changes are also being made.

DATE: Effective October 1, 1981, except that sections 45 CFR 224.41 and 29 CFR 56.41 will not become effective until approval after that date by the Office of Management and Budget pursuant to provisions of Executive Order 12291. However, consideration will be given to comments received before November 2, 1981. These will be carefully considered, and any changes to these regulations or our reasons for not accepting recommendations for change will be published in the Federal Register.

ADDRESSES: Mail or deliver comments to the Executive Director, Work Incentive Program, Patrick Henry Building, Room 5102, 601 D Street NW., Washington, D.C. 20213. Agencies and organizations are requested to submit comments in duplicate. Beginning October 15, 1981, these comments shall be available for public review at the above address, between the hours of 9 a.m. and 4 p.m., Monday through Friday, except on Federal holidays.

FOR FURTHER INFORMATION CONTACT: Robert Easley, (202) 376-7030.

SUPPLEMENTARY INFORMATION:

Backgound

The purpose of the WIN program is to utilize all available employment and social services, including those authorized under provisions of other laws, so that individuals receiving Aid to Families with Dependent Children (AFDC) under Part A of Title IV of the Social Security Act will be furnished incentives, opportunities, and necessary services for (1) the employment of such individuals in the regular economy, (2) the training of such individuals for work in the regular economy, and (3) the participation of such individuals in WIN public service employment, thus assisting the families of such individuals to achieve economic independence and to assume useful roles in their communities.

History of the WIN Program

Enactment of amendments to Title IV of the Social Security Act in 1967, authorizing the Work Incentive Program (Pub. L. 90-248), was a recognition of the need for an employment program directed to the special needs of public assistance recipients and their families. Earlier measures funded under the Manpower Development and Training Act of 1962 (Pub. L. 87-415) and the Economic Opportunity Act of 1964 (Pub. L. 88-452) provided some assistance to this group but did not address the multiple problems of the public assistance population, and had limited impact.

Under the 1967 legislation, registration in WIN was by referral of persons deemed by public welfare agencies to be appropriate for participation. An employment plan tailored to the specific needs and goals of each individual was developed jointly by the registrant and WIN staff. Emphasis tended to be on the provision of classroom training and other aids to employability development, rather than on immediate job placement.

Amendments to Title IV of the Social Security Act (Act) in December 1971 (Pub. L. 92-223) changed the administration and focus of the program. WIN registration was mandated for all persons at least 16 years of age receiving or applying for AFDC, unless legally exempt. Exemption were provided under Section 402(a)(19)(A) of the Act (42 U.S.C. 602(a)(19)(A)) for full-time students, the ill and disabled, persons too remote from WIN program sites, and certain persons needed to care for a family member in the home.

The emphasis was shifted from employability development to employment at the earliest point feasible in the registrant's WIN experience. Changes in regulations which became effective in 1976 further increased the emphasis on direct placement into unsubsidized employment. See, e.g., 41 FR 47700 (October 29, 1976).

Employment-related social services are arranged for or provided by separate administrative unit (SAU) staff who participate with WIN sponsor staff to develop individual employability plans with registrants. These services can include child care, remedial medical services, home management, counseling, family planning, and transportation to needed services.

Administration

The WIN program is administered by the National Coordinating Committee (NCC) at the National level (which is composed of the Assistant Secretary for Employment and Training, Department of Labor (DOL) and the Assistant Secretary for Human Development Services, Department of Health and Human Services (DHHS)) and the Regional Coordination Committees (RCCs) (which is composed of Regional Administrators from both Departments) in each Region. The RCC reviews and approves State WIN plans and oversees the operational and administrative procedures of state programs.

At the State level, the State WIN sponsor and the State welfare agency develop an annual State WIN plan for operation of the WIN program in the State and submit it to the appropriate Regional Coordination Committee for approval. The State WIN sponsor and State welfare agency also administer and supervise the administration of the WIN program in each State.

At the local level, there are three units involved—the income maintenance unit (IMU), the WIN sponsor, and the separate administration unit (SAU). The IMU determines AFDC eligibility and exemption status and refers suitable persons to the WIN program. The WIN sponsor (usually part of the State job service) registers referred individuals and provides work and training services. The WIN sponsor and the SAU appraise registrants and develop an employability plan for each registrant found suitable for participation in the program. The SAU furnishes social services to enable registrants to engage in employment, training, and employment-related activities.

Summary of the 1980 Amendments

Section 401 of the Social Security Disability Amendments of 1980 (Pub. L. 96-265) includes amendments to update and introduce changes to the WIN legislation to make the program more effective for WIN registrants.

The changes, as follow, also reflect WIN operational experience over the

years, research findings, and the legislative intent to help welfare recipients to become employed:

(1) The 1980 amendments provide authority for requiring employment search activities for WIN registrants, including applicants; and authorize reimbursement of employment search expenses of all participants.

(2) The 1980 amendments authorize, for the first time, the provision of supportive services to applicants as well as recipients, when needed to support employment-related activities;

(3) The amendments also exempt AFDC applicants and recipients who work not less than 30 hours a week from registration. This will eliminate the WIN registration requirements for those working individuals and reduce paperwork requirements of local WIN staff;

(4) The amendments authorize the Secretaries of DOL and DHHS to define sanction periods in cases where individuals fail or refuse to participate in WIN, terminate or refuse to accept employment, or reduce earnings without good cause;

(5) The amendments eliminate the 60-day counseling period previously required for individuals refusing to participate without good cause;

(6) Other changes are designed to bring the public employment agencies and the public welfare agencies, which are respectively responsible for administering the employment-related and social services-related aspects of WIN, into closer cooperation and communication by encouraging the collocation of their local offices;

(7) The legislation provides that individuals not be referred to employment which does not meet the appropriate work criteria;

(8) In the past, a State's 10 percent match for social services expenditures had to be in cash. Under the new legislation, this share may also be "in-kind" which conforms to the State's employment and training expenditures match; and

(9) The 1980 amendments clarify that there is no disregard of income from WIN public service employment in the calculation of the standard of need for an AFDC grant.

Discussion of Amendments to WIN Regulations Implementing Section 401 of the 1980 Amendments (Pub. L. 96-265)

1. *Authorization of Employment-related Activities.*

a. *The Statute: Section 402(a)(19)(A) of the Social Security Act.*

Before the 1980 amendments, an AFDC applicant or recipient had to register under the WIN program for employment services, training, and employment.

The amendments now also authorize an AFDC applicant or recipient to participate in employment-related activities, including employment search. This new activity is supported by research and demonstration findings that the potential for registrants' success in obtaining employment is increased if registrants are exposed to jobs and job-finding skills as quickly as possible.

The Senate Finance Committee reported that:

> Despite growing success in placing AFDC recipients in employment, the committee believes that the present statutory requirements should be strengthened in such a way as to provide additional encouragement for welfare recipients to move into employment. The committee further believes that AFDC recipients who are able to work should be required to actively seek employment and that this should be made explicit in the law. The committee amendment therefore would amend Title IV-A to provide that AFDC recipients who are not excluded from WIN registration by law will be required, as a condition of continuing eligibility for AFDC, to participate in the full range of employment-related activities which are part of the WIN program, including employment search activities * * *. The committee anticipates that with such an employment search requirement, substantial numbers of AFDC recipients will find jobs and welfare costs will be reduced.

[S. Rep. No. 96-408, 96th Cong., 1st Sess., 63 (1979).]

b. *The Rule: 29 CFR 56.41 and 45 CFR 224.41 of the regulations.*

The "intensive manpower services" (IMS) component previously established in 29 CFR 56.41 (1980) and 45 CFR 224.41 (1980) has been discontinued. IMS activities have been incorporated into the new "employment-related activities," which is an umbrella activity for WIN job-seeking, designed to enable staff to work with more registrants, including AFDC applicants.

This rule will enable a larger number of WIN registrants to engage in employment search supported by instruction, counseling, and guidance. WIN participants in employment-related activities will have access to the full range of WIN jobseeking services, and will be able to take part on a schedule developed for each individual on consecutive or intermittent days, based on the person's needs and goals.

States will have the flexibility to design the employment-related activities, and to establish the criteria for selection of WIN registrants and the level of services to be provided.

The 1980 amendments provide that employment search not exceed eight weeks each year. DHHS and DOL interpret eight weeks of employment search to mean 40 work days. This definition gives the flexibility needed at the local level to provide for individual registrants' differing needs and situations. The 40-day limit is on *required* employment search. Additional voluntary participation on the part of the WIN registrant is encouraged.

Although an AFDC applicant or recipient must register with the WIN program for employment services, training, employment, and other employment-related activities (including employment search), participation in employment-related activities is not required of all WIN registrants. Local WIN offices will select the registrants for this activity on an individual basis in accordance with established practices.

2. *Social Services for Employment-related Activities for AFDC Applicants and Recipients.*

a. *The Statute: Section 402(a)(19)(G)(ii)(II) of the Social Security Act.*

The 1980 amendments require that social services needed to support WIN registrants in employment-related activities be provided. The major change is the authorization that permits the extension of the provision of purchased social services to AFDC *applicants*, as well as recipients, to enable them to participate.

This change enables WIN to provide immediate services to WIN registrants, and in many cases, to assist them to obtain a job before they become AFDC recipients. Research findings show that the faster a WIN registrant is assisted the more likely he or she is to be successful in getting a job and become self-supporting. Research reports and the results of demonstrations have been made available to the States to enable them to incorporate the "immediate services" concept into program operations.

b. *The Rule: 29 CFR 56.22 and 45 CFR 224.22; and 29 CFR 56.30 and 45 CFR 224.30 of the regulations.*

Under the revision of the regulations WIN will now be enabled to pay for social services for AFDC *applicants* so that applicants can participate in employment-related activities. Applicants may be certified, or services can be arranged for or provided on an occasional basis without certification so that applicants can participate in employment-related activities. This flexibility enables local staff to assist appropriate individuals as soon as possible after registration.

Whether to certify an applicant or wait for eligibility determination before certification will be a local program

decision. The issue is to plan what is in the best interest of the participant to successfully obtain employment, with or without services, as the individual case may require.

3. *Exemption from WIN Registration for Working AFDC Applicants and Recipients*

a. *The Statute: Section 402(a)(19)(A)(vii) of the Social Security Act.*

The amendments add another exemption from the WIN registration requirements for AFDC applicants and recipients who are working not less than 30 hours per week.

b. *The Rule: 29 CFR 56.20 and 45 CFR 224.20; and 29 CFR 56.21(a)(5) and 45 CFR 224.21(a)(5) of the regulations.*

In the revisions of the regulations, DHHS and DOL have interpreted this amendment to apply to only those persons working in unsubsidized employment. Subsidized employment is considered to be temporary in WIN, and individuals in such employment remain registrants so that services can be provided to assist them to obtain unsubsidized employment. This exemption is used only for employment expected to last at least 30 days since employment of less than 30 days is not regular full-time employment.

The WIN sponsor is required to include, as part of its notification to the Income Maintenance Unit (IMU) of a registrant's employment, the number of hours, and expected duration of employment.

The purpose of this is to assist the IMU to determine whether the employment is full-time, and to apply the appropriate exemption criterion.

Individuals in full-time unsubsidized employment will no longer lose their AFDC assistance payments for not being registered. They may volunteer to register for WIN or to stay in WIN if they choose.

This new exemption will result in the deregistration from WIN of mandatory registrants who are working substantially full-time.

This change will free staff, who now register employed applicants and recipients, to work with WIN registrants who are not already employed and are more in need of WIN services. In addition, working individuals will no longer have to take time away from their jobs to register.

4. *Determination of Sanction Periods*

a. *The Statute: Section 402(a)(19)(F) of the Social Security Act.*

The sanction period is the time during which an individual, deregistered for failure or refusal to participate, is not permitted to reregister for WIN and therefore is not eligible for the AFDC grant unless he or she is a voluntary WIN registrant.

The WIN regulations originally contained fixed sanction periods of three and six months respectively for the first and subsequent failures or refusals of a WIN registrant to participate in WIN without good cause. This was to assure compliance with the Congressional intent at the time the legislation was enacted that WIN registrants participate in the WIN program in order to be eligible to continue to receive an AFDC grant.

However, specific authority for the Secretaries of Labor and Health and Human Services to prescribe the sanction period(s) was not contained in the law. The law previously stated that the mandatory WIN registrant's portion of the AFDC grant be removed "for so long as" the individual failed or refused to participate in the WIN program without good cause. The Federal courts in *McLean* v. *Califano*, 458 F Supp. 285 (S.D.N.Y. 1977); *Crosby* v. *Califano*, Civil Action No. 73 (S.D.Ill. 1979); and other cases nullified the section of the WIN regulations which prescribed fixed sanction periods. The courts found that fixed sanction periods did not comport with the law. To comply with these decisions and orders the WIN regulations were amended in April 1980 to provide for flexible sanctions based on the length of time that the individual failed or refused to participate without good cause. See 45 FR 27414 (April 22, 1980).

DHHS and DOL believe that Congress intended in the 1980 amendments to permit fixed sanction periods to be imposed for those individuals who without good cause fail or refuse to participate or terminate or refuse to accept employment or reduce earnings. The 1980 amendments to section 402 (a)(19)(F) of the Act (42 U.S.C. 602 (a)(19)(F) expressly permit sanction periods to be prescribed by joint regulations of the Secretaries of Labor and Health and Human Services. In accordance with section 402(a) (19) (F) of the Act, the sanctions also apply when an individual refuses to accept employment offered through the State public employment offices or a bona fide offer of employment from any source. The regulations make clear that terminating employment or reducing earnings without good cause invokes the sanctions, since such actions are, as a practical matter, equivalent to a refusal to accept employment.

b. *The Rule: 29 CFR 56.51 and 45 CFR 224.51 of the regulations.*

The revision to the regulations provides for a three "payment-month" sanction period when a registrant without good cause first fails or refuses to participate, terminates or refuses to accept employment, or reduces earnings and a six "payment-month" period for subsequent failures, refusals, terminations, or reductions. The three- and six-month sanction periods which applied before the court decisions were effective deterrents against individuals who tried to avoid participation in WIN while remaining on AFDC. A payment month is defined in 45 CFR 233.21 (b)(4) as the fiscal or calendar month for which an agency shall pay assistance.

Following an initial sanction period, the six "payment-month" suspension is an even greater deterrent for an individual who may again contemplate failing or refusing to participate or terminating or refusing to accept employment or reducing earnings. Previous experiences with more stringent sanctions show that they improve compliance with program requirements, standards and objectives.

The six "payment-month" sanction period also reflects the opinion of both Departments that individuals who again fail or refuse to participate, terminate or refuse to accept employment, or reduce earnings without good cause after having regained eligibility should receive a harsher sanction.

The use of "payment-month" periods will facilitate implementation of the grant adjustment, since most States' AFDC grant payments are paid on a "payment-month" basis. The sanction will become effective on the first day of the first payment month that the sanctioned individual's needs are removed from the grant.

5. *Elimination of the 60-Day Counseling Period*

a. *The Statute: Section 402(a)(19)(F) of the Social Security Act.*

Before the 1980 amendments, AFDC payments continued to be paid during a counseling period even though the recipient had failed to participate in a WIN program, or refused employment, without good cause.

The requirement for a 60-day counseling period has been stricken from the Act by the 1980 amendments. Elimination of the counseling streamlines case processing following an adverse determination or decision. It also emphasizes the importance of conciliating grievances and disputes informally, before positions become polarized, and before it becomes necessary for a registrant to request a hearing.

b. *The Rule: The provisions of 29 CFR 56.76 and 45 CFR 224.76 of the old regulations have been deleted.*

The revision to the regulations deletes the requirement for a 60-day counseling period.

6. *Collocation of Social Services Staff and Employment and Training Staff*

a. *The Statute: Section 402(a)(19)(G)(i) of the Social Security Act.*

The amendments provide that the local Separate Administrative Unit (SAU) staff and WIN employment and training staff be located in the same facility, "to the maximum extent feasible."

b. *The Rule: 29 CFR 56.30(a) and 45 CFR 224.30(a) of the regulations.*

It has been the policy of WIN to encourage local SAU staff and local WIN sponsor staff to be located in the same office for the convenience of the WIN registrant, and to improve the communication and working relationship between the staff of the two agencies. Although research has not been conclusive on this, the program administrators believe that proximity does foster more efficient working arrangements for jointly appraising and developing employability plans for individuals, and for providing other WIN services.

Under the revision of the regulations, collocation is not required, but will be encouraged to the maximum extent feasible. The WIN National Coordinating Committee will issue guidelines dealing with methods for accomplishing consolidation of staff offices and improving program performance.

7. *Prohibition of Referral to Jobs Known Not to Meet Appropriate Work Criteria*

a. *The Statute: Section 402(a)(19) (H) of the Social Security Act.*

This provision requires that individuals participating in employment search activities will not be referred to employment opportunities which do not meet the criteria for appropriate work.

b. *The Rule: 29 CFR 56.34 and 45 CFR 224.34 of the regulations.*

WIN registrants are not required to take jobs which do not meet established appropriate work criteria. This revision will prohibit WIN staff from referring registrants to jobs which are known not to meet the appropriate work criteria.

8. *Authorization of State In-Kind Match for Social Services*

a. *The Statute: Section 403(d)(1) of the Social Security Act.*

This authorization eliminates a disparity in matching provisions for Federal funds for the State welfare agency and the State WIN sponsor. In the past, the WIN sponsor was allowed an in-kind match under Section 435 of the Social Security Act, but the welfare agency was not.

b. *The Rule: 29 CFR 56.16 and 45 CFR 224.16 of the regulations.*

The revision to the regulations allows an in-kind match for social services and thereby brings conformity to the matching funds provisions for both the State welfare agency and the State WIN sponsor.

9. *Clarification of Treatment of WIN Public Service Employment (PSE) Income in the Calculation of AFDC Grants*

a. *The Statute: Section 402(a)(19)(D) of the Social Security Act.*

This provision specifies that incentive payments and allowances for transportation and other job related training costs paid to a family member participating in employment training will be disregarded in the calculation of an AFDC grant.

The 1980 amendments deleted the requirement that income derived from a special work project under the WIN public service employment program also be disregarded. This means that income from WIN public service employment must be counted.

b. *The Rule: 29 CFR 56.40 and 45 CFR 224.40 of the regulations.*

This clarifying amendment does not affect WIN regulations which already provide that the disregards are not available to registrants in WIN PSE.

Technical and Clarifying Changes to Definitions

29 CFR 56.1 and 45 CFR 224.1 of the regulations.

The definitions below have been revised, deleted, or added to explain, clarify, change, or redefine certain terms in the previous regulations which were affected by changes resulting from the 1980 amendments.

"*Component*" now identifies the WIN components such as on-the-job training and public service employment. However, employment-related activities and social services are not components.

"*Employability-related activities*" has been added. This term is defined as services to assist registrants in locating and securing unsubsidized employment.

"*Employment search*" has been added; this activity is now part of the new "*employment-related activities*" in which registrants are provided with group job seeking, job seeking skills, job development assistance, and referrals, and in which they actively contact employers in their effort to secure jobs.

"*Intensive manpower services (IMS)*" has been eliminated because the IMS component has been discontinued. (See the definition of the new "*employment-related activities*").

Justification for Dispensing With Prior Notice of Proposed Rulemaking and 30-Day Implementation Period

These regulations implement Section 401 of the Social Security Disability Amendments of 1980 (Pub. L. 96-265), by conforming the regulations to the statutes.

The terms of Section 401 are, for the most part, clear and do not permit the exercise of discretion by the Secretary. Accordingly, it is unnecessary to utilize notice and comment procedures with respect to those revisions in the regulations that simply incorporate the provisions of Section 401 and make conforming changes.

The only significant exercise of discretion embodied in these regulations is determination of the sanction periods authorized by Section 401. As described above, the sanction periods selected are the same periods as were established in the Department's regulations prior to the court cases that were overturned by the 1980 Amendments. These sanction periods were adopted through notice-and-comment procedures, and the Department has thus previously obtained and considered the views of the public on this matter. In light of this fact and the fact that Section 401 was effective on September 30, 1980, the Secretary has concluded that it would be contrary to the public interest further to delay the implementation of Section 401 through issuance of a notice of proposed rulemaking. However, the comments of the public are requested on these Interim Final Rules.

We will carefully consider all comments. We will then publish in the Federal Register a final regulation. The final regulation will include a summary of the comments, together with any revision of these regulations resulting from comments or our reasons for not accepting suggested revisions.

We are dispensing with the 30-day delay in effective date after publication. Both agencies have found that good cause exists for these regulations to become effective on October 1, 1981 since publication of these regulations has been delayed.

Regulatory Flexibility Act

The Secretaries certify in accordance with Section 603 of the Regulatory Flexibility Act, Pub. L. 96-354 (5 U.S.C. 603) that this regulation will not have a significant economic impact on a substantial number of small entities including small business, small organizational units and small governmental jurisdictions. Consequently, an initial regulatory

flexibility analysis has not been prepared for this rule. Most of the provisions of the rule impose conditions for Federal financial participation on State agencies and do not impact on small entities.

Executive Order 12291

The Secretaries have also determined in accordance with Executive Order 12291 that the rule does not constitute a major rule requiring the preparation of a regulatory impact analysis. The regulation is not likely to result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in cost prices for consumers, individual industries, Federal, State or local government agencies or geographic regions; or (3) significant adverse effects on competition, employment, investment and innovation.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1980, Pub. L. 96-511, all Departments are required to submit to the Office of Management and Budget for review and approval any reporting or recordkeeping requirements inherent in a proposed and final rule. This rule increases the Federal paperwork burden for WIN State agencies. 15 CFR 224.41 and 29 CFR 56.41 specify that each state WIN sponsor must establish a program of employment related activities in each WIN site to assist registrants to obtain employment. This requires the development of standards of participation which must be included in the State WIN plan. The Department will submit this section of the final regulation to OMB for review.

(Catalog of Federal Domestic Assistance Program No. 13.646, "Work Incentive Program (WIN)".)

(402 (a)(7), 402(a)(19), 430-444, 1102 of the Social Security Act, as amended. 49 Stat. 647 (42 U.S.C. 602(a)(7), 630-644, 1302))

Dated: August 14, 1981.

Dorcas R. Hardy,

Assistant Secretary for Human Development Services.

Approved: September 17, 1981.

Richard S. Schweiker,

Secretary, Health and Human Services.

Dated: September 23, 1981.

Albert Angrisani,

Assistant Secretary.

Approved: September 29, 1981.

Raymond J. Donovan,

Secretary, Department of Labor.

For reasons set out in the preamble, Part 56 of Title 29 of the Code of Federal Regulations is amended as set forth below:

Title 29—Labor

Subtitle A—Office of the Secretary

PART 56—WORK INCENTIVE PROGRAMS FOR AFDC RECIPIENTS UNDER TITLE IV OF THE SOCIAL SECURITY ACT

Subpart A—Purpose and Scope and Definitions

1. Section 56.1 is amended as follows:

§ 56.1 Definitions [Amended]

(a) By revising certain definitions as follows:

* * * * *

Certification means a written notice from the SAU that necessary supportive services have been arranged or are available to enable a WIN registrant to accept employment, training, manpower services, or other employment-related activities, or that no supportive services are needed and that the individual is at that time ready for employment or training.

* * * * *

Component means a structured regularly scheduled program activity for certified registrants such as OJT, WIN PSE, institutional training, and work experience, but not employment-related activities or supportive services.

* * * * *

Exempt refers to an AFDC applicant or recipient who is not required by the Act to register for employment, training, or other employment-related activities under the WIN program as a condition of eligibility for AFDC.

* * * * *

Mandatory or Nonexempt Registrant means an AFDC applicant or recipient who is required by the Act to register for manpower services, training, employment, or other employment-related activities, as a condition of eligibility for AFDC.

* * * * *

Registrant means an AFDC applicant or recipient who has registered with the WIN sponsor for manpower services, training, employment, and other employment-related activities.

* * * * *

State WIN Plan means the Statewide operational plan for WIN, covering AFDC applicants and recipients who register for employment, other employment-related activities, manpower services and training under WIN, developed by the WIN sponsor and SAU in each state and approved and supervised by the RCC under title IV, of the Act.

* * * * *

Supportive Services means those social services provided or arranged by the SAU, necessary to enable an individual to engage in employment, other employment-related activities, or training.

* * * * *

Volunteer means an AFDC applicant or recipient who, though exempt from WIN registration, volunteers for WIN and registers for employment, other employment-related activities, manpower services and training.

* * * * *

WIN Incentive Payment means a cash payment of up to $30 per month, paid to an individual who is participating in an institutional or work experience component.

* * * * *

Work Experience Training means a clearly defined, well-supervised assignment with a public or nonprofit private employer.

(b) By removing the term "Intensive Manpower Services Component";

(c) By adding the following two terms in proper alphabetical sequence:

* * * * *

Employment-related Activities means activities providing employment and training services to WIN registrants to assist them in locating and securing unsubsidized employment. Employment-related activities include employment search.

Employment Search is the part of employment-related activities where registrants are provided with job seeking skills, job development assistance and referrals, and actively contact employers in their effort to secure jobs.

* * * * *

Subpart B—Administration

2. In § 56.16 paragraph (b) is revised to read as follows:

§ 56.16 Non-Federal contribution.

* * * * *

(b) The State welfare agency shall assure a non-Federal cash or in-kind contribution of 10 percent of the cost of supportive services and related administrative expenses incurred by the SAU under Title IV-A of the Act.

* * * * *

Subpart C—Requirements and Procedures for Registration, for Appraisal and Certification

3. In § 56.20 paragraphs (a) and (c)(4) are revised and paragraph (b)(10) is added to read as follows:

§ 56.20 Registration requirements for AFDC applicants and recipients; State plan requirements.

A State plan under Title IV-A of the Social Security Act must provide that:

(a) All applicants and recipients who are required to register by section 402(a)(19)(A) of the Act shall register for manpower services, training, employment, and other employment-related activities as a condition of eligibility for AFDC, except as otherwise provided under paragraph (b) of this section;

(b) * * *

(10) A person who is working not less than 30 hours per week in unsubsidized employment expected to last a minimum of 30 days. This exemption continues to apply if there is a temporary break in full-time employment expected to last no longer than 10 work days.

(c) * * *

(4) Exempt applicants and recipients in WIN project areas may choose to register voluntarily for manpower services, training employment, and employment-related activities, and may withdraw such registration at any time without loss of AFDC benefits, provided their status has not changed in a way which would require registration; and

* * * * *

4. In § 56.21, Paragraph (a)(5) is revised to read as follows:

§ 56.21 Registration procedures.

(a) * * *

(5) Notify the IMU of any employment or other change of status which may affect an individual's AFDC eligibility or the amount of the AFDC payment. Included in this notification will be the hours and expected duration of employment.

* * * * *

5. Section 56.22 is amended by revising paragraph (e), adding a new paragraph (f) and redesignating existing paragraphs (f) and (g) as (g) and (h) to read as follows:

§ 56.22 Appraisal and certification.

* * * * *

(e) The SAU shall certify in writing that the necessary immediate and on-going supportive services have been provided or arranged, or that no such services are required for those individuals who have been selected for participation in a WIN component. The SAU shall also certify registrants who are recipients who are selected to participate in employment-related activities. When certified, the individual shall be placed in employment if appropriate work that the individual can perform is available. If the individual cannot be immediately placed in employment, he shall be placed in employment-related activities, on-the-job training, public service employment, institutional training or in any other manpower program or activity.

(f) The SAU may provide or arrange for social services for AFDC applicants to enable them to participate in employment-related activities. Such applicants may be certified, or services may be provided or arranged on an occasional basis without certification.

* * * * *

Subpart D—Supportive and Manpower Services and Protective Provisions

6. Section 56.30 is amended by removing paragraph (b)(5) and by revising paragraphs (a), (b)(2), (b)(3), and (e) to read as follows:

§ 56.30 Supportive services; State plan requirements.

A State plan under Part A of title IV of the Act must provide that:

(a) Within the State agency there will be separate administrative units which will, to the maximum extent possible, perform functions only in connection with the WIN program. To the maximum extent feasible, local SAU staff and WIN employment and training staff should be located together to foster more efficient working arrangements for joint appraisals, the development of employability plans, and the provision of services to registrants.

(b) * * *

(2) Developing and supplying social services necessary to enable a registrant, to accept employment, training for employment, or other employment-related activities. Necessary services shall continue for a period of 30 days after the start of unsubsidized employment and may continue for a maximum of 90 days at the discretion of the SAU. Such services may be provided even after the AFDC grant has been discontinued due to employment. In an emergency such services may also be provided for a period of up to 30 days to enable a registrant to continue existing employment;

(3) Participating with the WIN sponsor in appraisal and certification, in the development of employability plans pursuant to § 56.22, and in efforts to resolve grievances and disputes informally.

* * * * *

(e) Supportive services may be provided for up to two weeks to a registrant between participation in WIN components or between participation in a component or employment-related activities and the start of employment in order to avoid interruption of the employability process.

7. In § 56.32 paragraphs (a) through (g) are redesignated as paragraphs (b) through (h); a new paragraph (a) is added; and paragraphs (b) and (h) are revised as follows:

§ 56.32 Pay and allowances for WIN registrants.

(a) An individual assigned to employment search shall receive an allowance for necessary expenses for participation.

(b) An individual assigned to a WIN institutional or work experience training component, in which no salary is paid, shall receive an allowance for necessary training related expenses. He shall also receive incentive payments at a rate not to exceed $30 a month provided he meets the requirements of the component relative to hours of participation.

(c) Individuals placed in employment, OJT, or PSE shall be authorized training related expenses for not in excess of two WIN pay periods; or until they receive their first full paycheck or the cash from a grant adjustment reflecting new work related expenses, whichever occurs first.

(d) Reasonable subsistence allowance, in addition to a training-related expense payment, shall be paid to individuals for separate maintenance when in training facilities beyond daily commuting distance from their homes for each calender day within the training payment period during which they are participating in such training and are residing away from home.

(e) An individual shall be paid transportation allowance to a training facility located beyond commuting distance for the cost of his initial trip to the training facility and for his final trip home at the completion or other termination of such training.

(f) Individuals may be paid allowances for nonrecurring expenses as authorized by the Secretary of Labor.

(g) WIN sponsor offices may establish petty cash funds or another acceptable method to meet needs for cash for allowable expenditures for all registrants.

(h) Registrants referred to employment may receive an allowance for necessary expenses.

8. In § 56.34 paragraph (a) is revised to read as follows:

§ 56.34 Appropriate work and training criteria.

(a) WIN registrants may not be referred to employment which is known not to meet the criteria of this paragraph. Certified recipients shall accept assignment to employment, WIN training or employment-related activities, as determined appropriate by the WIN sponsor or face deregistration action. The following standards must be met before any such individuals can be required to accept a work or training assignment including PSE and OJT:

* * * * *

Subpart E—The WIN Components and Activities

9. In § 56.41 the section heading is revised, paragraphs (a) and (b) are removed and new paragraphs (a), (b), (c), and (d) are added to read as follows:

§ 56.41 Employment-related activities (EA).

(a) Each State WIN sponsor shall establish a program of employment-related activities in each WIN site to assist registrants, who are either AFDC applicants or recipients, to obtain employment. The State WIN sponsor shall develop standards of participation taking into account local conditions, including, but not limited to, geographic factors, availability of public transportation, and local labor market characteristics. These standards of participation shall be included in the State WIN plan.

(b) Employment-related activities shall provide employment search. Included may be group job seeking, job development, exposure to labor market information, referrals, and job placement, to assist individuals in obtaining unsubsidized employment.

(c) Participation in required employment search may not exceed a total of 40 work days in any calendar year for any individual.

(d) Assignment of registrants to employment-related activities shall occur only after appraisal and the development of an employability plan. Recipients must be certified prior to participation. AFDC applicants may be certified, but lacking certification must be provided any supportive services necessary to permit effective participation.

Subpart F—Deregistration and Sanctions

10. Section 56.50 is amended by revising paragraph (e) and adding a new paragraph (h) as follows:

§ 56.50 Deregistration.

* * * * *

(e) Any WIN recipient, except a volunteer, who is determined to have failed or refused without good cause to appear for appraisal; or any certified WIN recipient, except a volunteer, who has failed or refused to participate in the WIN program without good cause shall be deregistered from WIN and removed from the AFDC grant for failure to participate. Any individual who without good cause terminates or refuses to accept employment, or reduces earnings shall be deregistered and removed from the AFDC grant.

* * * * *

(h) The sanction in 29 CFR 56.51 shall become effective on the first day of the first payment-month that the sanctioned individual's needs are removed from the AFDC grant.

11. Section 56.51 is revised as follows:

§ 56.51 Sanctions.

A State plan under Title IV-A of the Act shall provide that:

(a) When an AFDC recipient, who is a mandatory registrant in the WIN program, has been found to have failed or refused without good cause to participate in the program, or has terminated employment or refused to accept employment, or reduced earnings without good cause, the following sanctions shall apply:

(1) For the first such occurrence the individual shall be deregistered for three payment-months.

(2) For the second and subsequent occurrences, the individual shall be deregistered for six payment-months.

(b) During the sanction period:

(1) If the individual is a caretaker relative receiving AFDC benefits, the State will not take into account his or her needs in determining the family's need for assistance, but the State will provide assistance in the form of protective or vendor payments or foster care for the remaining members of the assistance unit. When the State makes protective or vendor payments, the nonparticipating caretaker relative may not be the protective payee.

(2) If the individual is the only dependent child in the family, the State will deny assistance for the family.

(3) If the individual is one of several dependent children in the family, the State will deny assistance for the child and will not take into account the child's needs in determining the family's need for assistance.

(c) When the State finds that an AFDC recipient who is a voluntary registrant has failed or refused to participate in the WIN program without good cause, the State will deregister the individual for three or six payment-months depending on whether this was the first or a subsequent deregistration for failure or refusal to participate. However, the individual's AFDC grant shall not be affected.

(d) An individual may manifest failure or refusal to participate in the WIN program or may manifest termination of or refuses to accept employment or reduction in earnings either by an overt act (express) or by a de facto action.

(1) An overt (express) refusal is a written or oral statement by an individual that he or she will not participate in the WIN program.

(2) A de facto refusal is any current act or pattern of behavior consisting of a series of current events from which failure or refusal to participate can be implied. Where the failure or refusal to participate or termination of employment or refusal to accept employment or reduction in earnings is implied, the WIN sponsor shall send a notice setting an appointment for the individual to come to the WIN office and discuss the act or pattern of behavior in question. The notice shall explain the reasons for the appointment and the consequence of failure to keep the appointment.

(e) In the event a registrant is referred back to the IMU as having good cause for not continuing on a training plan or a job, the IMU shall promptly restore the assistance payment to the individual or make other necessary payment adjustments.

Subpart G—The WIN Adjudication System

12. Section 56.63 is amended by revising paragraph (a) and (b)(3); removing paragraph (b)(2) and redesignating paragraph (b)(3) as (b)(2); and redesignating the remaining paragraphs as (b)(3), (b)(4), (b)(5), (b)(6), and (b)(7) as follows:

§ 56.63 Requirement of conciliation and notice.

(a) The WIN staff must exhaust efforts toward conciliatory resolution of disputes between the WIN staff and the registrant before the WIN staff issues a "Notice of Intended Deregistration." This conciliation effort shall begin as soon as possible, but no later than 10 days following the date of failure or refusal to participate as determined

under § 56.51(d) of this Part, and may continue for a period not to exceed 30 days. However, either the WIN staff, or the registrant upon written request, *may* terminate this period sooner when either believes that the dispute cannot be resolved by conciliation. The WIN staff shall advise the registrant of the right to terminate the conciliation effort and, where necessary, assist in preparing the written statement.

(b) * * *

(2) Notification of the registrant's right to a hearing if the registrant believes that the proposed action is incorrect, or the length of the sanction period is incorrect, provided a request for a hearing is filed as prescribed in § 56.64 of this Part;

(3) Notice that the proposed action will be implementated if a hearing request is not received within the prescribed time;

(4) Instructions and required forms for requesting a hearing;

(5) An offer to assist with preparation of the hearing request;

(6) Notice that he may be represented at the hearing by counsel or other authorized representative appointed by him and that he and his representative will have the opportunity to confront and cross-examine opposing witnesses;

(7) Notice that he will be permitted to present material evidence and testimony at the hearing that is not already in the record.

* * * * *

§ 56.76 [Removed and Reserved]

13. Section 56.76 is removed and reserved.

For reasons set out in the preamble, Part 224 of Title 45 of the Code of Federal Regulations is amended as set forth below:

Title 45—Public Welfare

Subtitle B—Regulations Pertaining to Public Welfare

PART 224—WORK INCENTIVE PROGRAMS FOR AFDC RECIPIENTS UNDER TITLE IV OF THE SOCIAL SECURITY ACT

Subpart A—Purpose of Scope and Definitions

1. Section 224.1 is amended as follows:

§ 224.1 Definitions [Amended]

(a) by revising certain definitions as follows:

* * * * *

Certification means a written notice from the SAU that necessary supportive services have been arranged or are available to enable a WIN registrant to accept employment, training, manpower services, or other employment related activities, or that no supportive services are needed and that the individual is at that time ready for employment or training.

* * * * *

Component means a structured regularly scheduled program activity for certified registrants such as OJT, WIN, PSE, institutional training, and work experience, but not employment-related activities or supportive services.

* * * * *

Exempt refers to an AFDC applicant or recipient who is not required by the Act to register for employment, training, or other employment-related activities under the WIN program as a condition of eligibility for AFDC.

* * * * *

Mandatory or Nonexempt Registrant means an AFDC applicant or recipient who is required by the Act to register for manpower services training, employment, or other employment-related activities as a condition of eligibility for AFDC.

* * * * *

Registrant means an AFDC applicant or recipient who has registered with the WIN sponsor for manpower services, training, employment, and other employment-related activities.

* * * * *

State WIN Plan means the Statewide operational plan for WIN, covering AFDC applicants and recipients who register for employment, other employment-related activities, manpower services and training under WIN, developed by the WIN sponsor and SAU in each state and approved and supervised by the RCC under title IV, of the Act.

* * * * *

Supportive Services means those social services provided or arranged by the SAU, necessary to enable an individual to engage in employment, other employment-related activities, or training.

* * * * *

Volunteer means an AFDC applicant or recipient who, though exempt from WIN registration, volunteers for WIN and registers for employment, other employment-related activities, manpower services and training.

* * * * *

WIN Incentive Payment means a cash payment of up to $30 per month, paid to an individual who is participating in an institutional or work experience component.

* * * * *

Work Experience Training means a clearly defined, well-supervised assignment with a public or nonprofit private employer.

(b) By removing the term "Intensive Manpower Services Component".

(c) By adding the following two terms in proper alphabetical sequence:

* * * * *

Employment-related Activities means activities providing employment and training services to WIN registrants to assist them in locating and securing unsubsidized employment. Employment-related activities include employment search.

Employment Search is the part of employment-related activities where registrants are provided with job seeking skills, job development assistance and referrals, and actively contact employers in their effort to secure jobs.

* * * * *

Subpart B—Administration

2. In § 224.16 paragraph (b) is revised to read as follows:

§ 224.16 Non-Federal contribution.

* * * * *

(b) The State welfare agency shall assure a non-Federal cash or in-kind contribution of 10 percent of the cost of supportive services and related administrative expenses incurred by the SAU under Title IV-A of the Act.

* * * * *

Subpart C—Requirements and Procedures for Registration, Appraisal and Certification

3. In § 224.20 paragraphs (a) and (c)(4) are revised and paragraph (b)(10) is added to read as follows:

§ 221.20 Registration requirements for AFDC applicants and recipients; State plan requirements.

A State plan under Title IV-A of the Social Security Act must provide that:

(a) All applicants and recipients who are required to register by section 402(a)(19)(A) of the Act, shall register for manpower services, training, employment, and other employment-related activities as a condition of eligibility for AFDC, except as otherwise provided under paragraph (b) of this section:

(b) * * *

(10) A person who is working not less than 30 hours per week in unsubsidized employment expected to last a minimum of 30 days. This exemption continues to apply if there is a temporary break in

full-time employment expected to last no longer than 10 work days.

(c) * * *

(4) Exempt applicants and recipients in WIN project areas may choose to register voluntarily for manpower services, training, employment, and employment-related activities, and may withdraw such registration at any time without loss of AFDC benefits, provided their status has not changed in a way which would require registration; and

* * * * *

4. In § 224.21, paragraph (a)(5) is amended to read as follows:

§ 224.21 Registration procedures.

(a) * * *

(5) Notify the IMU of any employment or other change of status which may affect an individual's AFDC eligibility or the amount of the AFDC payment. Included in this notification will be the hours and expected duration of employment.

* * * * *

5. Section 224.22 is amended by revising paragraph (e), adding a new paragraph (f) and redesignating existing paragraphs (f) and (g) as (g) and (h) to read as follows:

§ 224.22 Appraisal and certification.

* * * * *

(e) The SAU shall certify in writing that the necessary immediate and on-going supportive services have been provided or arranged, or that no such services are required for those individuals who have been selected for participation in a WIN component. The SAU shall also certify registrants who are recipients who are selected to participate in employment-related activities. When certified, the individual shall be placed in employment if appropriate work that the individual can perform is available. If the individual cannot be immediately placed in employment, he shall be placed in employment-related activities, on-the-job training, public service employment, institutional training or in any other manpower program or activity.

(f) The SAU may provide or arrange for social services for AFDC applicants to enable them to participate in employment-related activities. Such applicants may be certified, or services may be provided or arranged on an occasional basis without certification.

* * * * *

Subpart D—Supportive and Manpower Services and Protective Provisions

6. Section 224.30 is amended by removing paragraph (b)(5) and by revising paragraphs (a), (b)(2), (b)(3), and (e) to read as follows:

§ 224.30 Supportive services; State plan requirements.

A State plan under Part A of title IV of the Act must provide that:

(a) Within the State agency there will be separate administrative units which will, to the maximum extent possible, perform functions only in connection with the WIN program. To the maximum extent feasible, local SAU staff and WIN employment and training staff should be located together to foster more efficient working arrangements for joint appraisals, the development of employability plans, and the provision of services to registrants.

(b) * * *

(2) Developing and supplying social services necessary to enable a registrant to accept employment, training for employment, or other employment-related activities. Necessary services shall continue for a period of 30 days after the start of unsubsidized employment and may continue for a maximum of 90 days at the discretion of the SAU. Such services may be provided even after the AFDC grant has been discontinued due to employment. In an emergency such services may also be provided for a period of up to 30 days to enable a registrant to continue existing employment;

(3) Participating with the WIN sponsor in appraisal and certification, in the development of employability plans pursuant to § 224.22, and in efforts to resolve grievances and disputes informally.

* * * * *

(e) Supportive services may be provided for up to two weeks to a registrant between participation in WIN components or between participation in a component or employment-related activities and the start of employment in order to avoid interruption of the employability process.

7 In § 224.32 paragraphs (a) through (g) are redesignated as paragraphs (b) through (h); a new paragraph (a) is added; and paragraphs (b) and (h) are revised as follows:

§ 224.32 Pay and allowances for WIN registrants.

(a) An individual assigned to employment search shall receive an allowance for necessary expenses for participation.

(b) An individual assigned to a WIN institutional or work experience training component, in which no salary is paid, shall receive an allowance for necessary training related expenses. He shall also receive incentive payments at a rate not to exceed $30 a month provided he meets the requirements of the component relative to hours of participation.

(c) Individuals placed in employment, OJT, or PSE shall be authorized training related expenses for not in excess of two WIN pay periods; or until they receive their first full paycheck or the cash from a grant adjustment reflecting new work related expenses, whichever occurs first.

(d) Reasonable subsistence allowance, in addition to a training-related expense payment, shall be paid to individuals for separate maintenance when in training facilities beyond daily commuting distance from their homes for each calendar day within the training payment period during which they are participating in such training and are residing away from home.

(e) An individual shall be paid transportation allowance to a training facility located beyond commuting distance for the cost of his initial trip to the training facility and for his final trip home at the completion or other termination of such training.

(f) Individuals may be paid allowances for nonrecurring expenses as authorized by the Secretary of Labor.

(g) WIN sponsor offices may establish petty cash funds or another acceptable method to meet needs for cash for allowable expenditures for all registrants.

(h) Registrants referred to employment may receive an allowance for necessary expenses.

8. In § 224.34 paragraph (a) is revised to read as follows:

§ 224.34 Appropriate work and training criteria.

(a) WIN registrants may not be referred to employment which is known not to meet the criteria of this paragraph. Certified recipients shall accept assignment to employment, WIN training or employment-related activities, as determined a appropriate by the WIN sponsor or face deregistration action. The following standards must be met before any such individuals can be required to accept a work or training assignment including PSE and OJT:

* * * * *

Subpart E—The WIN Components and Activities

9. In § 224.41 the section heading is revised, paragraphs (a) and (b) are removed and new paragraphs (a), (b), (c), and (d) are added to read as follows:

§ 224.41 Employment-related activities (EA).

(a) Each State WIN sponsor shall establish a program of employment-related activities in each WIN site to assist registrants, who are either AFDC applicants or recipients, to obtain employment. The State WIN sponsor shall develop standards of participation taking into account local conditions, including, but not limited to, geographic factors, availability of public transportation, and local labor market characteristics. These standards of participation shall be included in the State WIN plan.

(b) Employment-related activities shall provide employment search. Included may be group job seeking, job development, exposure to labor market information, referrals, and job placement, to assist individuals in obtaining unsubsidized employment.

(c) Participation in required employment search may not exceed a total of 40 work days in any calendar year for any individual.

(d) Assignment of registrants to employment-related activities shall occur only after appraisal and the development of an employability plan. Recipients must be certified prior to participation. AFDC applicants may be certified, but lacking certification must be provided any supportive services necessary to permit effective participation.

Subpart F—Deregistration and Sanctions

10. Section 224.50 is amended by revising paragraph (e) and adding a new paragraph (h) as follows:

§ 224.50 Deregistration.

* * * * *

(e) Any WIN recipient, except a volunteer, who is determined to have failed or refused without good cause to appear for appraisal; or any certified WIN recipient, except a volunteer, who has failed or refused to participate in the WIN program without good cause shall be deregistered from WIN and removed from the AFDC grant for failure to participate Any individual who without good cause terminates or refuses to accept employment or reduces earnings shall be deregistered and removed from the AFDC grant.

* * * * *

(h) The sanction in 45 CFR 224.51 shall become effective on the first day of the first payment-month that the sanctioned individual's needs are removed from the AFDC grant.

11. Section 224.51 is revised as follows:

§ 224.51 Sanctions.

A State plan under Title IV-A of the Act shall provide that:

(a) When an AFDC recipient, who is a mandatory registrant in the WIN program, has been found to have failed or refused without good cause to participate in the program or has terminated employment, or has refused to accept employment or reduced earnings without good cause, the following sanctions shall apply:

(1) For the first such occurrence the individual shall be deregistered for three payment-months.

(2) For the second and subsequent occurrences, the individual shall be deregistered for six payment-months.

(b) During the sanction period:

(1) If the individual is a caretaker relative receiving AFDC benefits, the State will not take into account his or her needs in determining the family's need for assistance, but the State will provide assistance in the form of protective or vendor payments or foster care for the remaining members of the assistance unit. When the State makes protective or vendor payments, the non-participating caretaker relative may not be the protective payee.

(2) If the individual is the only dependent child in the family, the State will deny assistance for the family.

(3) If the individual is one of several dependent children in the family, the State will deny assistance for the child and will not take into account the child's needs in determining the family's need for assistance.

(c) When the State finds that an AFDC recipient who is a voluntary registrant has failed or refused to participate in the WIN program without good cause, the State will deregister the individual for three or six payment-months depending on whether this was the first or a subsequent deregistration for failure or refusal to participate. However, the individual's AFDC grant shall not be affected.

(d) An individual may manifest failure or refusal to participate in the WIN program or may manifest termination of employment or may refuse to accept employment or reduction in earnings either by an overt act (express) or by a *de facto action*.

(1) An overt (express) refusal is a written or oral statement by an individual that he or she will not participate in the WIN program.

(2) A de facto refusal is any current act or pattern of behavior consisting of a series of current events from which failure or refusal to participate can be implied. Where the failure or refusal to participate or termination of employment, or refusal to accept employment, or reduction in earnings is implied, the WIN sponsor shall send a notice setting an appointment for the individual to come to the WIN office and discuss the act or pattern of behavior in question. The notice shall explain the reasons for the appointment and the consequences of failure to keep the appointment.

(e) In the event a registrant is referred back to the IMU as having good cause for not continuing on a training plan or a job, the IMU shall promptly restore the assistance payment to the individual or make other necessary payment adjustments.

Subpart G—The WIN Adjudication System

12. Section 224.63 is amended by revising paragraphs (a) and (b)(3); removing paragraph (b)(2) and redesignating paragraph (b)(3) as (b)(2); and redesignating the remaining paragraphs as (b)(3), (b)(4), (b)(5), (b)(6), and (b)(7) as follows:

§ 224.63 Requirement of conciliation and notice.

(a) The WIN staff must exhaust efforts toward conciliatory resolution of disputes between the WIN staff and the registrant before the WIN staff issues a "Notice of Intended Deregistration." This conciliation effort shall begin as soon as possible, but no later than 10 days following the date of failure or refusal to participate as determined under § 224.51(d) of this Part, and may continue for a period not to exceed 30 days. However, either the WIN staff, or the registrant upon written request, *may* terminate this period sooner when either believes that the dispute cannot be resolved by conciliation. The WIN staff shall advise the registrant of the right to terminate the conciliation effort and, where necessary, assist in preparing the written statement.

(b) * * *

(2) Notification of the registrant's right to a hearing if the registrant believes that the proposed action is incorrect, or the length of the sanction period is incorrect, provided a request for a

hearing is filed as prescribed in § 224.64 of this part.

(3) Notice that the proposed action will be implemented if a hearing request is not received within the prescribed time;

(4) Instructions and required forms for requesting a hearing;

(5) An offer to assist with preparation of the hearing request;

(6) Notice that he may be represented at the hearing by counsel or other authorized representative appointed by him and that he and his representative will have the opportunity to confront and cross-examine opposing witnesses;

(7) Notice that he will be permitted to present material evidence and testimony at the hearing that is not already in the record.

* * * * *

§ 224.76 [Removed and Reserved]

13. Section 224.76 is removed and reserved.

[FR Doc. 81-28801 Filed 9-30-81; 8:45 am]
BILLING CODE 4510-30-M, 4110-92-M